NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted March 13, 2024
Decided April 3, 2024

Before

ILANA DIAMOND ROVNER, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 23-3015

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

MARIO L. GORDON,
Defendant-Appellant.

Appeal from the United States District Court for the Southern District of Illinois.

No. 4:02-CR-40004-SMY-1

Staci M. Yandle,
Judge.

O R D E R

Mario Gordon appeals the sentence imposed upon the revocation of his supervised release, but his appointed counsel asserts that the appeal is frivolous and moves to withdraw. *See Anders v. California*, 386 U.S. 738, 744 (1967). We grant counsel's motion and dismiss Gordon's appeal.

A defendant who appeals a revocation order does not have an unqualified constitutional right to counsel, so the *Anders* safeguards need not govern our review. *Gagnon v. Scarpelli*, 411 U.S. 778, 789–90 (1973). Even so, our practice is to apply them.

See United States v. Brown, 823 F.3d 392, 394 (7th Cir. 2016). Counsel's brief explains the nature of the case and addresses issues that an appeal of this kind might be expected to involve, and Gordon has responded to counsel's motion. *See* CIR. R. 51(b). Because counsel's analysis appears thorough, we limit our review to subjects that counsel and Gordon discuss. *See United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014).

In 2023, after serving time in prison for convictions of conspiracy to distribute and possess with intent to distribute crack cocaine, 21 U.S.C. § 846, and possession with intent to distribute crack cocaine, *id.* § 841, Gordon violated the conditions of his supervised release. The probation officer advised the district court that Gordon had (1) assaulted a peace officer or judge and (2) unlawfully possessed marijuana. Gordon pleaded guilty to the violations, and the court sentenced him to prison terms of 24 and 27 months—to run concurrently—as well as concurrent, 36-month terms of supervised release.

After consulting with Gordon, counsel represents that Gordon does not wish to challenge the basis for revocation. Counsel thus properly refrains from discussing whether Gordon's admissions were knowing and voluntary.

Counsel considers whether Gordon could raise any non-frivolous challenge to the calculation of the sentence imposed at his revocation hearing. Our review of a sentence resulting from revocation proceedings is "highly deferential," *United States v. Njos*, 68 F.4th 1060, 1064 (7th Cir. 2023), and we agree with counsel that Gordon's sentence was not procedurally unreasonable. The district court correctly determined that Gordon's offenses—assault on a police officer and unlawful possession of marijuana—were Grade B violations, *see* U.S.S.G. § 7B1.1(a)(2); that Grade B violations mandate revocation of supervised release, *see id.* § 7B1.3(a)(1); and that he had a criminal history category of VI—yielding a policy-statement range of 21 to 27 months in prison, *see id.* § 7B1.4.

In his Rule 51(b) response, Gordon contends that his criminal history category should have been V. But Gordon's criminal history category was VI when he was originally sentenced, *see United States v. Gordon*, 189 F. App'x 544 (7th Cir. 2006), so it remains VI in revocation proceedings. *See* U.S.S.G. § 7B1.4 cmt. n.1.

Next, counsel evaluates whether Gordon could advance a non-frivolous argument regarding the substantive reasonableness of his sentence. We presume that a within-guidelines sentence like Gordon's is reasonable. *United States v. Major*, 33 F.4th 370, 384 (7th Cir. 2022). And the district court adequately considered the § 3553(a)

factors, emphasizing the seriousness of the offense and need for deterrence (Gordon's violation of supervision, in part by assaulting a police officer, within a week of his release from prison), the need to protect the public (Gordon's history of similar offenses), Gordon's personal characteristics (mental health challenges), and Gordon's need for medical care (mental health treatment as a part of his eventual supervised release).

Finally, counsel correctly concludes that a challenge based on ineffective assistance of counsel is best reserved for collateral review, where an evidentiary foundation can be developed. *See Massaro v. United States*, 538 U.S. 500, 504–05 (2003); *United States v. McClinton*, 23 F.4th 732, 737 (7th Cir. 2022).

We therefore GRANT counsel's motion and DISMISS the appeal.