NONPRECEDENTIAL DISPOSITION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 April 5, 2023
Decided April 13, 2023

Before

DAVID F. HAMILTON, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

Nos. 22-1636 & 22-1637

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

FRANWAN D. MATHIS,
Defendant-Appellant.

Appeals from the United States District Court for the Eastern District of Wisconsin.

Nos. 2:20-cr-206-PP & 2:09-cr-254-PP

Pamela Pepper,
Chief Judge.

O R D E R

Franwan Mathis appeals two decisions: first, the verdict in his criminal trial and the resulting 123-month prison term; second, the 10-month prison term imposed upon the revocation of supervised release. His lawyer moves to withdraw from the appeals, arguing that they are frivolous. *See Anders v. California*, 386 U.S. 738, 744 (1967). Mathis responded to counsel's motion. *See* CIR. R. 51(b). Because counsel carefully explains the nature of the cases, addresses the potential issues that the appeals might involve, and appears to analyze the issues thoroughly, we limit our review to counsel's discussion and the issues that Mathis raises. *United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014).

Mathis was charged in 2020 in a three-count indictment for felony possession of a handgun, possessing a controlled substance with intent to distribute, and possessing a firearm to further a drug trafficking offense. 18 U.S.C. § 922(g)(1); 21 U.S.C. § 841(a)(1), (b)(1)(C); 18 U.S.C. § 924(c)(1)(A)(i). The charges arose while he was on supervised release for a drug crime from 2009. He had refused to talk with his probation officer, and so a warrant was issued for his arrest. Law enforcement tracked him down at a gas station, and he tried to flee. Once surrounded, officers searched him and his van, and Mathis told them he was carrying a handgun in his waistband. The officers found heroin, cocaine base, methamphetamine, and fentanyl in his van.

After he was indicted, Mathis filed several pretrial evidentiary motions; all were denied. He sought disclosure of grand jury transcripts, suppression of lab reports about the drugs, and the dismissal of the indictment because, he contended, an unauthorized person was present at the grand jury proceedings.

At trial, the government presented evidence on all three charges. The officers who arrested him testified that Mathis admitted that the drugs in the van and the gun in his waistband were his. Expert chemists described the types and quantities of the drugs. A police detective, offered as an expert in drug trafficking, opined that Mathis was selling the drugs. The detective noted that Mathis possessed more drugs than a typical user could consume (the methamphetamine alone would sustain a continuous high for one week). Also, he added, the drugs were wrapped in individual doses, Mathis had $400 in cash (useful for facilitating illicit drug transactions), drug traffickers frequently carry a gun for protection, and drug traffickers often sell drugs out of cars to evade detection. Finally, the detective said, Mathis's cell phone contained text messages that referred to drug types and prices. A jury found Mathis guilty of all three counts.

Next came sentencing. The sentencing hearing covered the jury's verdict on the three counts and the revocation of supervised release. In arguing for mitigation, Mathis asked the court to consider his efforts at education and his low risk of reoffending. The judge did so but also discussed the circumstances of Mathis's offense (the quantity of drugs and his attempt to evade arrest), his criminal history, and the ineffectiveness of his prior criminal sentences to deter him from his latest crimes. The judge ordered a 60-month mandatory minimum sentence for the § 924(c) conviction, a 63-month sentence (at the bottom of the guidelines range) for the remaining two counts, and a 10-month sentence for his supervised-release violations, all of which were to run consecutively. Finally, the judge imposed a three-year term of supervised release.

We start our review by focusing on the trial. Counsel first analyzes three pretrial rulings and rightly concludes that they reveal no appealable issues. To begin, Mathis could not plausibly argue that the court wrongly denied his motion to release grand jury transcripts. They can be released if a defendant shows "that a ground may exist to dismiss the indictment because of a matter that occurred before the grand jury." FED. R. CRIM. P. 6(e)(3)(E)(ii). But Mathis argued only that it would be convenient to have the transcripts. Second, a challenge to the court's denial of Mathis's pro se motion to suppress the lab reports about the drugs would be frivolous; although Mathis did not personally receive those reports from his counsel, the government turned them over to counsel, thus meeting its obligations. *See United States v. Holly*, 940 F.3d 995, 1001 (7th Cir. 2019). Last, a contention that the court wrongly found that only authorized persons appeared before the grand jury would necessarily fail as harmless in light of the petit jury's guilty verdict. *See United States v. Philpot*, 733 F.3d 734, 741 (7th Cir. 2013).

As for the trial itself, counsel considers, and rejects, a challenge to jury selection and to the government's opening statement and closing argument. Mathis raised no objections during those stages of trial; therefore we would review jury selection and the government's statements for plain error. *United States v. Tucker*, 714 F.3d 1006, 1011–12 (7th Cir. 2013). But neither counsel nor we can discern any obvious problem in jury selection. Likewise, the record does not show any statement from the prosecutor that constituted a clear and obvious error affecting Mathis's substantial rights. *See United States v. Eaden*, 37 F.4th 1307, 1310 (7th Cir. 2022).

