

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-4008

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

OYONTIKEYTA V. JONES, a/k/a Oyonti V. Jones,

Defendant - Appellant.

Appeal from the United States District Court for the Southern District of West Virginia, at Beckley. Frank W. Volk, District Judge. (5:19-cr-00227-1)

Submitted: June 23, 2022

Decided: June 27, 2022

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

Affirmed by unpublished per curiam opinion.

ON BRIEF: Louie Thompson Price, HOLROYD & YOST, Charleston, West Virginia, for Appellant. Timothy Doyle Boggess, OFFICE OF THE UNITED STATES ATTORNEY, Beckley, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Oyontikeyta V. Jones pled guilty, without a plea agreement, to conspiracy to distribute 500 grams or more of methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A), 846 (Count 1); and felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2) (Count 2). The district court varied downward and sentenced Jones to a total of 200 months' imprisonment and 5 years of supervised release. On appeal, Jones' attorney 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: (1) Jones' guilty plea was valid; (2) the district court correctly calculated the advisory Sentencing Guidelines range; (3) the district court imposed a substantively unreasonable sentence based on the 18 U.S.C. § 3553(a) factors; and (4) trial counsel rendered ineffective assistance. Although advised of his right to file a pro se supplemental brief, Jones has not done so. We affirm.

We first address Jones' guilty plea. Because Jones did not seek to withdraw his guilty plea in the district court, we review the adequacy of the Fed. R. Crim. P. 11 hearing for plain error. *United States v. McCoy*, 895 F.3d 358, 364 (4th Cir. 2018). "Under the plain error standard, [we] will correct an unpreserved error if (1) an error was made; (2) the error is plain; (3) the error affects substantial rights; and (4) the error seriously affects the fairness, integrity, or public reputation of judicial proceedings." *United States v. Harris*, 890 F.3d 480, 491 (4th Cir. 2018) (internal quotation marks omitted). Our review of the record leads us to conclude that Jones entered his guilty plea knowingly and voluntarily and that a factual basis supported the plea. *See United States v.*

DeFusco, 949 F.2d 114, 116, 119-20 (4th Cir. 1991). Discerning no plain error, we conclude that Jones' guilty plea is valid.

Turning to Jones' sentence, we review a sentence "under a deferential abuse-of-discretion standard." *Gall v. United States*, 552 U.S. 38, 41 (2007). Under this standard, a sentence is reviewed for both procedural and substantive reasonableness. *Id.* at 51. In determining procedural reasonableness, we consider, among other things, whether the district court properly calculated the defendant's Sentencing Guidelines range. *Id.* 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.* A sentence is presumptively substantively reasonable if it "is within or below a properly calculated Guidelines range," and this "presumption can only be rebutted by showing that the sentence is unreasonable when measured against the 18 U.S.C. § 3553(a) factors." *United States v. Louthian*, 756 F.3d 295, 306 (4th Cir. 2014).

We conclude that Jones' sentence is procedurally and substantively reasonable. At sentencing, the district court correctly calculated Jones' advisory Guidelines range of 262 to 327 months' imprisonment. The district court also afforded counsel an opportunity to argue regarding an appropriate sentence, and Jones an opportunity to allocute. The district court granted in part Jones' counsel's request for a downward variance based on Jones' difficult childhood, age, serious health issues, and potential sentencing disparity with his codefendants. Finally, the district court weighed the 18 U.S.C. § 3553(a) factors it deemed most relevant, particularly Jones' history and characteristics, and the serious nature of the offenses, which involved Jones arranging drug shipments from

California to West Virginia and being a leader of a drug trafficking organization with more than 12 participants. Therefore, Jones has failed to rebut the presumption of reasonableness that we afford his below-Guidelines sentence.

Finally, with respect to Jones' allegation of ineffective assistance of counsel, we do not consider ineffective assistance claims on direct appeal "[u]nless an attorney's ineffectiveness conclusively appears on the face of the record." *United States v. Faulls*, 821 F.3d 502, 507 (4th Cir. 2016). As the record does not conclusively demonstrate that counsel was ineffective, Jones' claim is not cognizable on direct appeal and "should be raised, if at all, in a 28 U.S.C. § 2255 motion." *Id.* at 508.

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

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