

NONPRECEDENTIAL DISPOSITION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. 22-1517

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

NICKOLAS BURCH,
Defendant-Appellant.

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

No. 1:12-CR-00575(1)

Thomas M. Durkin,
Judge.

ORDER

Nickolas Burch 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 the motion and dismiss the appeal.

We briefly recount this case's procedural history. Burch was released from prison in December 2015 after serving nearly five years for unlawfully possessing a firearm. *See* 18 U.S.C. § 922(g)(1). Almost a year into his three-year term of supervised release, Burch was arrested on several state charges in connection with a robbery, and the probation office asked the district court to revoke his supervised release. The state proceedings were protracted, but in 2021 Burch was released from state custody on bond and transferred to federal custody. (The record is not clear, but at some point Burch was convicted of attempted armed robbery and sentenced to "time served and a few days.") The district court released Burch on home incarceration to continue serving his term of supervised release. Later in 2021 Burch violated a monitoring condition, for which the court admonished him. A couple months later, the court granted Burch's request to modify his release to allow him to leave home for work and other pre-approved activities. But soon thereafter, Burch was arrested on new state charges and violated another monitoring condition, and the probation office asked the court to revoke his supervised release.

At a revocation hearing, Burch admitted two violations of the conditions of his supervised release: committing a state crime (the attempted armed robbery) and failing to participate in location monitoring while under home incarceration. The parties agreed that Burch's policy-statement range for these violations was 24 to 30 months, capped by a 24-month statutory maximum. *See* 18 U.S.C. § 3583(e)(3). The district court revoked Burch's supervised release and sentenced him to 24 months' reimprisonment, to run consecutively to any prison sentence for the still-pending state conviction, with no additional term of supervised release.

Burch does not have an unqualified constitutional right to counsel when appealing a revocation order. *See Gagnon v. Scarpelli*, 411 U.S. 778, 789–91 (1973). Nevertheless, we apply the *Anders* safeguards to ensure that all potential issues receive consideration. *See United States v. Brown*, 823 F.3d 392, 394 (7th Cir. 2016). Because counsel's brief adequately addresses the issues that an appeal of this kind might involve, and Burch did not respond to counsel's motion, *see* CIR. R. 51(b), we limit our review to the topics that counsel discusses. *See United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014).

In his motion to withdraw, counsel first tells us that Burch instructed him not to challenge the court's revocation of his supervised release. Thus, counsel appropriately addresses only potential challenges to Burch's sentence. *See United States v. Wheeler*, 814 F.3d 856, 857 (7th Cir. 2016).

Counsel considers whether Burch could raise a nonfrivolous procedural challenge to his sentence and rightly concludes that he could not. Based on Burch's category IV criminal history from his original sentencing and the Grade A violation for attempted robbery, *see* U.S.S.G § 7B1.1(a)(1), Burch's policy-statement range was 24 to 30 months' imprisonment, *see id.* § 7B1.4(a), capped by a 24-month statutory maximum, *see* 18 U.S.C. § 3583(e)(3). And the court's decision to run the federal sentence consecutive to any state sentence was lawful and consistent with the Guidelines. *See* U.S.S.G. § 7B1.3(f). In addition, the court accounted for the relevant sentencing factors under 18 U.S.C. § 3553, including the seriousness of Burch's state crime (during which he "attempted to take a watch from the victim, produced a dangerous weapon when he did it, and [] the victim was injured"), Burch's "horrendous" criminal history (including an "extensive criminal record involving robbery and involving use of a gun"), and his poor supervision record (violating the monitoring rules, even after repeated admonishments from the court). *See* 18 U.S.C. § 3553(a)(1), (2)(A).

Finally, counsel is right that Burch could not plausibly argue that his 24-month sentence was "plainly unreasonable." *United States v. Yankey*, 56 F.4th 554, 560–61 (7th Cir. 2023). A within-guidelines sentence is presumed reasonable on appeal, and nothing in this record could rebut that presumption. *See id.*

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