NONPRECEDENTIAL DISPOSITION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 February 14, 2023
Decided February 15, 2023

Before

DIANE P. WOOD, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

No. 22-1503

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

AKEEM DILLON,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 1:21-CR-00024(1)

Matthew F. Kennelly,
Judge.

O R D E R

Akeem Dillon was at Tyrone Bush's apartment when police arrested him on drug and firearm charges. Bush's nephew and caretaker, Derrick Livingston, lived in the apartment, and he called 911 while Dillon was there to report that a man with a gun was in the apartment. When the police arrived, Livingston invited them inside and led an officer to Bush's bedroom, where the officer saw a firearm on the floor. Livingston told the officer that Dillon, who was detained in the living room, had been incarcerated.

At that point the officer arrested Dillon (who never contested the legality of the arrest) and searched him, finding drugs in his pocket.

Dillon was charged with unlawfully possessing a firearm, 18 U.S.C. § 922(g), and possessing fentanyl with intent to distribute it, 21 U.S.C. § 841(a)(1). He moved to suppress the firearm and drug evidence, arguing that Livingston lacked authority to consent to a search of the apartment, and that the search of his person was not justified. After an evidentiary hearing, the district court denied the motion. Dillon later pleaded guilty to the firearm charge (the drug charge was dismissed) but preserved his right to appeal the ruling on his motion to suppress. *See* FED. R. CRIM. P. 11(a)(2). The district court accepted the plea and sentenced Dillon to 64 months' imprisonment.

Dillon appeals, but his appointed counsel asserts that the appeal is frivolous and moves to withdraw. *See Anders v. California*, 386 U.S. 738, 744 (1967). Counsel's brief explains the nature of the case and discusses the potential issues that an appeal like this would be expected to involve. Because his analysis appears thorough, and Dillon has not responded to the motion, *see* CIR. R. 51(b), we limit our review to the potential issues that counsel identifies. *See United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014).

Counsel first considers whether Dillon could reasonably challenge the court's denial of his motion to suppress and determines that he could not. At the evidentiary hearing, Bush and Livingston testified that Livingston lived in the apartment and had access to all its rooms; the government also introduced recordings from the officers' body cameras and the 911 call. After evaluating this evidence, the court found that Livingston resided with Bush and had full access to the apartment, including Bush's bedroom. The court found that Dillon, on the other hand, visited the apartment only occasionally, had not spent the night recently, and was permitted access only to the apartment's common areas. It concluded that Dillon did not have standing to challenge the search, but even if he did, the search was proper because Livingston consented to it.

It would be fruitless to argue that the officers violated Dillon's Fourth Amendment rights by searching Bush's apartment or bedroom. To suppress the firearm evidence, Dillon had to establish that (1) he had a legitimate expectation of privacy in Bush's apartment (or "standing"), *see United States v. Mendoza*, 438 F.3d 792, 795 (7th Cir. 2006), and (2) Livingston did not have the actual or apparent authority to consent to its search, *see United States v. Wright*, 838 F.3d 880, 884–85 (7th Cir. 2016). Even if Dillon had standing to contest the bedroom's search, his challenge would necessarily fail because the district court found that Livingston was a resident of the apartment with access to

all its rooms. A challenge to that finding—reviewed for clear error, *see id.*—would go nowhere because the testimony amply supported it. And as a resident of the apartment with full access to the rooms, Livingston had a reasonable expectation of privacy in the bedroom with authority to consent to its search. *See id.* (explaining that consent to a search may be obtained from people with joint access to the searched property).

Counsel next rightly observes that any argument that the officers searched Dillon unconstitutionally would also be groundless. *See Riley v. California*, 573 U.S. 373, 384 (2014). Dillon did not contest the legality of the arrest; thus we would review the district court's acceptance of the arrest's legality for plain error. *United States v. Radford*, 39 F.4th 377, 387 (7th Cir. 2022). But nothing in the record contradicts the court's finding that the officers had probable cause—after Livingston told them that Dillon had a prison record and a gun—to believe that Dillon unlawfully possessed the gun found on the floor. And the arrest allowed for the search of Dillon's person that followed. *Riley*, 573 U.S. at 384.

