

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 21-4533**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MICHAEL JAMES NOTHEISEN, a/k/a BE BALLin, a/k/a B Ballin, a/k/a Mike  
Bebollin,

Defendant - Appellant.

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Appeal from the United States District Court for the Western District of North Carolina, at  
Statesville. Kenneth D. Bell, District Judge. (5:20-cr-00046-KDB-DSC-11)

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Submitted: June 23, 2022

Decided: June 27, 2022

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Before WYNN and QUATTLEBAUM, Circuit Judges, and FLOYD, Senior Circuit Judge.

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Affirmed by unpublished per curiam opinion.

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**ON BRIEF:** William D. Auman, AUMAN LAW OFFICES, Asheville, North Carolina,  
for Appellant.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Michael James Notheisen pled guilty to conspiracy to distribute and possess with intent to distribute methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A), 846, possession with intent to distribute methamphetamine, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(A), and possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1)(A). The district court sentenced Notheisen to 240 months' imprisonment. On appeal, counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), conceding that there are no meritorious issues for appeal. Although notified of his right to do so, Notheisen has not filed a pro se supplemental brief. We affirm the district court's judgment.

Pursuant to *Anders*, we briefly review Notheisen's guilty plea. Because Notheisen did not move to withdraw his guilty plea, we review the adequacy of the Fed. R. Crim. P. 11 hearing for plain error. *United States v. Lockhart*, 947 F.3d 187, 191 (4th Cir. 2020) (en banc). "To succeed under plain error review, a defendant must show that: (1) an error occurred; (2) the error was plain; and (3) the error affected his substantial rights." *Id.* In the plea context, a defendant establishes that an error affected his substantial rights by demonstrating "a reasonable probability that, but for the error, he would not have entered the plea." *United States v. Davila*, 569 U.S. 597, 608 (2013) (internal quotation marks omitted). If Notheisen makes this showing, "we retain the discretion to correct [the] error but will do so only if the error seriously affects the fairness, integrity or public reputation of judicial proceedings." *Lockhart*, 947 F.3d at 191 (internal quotation marks omitted).

Because the magistrate judge's plea colloquy substantially complied with Rule 11, we discern no reversible error as to Notheisen's guilty plea.

Turning to Notheisen's sentence, we review a defendant's sentence "under a deferential abuse-of-discretion standard." *Gall v. United States*, 552 U.S. 38, 41 (2007). Under the *Gall* standard, a sentence is reviewed for both procedural and substantive reasonableness. *Id.* at 51. In determining procedural reasonableness, we consider whether the district court properly calculated the defendant's advisory Sentencing Guidelines range, gave the parties an opportunity to argue for an appropriate sentence, considered the 18 U.S.C. § 3553(a) factors, and sufficiently explained the selected sentence. *Id.* at 49-51. If a sentence is free of "significant procedural error," then we review it for substantive reasonableness, "tak[ing] into account the totality of the circumstances." *Id.* at 51. We "apply a presumption of reasonableness to a sentence within or below a properly calculated [G]uidelines range." *United States v. Vinson*, 852 F.3d 333, 357 (4th Cir. 2017) (internal quotation marks omitted). This "presumption can only be rebutted by showing that the sentence is unreasonable when measured against the 18 U.S.C. § 3553(a) factors." *Id.* at 357-58 (internal quotation marks omitted).

We conclude that Notheisen's sentence is reasonable. The district court correctly calculated Notheisen's advisory Guidelines range. The court credited several of his mitigation arguments in imposing a below-Guidelines sentence, namely that Notheisen's criminal history category was overstated, he suffered from a traumatic brain injury, and that his codefendants received lesser sentences. We further conclude that Notheisen cannot overcome the presumption of reasonableness accorded his below-Guidelines sentence.

In accordance with *Anders*, we have reviewed the entire record in this case and have found no meritorious issues for review. We therefore affirm the district court's judgment. This court requires that counsel inform Notheisen, in writing, of the right to petition the Supreme Court of the United States for further review. If Notheisen 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 Notheisen.

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*