Counsel and Mathis next assess whether the evidence presented at trial was insufficient to find Mathis guilty. In his Rule 51(b) response, Mathis contends that the government's evidence of his intent to sell drugs was "purely speculative" and did not include techniques—wiretaps, searches of his home, and interrogations of the people he texted with—that might have produced direct evidence of intent. But as counsel rightly observes, a reasonable jury can rely on expert testimony to find an intent to distribute. *See United States v. Tingle*, 880 F.3d 850, 854–55 (7th Cir. 2018). The expert detective's testimony here adequately suggested that Mathis intended to sell drugs: (1) Mathis had a variety of drugs in quantities too large for personal use; (2) some were packaged in individual doses; (3) he had a handgun, which is often used for protection during drug sales; (4) he used his van to store the drugs, suggesting an attempt to evade detection of sales; and (5) his $400 in cash and text messages about drug prices were consistent with drug sales. Because the government presented sufficient evidence for a rational jury to find that Mathis possessed illicit drugs with an intent to traffic them, it met its burden. *See United States v. Wilson*, 879 F.3d 795, 802 (7th Cir. 2018).

Likewise, sufficiency-of-evidence challenges to the two remaining counts would necessarily fail. Mathis stipulated that the handgun was his and that he knew he could not lawfully possess it, facts that suffice for a conviction for unlawful possession of a firearm. *See Greer v. United States*, 141 S. Ct. 2090, 2095 (2021). And because the jury permissibly determined that Mathis was selling drugs, Mathis's simultaneous possession of the gun supported the § 924(c) charge for possessing it to further a drug crime. *See United States v. Perryman*, 20 F.4th 1127, 1134 (7th Cir. 2021).

Counsel next considers the sentence on the jury's verdict, and we agree with him that Mathis cannot reasonably contest it. Because Mathis did not object to any part of the guidelines-range calculation, our review of potential procedural errors there would be for plain error. *See United States v. Oliver*, 873 F.3d 601, 607 (7th Cir. 2017). And we see none. The court correctly observed that the § 924(c) conviction carried a mandatory 60-month minimum and must run consecutively to any other sentence imposed. 18 U.S.C. §§ 924(c)(1)(A)(i), 924(c)(1)(D)(ii). For the remaining two counts, the judge relied on an unopposed presentencing report to calculate correctly Mathis's total offense level of 22 and criminal history category of IV, U.S.S.G. §§ 2D1.1, 3D1.4(a)-(c), 4A1.1(a), 4A1.2(e)(1), leading to an advisory range of 63 to 78 months.

We also see no possible merit to a substantive challenge to the sentence. We presume that a within-guidelines sentence is reasonable. *See United States v. Konczak*, 683 F.3d 348, 350 (7th Cir. 2012). And we see no basis to rebut that presumption for Mathis's prison term of 123 months, which combined the mandatory, consecutive sentence of 60 months for the § 924(c) count and a bottom-of-the-guidelines range sentence for the other two counts. The judge reasonably balanced Mathis's mitigating arguments against the concerns about his dangerous attempt to flee his arrest, his extensive criminal history, and the ineffectiveness of his past sentences to deter his criminal activity. *See* 18 U.S.C. § 3553(a); *United States v. Sunmola*, 887 F.3d 830, 841 (7th Cir. 2018). These comments also suffice to support the new three-year term of supervised release, which falls within the statutory range. *See* 18 U.S.C. § 3583(b)(2); *United States v. Bloch*, 825 F.3d 862, 869 (7th Cir. 2016).

We now turn to the revocation of supervised release from the 2009 conviction. Because Mathis admitted to violating several conditions of his release and does not offer a complex mitigating argument, we are not obligated to apply the *Anders* safeguards. *See United States v. Wheeler*, 814 F.3d 856, 857 (7th Cir. 2016). But in an abundance of caution, we do so anyway. *See United States v. Brown*, 823 F.3d 392, 394 (7th Cir. 2016).

Counsel correctly concludes that an attack on the revocation of supervised release and resulting prison term of 10 months would be pointless. Although counsel reports that Mathis desires to challenge the revocation, *see United States v. Wheaton*, 610 F.3d 389, 390 (7th Cir. 2010), no plausible challenge to it is possible. In revoking Mathis's supervised release, the judge ensured that Mathis had notice of the charges against him and his right to contest the charges. *See* FED. R. CRIM. P. 32.1(b)(2). And his admission to violating conditions of release (for refusing to contact his probation officer, selling drugs, and carrying a gun) adequately supports the revocation. *See United States v. Mosley*, 759 F.3d 664, 669 (7th Cir. 2014). Finally, the 10-month prison term was substantively and procedurally reasonable. The court correctly, and without objection, determined that Mathis committed a Grade A violation for committing a controlled-substance offense, and he had a criminal-history category of VI, yielding a policy-statement range of 33 to 41 months in prison. U.S.S.G. §§ 7B1.1(a)(1), 7B1.4(a). And the court reasonably justified the below-guidelines term of 10 months by noting the seriousness of Mathis's refusal to talk to his probation officer. *See* 18 U.S.C. §§ 3553(a)(1), 3583(e)(3).

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