

NONPRECEDENTIAL DISPOSITION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 March 22, 2023

Decided March 23, 2023

Before

MICHAEL Y. SCUDDER, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 22-1843

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

BERNARD L. MOSLEY,
Defendant-Appellant.

Appeal from the United States District
Court for the Southern District of Illinois.

No. 3:20-CR-30156-DWD

David W. Dugan,
Judge.

ORDER

Bernard Mosley pleaded guilty to one count of possessing a firearm as a felon, 18 U.S.C. § 922(g)(1), and the district court sentenced him to 84 months in prison and two years of supervised release. Mosley 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). We notified Mosley of the motion, *see* CIR. R. 51(b), and he submitted a response to counsel's motion. Because counsel's analysis appears thorough, we limit our review to the subjects that she and Mosley raise. *See United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014).

Four months after being paroled following a sentence for armed robbery, Mosley was discovered having a gun and ammunition. Officers, while executing a parole-violation warrant, found the gun at his residence and multiple rounds of ammunition at his residence and on his person. They soon learned that Mosley had used the gun a day earlier: A cooperating witness reported that Mosley fired the gun into a group of people in a park, and shots had been returned.

While awaiting trial on the charge of being a felon in possession of a firearm, Mosley was involved in two more incidents. He was overheard placing a telephone call in which he said that he really wanted someone to “take” or do something to the witness. Jail personnel also intercepted an investigation report (containing details of the witness’s statements to the police) that Mosley tried to mail to someone outside the jail.

Mosley later entered into a plea agreement and pleaded guilty to possessing a firearm as a felon. *See* 18 U.S.C. § 922(g)(1). The district court adopted the presentence investigation report and calculated a guidelines range of 57 to 71 months in prison (based on a total offense level of 23 and a criminal-history category of III) and one to three years of supervised release. *See* U.S.S.G. Ch. 5, pt. A (imprisonment); U.S.S.G. § 5D1.2(a)(2) (supervised release). These ranges were within the statutory maximums. *See* 18 U.S.C. § 924(a)(2) (2018) (ten years’ imprisonment); 18 U.S.C. § 3583(b)(2) (one to three years’ supervised release). The court, however, varied the prison sentence upwards based on the factors under 18 U.S.C. § 3553(a) and sentenced Mosley to 84 months in prison and two years of supervised release.

Counsel confirms that Mosley wishes to challenge his guilty plea, *see United States v. Konczak*, 683 F.3d 348, 349 (7th Cir. 2012), so she explores possible challenges. Mosley, in his letter to this court, asserts that his plea was not knowing and voluntary because the arresting officers beat him and coerced a confession. But counsel rightly concludes that Mosley cannot raise a nonfrivolous challenge to the voluntariness of the plea. When the court inquired, Mosley confirmed that he signed the plea agreement of his own free will and that no one had threatened him. Those sworn statements are presumed true. *See United States v. Graf*, 827 F.3d 581, 584 (7th Cir. 2016).

Through his valid plea agreement, Mosley waived most of his appellate rights, *see United States v. Nulf*, 978 F.3d 504, 506 (7th Cir. 2020), but reserved the right to appeal the substantive reasonableness of the sentence if the district court imposed, as it did here, an above-guidelines sentence. Counsel correctly explains that Mosley cannot raise any nonfrivolous argument that the sentence was unreasonable. An above-guidelines

sentence is “neither presumptively nor absolutely unreasonable.” *United States v. Wood*, 31 F.4th 593, 600 (7th Cir. 2022). Here, the district court reasonably determined that Mosley’s conduct—shooting a gun into a group of people in a park four months after being released from prison for armed robbery—warranted an upward variance to deter criminal conduct and ensure public safety.

Finally, Mosley contends that his prior counsel was ineffective at the district court. But claims of ineffective assistance of counsel are best suited to a collateral action under 28 U.S.C. § 2255 so that a factual record bearing on the issue can be developed. *See Massaro v. United States*, 538 U.S. 500, 504–05 (2003).

We GRANT the motion and DISMISS the appeal.