Counsel next informs us that he consulted with Dillon and confirmed that Dillon does not wish to withdraw his plea. Accordingly, counsel appropriately does not discuss potential challenges to its validity. *See United States v. Konczak*, 683 F.3d 348, 349 (7th Cir. 2012); *United States v. Knox*, 287 F.3d 667, 670–71 (7th Cir. 2002).

Counsel then contemplates challenges to Dillon's sentence, starting with potential procedural errors. He accurately notes that the 64-month sentence was below the maximum of 120 months, *see* 18 U.S.C. § 924(a)(2), and the 36-month term of supervised release, $100 special assessment, and firearm forfeiture were also lawful. *See* 18 U.S.C. §§ 3583(b)(2) (supervised release), 3013(a)(2)(A) (special assessment), 924(d)(1) (forfeiture); 28 U.S.C. § 2461(c) (forfeiture). He also rightly concludes that Dillon's guidelines range was correctly calculated. For possessing a firearm as a felon, Dillon's base offense level was 14, U.S.S.G. § 2K2.1(a)(6)(A), enhanced by two levels because the firearm was stolen, *id.* § 2K2.1(b)(4)(A), four levels for possessing the firearm in connection to a drug trafficking offense, *id.* § 2K2.1(b)(6)(B), and two levels for obstructing justice by soliciting a false affidavit from Bush, *id.* § 3C1.1. After subtracting two levels for accepting responsibility, *id.* § 3E1.1(a), the resulting offense level of 20, combined with a criminal history category of VI based on Dillon's 16 criminal history points, *id.* § 4A1.1, yielded a guidelines range of 70 to 87 months' imprisonment. *Id.* Ch. 5, Pt. A. We see no error in counsel's conclusion that this range was appropriate.

Continuing with his procedural review, counsel also rightly concludes that the district court adequately considered each of Dillon's principal arguments under the sentencing factors of 18 U.S.C. § 3553(a). *See United States v. Barr*, 960 F.3d 906, 914 (7th Cir. 2020). The court considered Dillon's arguments that the gun was inoperable and that he did not know it was stolen. But it reasonably determined that the possession offense was serious because Bush and Livingston did not know that the gun was nonfunctional and thus could still fear Dillon's use of it. *See* 18 U.S.C. § 3553(a)(2)(A). The court also considered Dillon's argument that he was rehabilitated. But it explained that it took his argument "with a grain of salt" because Dillon committed new crimes despite his prior convictions. *See id.* § 3553(a)(1). The court acknowledged Dillon's argument that he did not threaten Bush after his arrest. But it permissibly ruled that Dillon improperly tried to influence Bush by posing as his own mother over the phone to get Bush to retract his statement that Dillon possessed the firearm or drugs; therefore, his post-arrest conduct was an obstructive and an aggravating factor. *See id.* § 3553(a)(2)(A). Finally, the court recognized hardships that Dillon faced in pretrial custody, *see id.*, and agreed with him that he should receive credit that he requested for the time spent in state custody. In light of that credit, the court lowered his sentence to 64 months (six months below the guidelines range).

Based on the court's balancing of the above sentencing factors, we agree with counsel that it would also be frivolous to challenge the substantive reasonableness of Dillon's sentence. We would presume his below-guidelines sentence to be reasonable against a challenge that it is too high, *United States v. De La Torre*, 940 F.3d 938, 953 (7th Cir. 2019), and we see no basis for rebutting that presumption. As just discussed, in explaining its rejection of Dillon's arguments, the court reasonably weighed the § 3553(a) factors—Dillon's background, the seriousness of his crime, and his post-arrest conduct.

Finally, counsel explains why a challenge to the district court's imposition of a 36-month term of supervised release would be frivolous. The term was well supported by the court's explanation of the prison term; thus no independent explanation was necessary. *See United States v. Bloch*, 825 F.3d 862, 870–71 (7th Cir. 2016). Further, Dillon waived any challenge to the conditions themselves because he objected to only one condition, and that objection was sustained. *See United States v. Flores*, 929 F.3d 443, 448–49 (7th Cir. 2019).

Therefore, we GRANT counsel's motion to withdraw and DISMISS the appeal.