

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 19-4632

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DOUGLAS E. MILLS,

Defendant - Appellant.

Appeal from the United States District Court for the Southern District of West Virginia, at Charleston. John T. Copenhaver, Jr., Senior District Judge. (2:09-cr-00241-1)

Submitted: March 26, 2020

Decided: May 20, 2020

Before WILKINSON and NIEMEYER, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

L. Thompson Price, TOM PRICE LAW, Charleston, West Virginia, for Appellant. Steven Loew, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Charleston, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Douglas E. Mills appeals the 8-month sentence imposed upon revocation of his supervised release. Mills' counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), stating that there are no meritorious grounds for appeal, but questioning whether Mills' sentence is plainly unreasonable. Mills was notified of his right to file a pro se supplemental brief but has not done so. The Government has declined to file a response brief. We affirm.

“A district court has broad, though not unlimited, discretion in fashioning a sentence upon revocation of a defendant's term of supervised release.” *United States v. Slappy*, 872 F.3d 202, 206 (4th Cir. 2017). “We will affirm a revocation sentence if it is within the statutory maximum and is not plainly unreasonable.” *Id.* at 207 (internal quotation marks omitted). “To consider whether a revocation sentence is plainly unreasonable, we first must determine whether the sentence is procedurally or substantively unreasonable.” *Id.* In doing so, we generally apply “the procedural and substantive considerations that we employ in our review of original sentences, with some necessary modifications to take into account the unique nature of supervised release revocation sentences.” *Id.* (alteration and internal quotation marks omitted). Only when we conclude that the revocation sentence is procedurally or substantively unreasonable must we consider whether it is plainly so. *Id.* at 208.

“A revocation sentence is procedurally reasonable if the district court adequately explains the chosen sentence after considering the Sentencing Guidelines' nonbinding Chapter Seven policy statements and the applicable 18 U.S.C. § 3553(a) [(2018)] factors.”

Id. (footnotes omitted); *see* 18 U.S.C. § 3583(e) (2018) (listing § 3553(a) factors relevant to revocation sentences). “[A] revocation sentence is substantively reasonable if the court sufficiently states a proper basis for its conclusion that the defendant should receive the sentence imposed.” *Id.* at 207 (alteration and internal quotation marks omitted). “[A] revocation sentence that is within the recommended Guidelines range is presumed [substantively] reasonable.” *United States v. Gibbs*, 897 F.3d 199, 204 (4th Cir. 2018) (internal quotation marks omitted).

In fashioning an appropriate sentence, “the court should sanction primarily the defendant’s breach of trust, while taking into account, to a limited degree, the seriousness of the underlying violation and the criminal history of the violator.” U.S. Sentencing Guidelines Manual ch. 7, pt. A, intro. cmt. 3(b). The sentencing court “need not be as detailed or specific when imposing a revocation sentence as it must be when imposing a post-conviction sentence,” but “it still must provide a statement of reasons for the sentence imposed.” *Slappy*, 872 F.3d at 208 (internal quotation marks omitted). An explanation is sufficient if this court can determine “that the sentencing court considered the applicable sentencing factors with regard to the particular defendant before it and also considered any potentially meritorious arguments raised by the parties with regard to sentencing.” *Gibbs*, 897 F.3d at 204 (alterations and internal quotation marks omitted). In appropriate circumstances, “[t]he context surrounding a district court’s explanation may imbue it with enough content for us to evaluate both whether the court considered the applicable § 3553(a) factors and whether it did so properly.” *United States v. Montes-Pineda*, 445 F.3d 375, 381 (4th Cir. 2006).

We find no unreasonableness, plain or otherwise, in Mills' sentence. The district court properly calculated Mills' advisory policy statement range and sentenced him within that range. While the court provided only a limited explanation for the sentence it imposed, its statements throughout the revocation proceedings evidence both its consideration of the applicable § 3553(a) factors and its reasoned basis for the sentence imposed. The district court emphasized Mills' egregious breach of the court's trust in failing to comply with the conditions of his supervised release and Mills' absconding from supervision for several months. Particularly when viewed in context, we conclude that the court's explanation was adequate to permit us to determine "that the sentencing court considered the applicable sentencing factors with regard to the particular defendant before it and also considered any potentially meritorious arguments raised by the parties with regard to sentencing." *Gibbs*, 897 F.3d at 204 (alterations and internal quotation marks omitted). The reasoning is sufficiently adequate for us to "meaningfully consider the procedural reasonableness of the revocation sentence imposed," *Slappy*, 872 F.3d at 208. Finally, we conclude that Mills fails to rebut the presumption of substantive reasonableness accorded his sentence. *See Gibbs*, 897 F.3d at 204.

In accordance with *Anders*, we have reviewed the entire record in this case and have found no meritorious issues for appeal. We therefore affirm the district court's judgment. This court requires that counsel inform Mills, in writing, of the right to petition the Supreme Court of the United States for further review. If Mills requests that a petition be filed, but counsel believes that such a petition would be frivolous, then counsel may move in this

court for leave to withdraw from representation. Counsel's motion must state that a copy thereof was served on Mills.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED