

NONPRECEDENTIAL DISPOSITION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 9, 2023

Decided March 9, 2023

Before

FRANK H. EASTERBROOK, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

No. 22-1978

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

ALAN GROSS,
Defendant-Appellant.

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

No. 1:21-CR-00329(1)

John Robert Blakey,
Judge.

ORDER

Alan Gross pleaded guilty to bank fraud. 18 U.S.C. § 1344. The district court sentenced him to 13 months in prison and 3 years of supervised release, and it ordered restitution. Gross appeals, but his appointed attorney asserts that the appeal is frivolous and moves to withdraw. *See Anders v. California*, 386 U.S. 738 (1967). Counsel's brief explains the nature of the case and addresses potential issues that an appeal of this kind would typically involve. Gross did not respond to counsel's motion. *See* CIR. R. 51(b). Because counsel's analysis appears thorough, we limit our review to the two subjects identified: the procedural regularity and substantive reasonableness of the prison sentence. *See United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014).

In 2010, Gross participated in a scheme to obtain by fraud a mortgage to buy a house in Chicago, Illinois. Gross paid someone to recruit a buyer for the property who would then use falsified records and a phony check to induce a bank to approve a mortgage. He also created a false appraisal of the property, signing it in another person's name. The bank funded a mortgage loan for over \$180,000; the property, as reflected in a later sale, was worth only \$27,000. A decade later, Gross was charged with and pleaded guilty to the single count of violating 18 U.S.C. § 1344.

At the sentencing hearing, the district court adopted the recommendations in the presentence investigation report (PSR), to which neither party objected, setting the applicable ranges under the Sentencing Guidelines. The PSR listed Gross's base offense level as seven, *see* U.S.S.G. § 2B1.1(a)(1), and added two specific-offense adjustments: a ten-level adjustment for a total loss amount of over \$150,000, § 2B1.1(b)(1)(F), and a two-level adjustment for employing sophisticated means, § 2B1.1(b)(10)(C). Gross received a three-level downward adjustment for timely acceptance of responsibility, *id.* § 3E1.1, resulting in a final offense level of 16. Gross's criminal-history category was I based on one prior conviction for theft under 720 ILCS 5/16-1(a), for which he served 24 months' probation. U.S.S.G. § 4A1.1(c). The court adopted these calculations. It noted that they yielded a guidelines imprisonment range of 21 to 27 months, with a statutory maximum of 30 years under 18 U.S.C. § 1344, and a guidelines supervised-release range of 2 to 5 years, U.S.S.G. § 5D1.2(a)(1), with a statutory maximum of 5 years. 18 U.S.C. § 3583(b)(1).

The court then weighed the factors under 18 U.S.C. § 3553(a), balancing the mitigating and aggravating factors. In mitigation, the court considered the age of the offense of conviction (a decade old) and the absence of any new offenses. It also noted that Gross had accepted responsibility for his conduct not only in his plea, but in his allocution during sentencing and through his attempts to cooperate with law enforcement. And it observed that Gross's struggles with substance abuse and finances, including the loss of his business and home, affected his ability to pay restitution and explained his criminal activity. In aggravation, the court considered that his offense was a sophisticated systemic fraud scheme that resulted in significant loss. It also observed a high risk of recidivism, given that a prior offense with deferred prosecution did not deter Gross. With these factors in mind, the district court granted a downward variance from the bottom of the guidelines range and sentenced Gross to 13 months in prison and 3 years of supervised release. The court also ordered restitution of \$159,488.

Counsel informs us that Gross wishes to challenge only his prison term, not his conviction. Counsel thus properly refrains from discussing the validity of the guilty

plea. *United States v. Konczak*, 683 F.3d 348, 349 (7th Cir. 2012); *United States v. Knox*, 287 F.3d 667, 671 (7th Cir. 2002).

Counsel first considers whether the district court correctly calculated Gross's offense level. Because Gross did not object to these calculations, we would review them for plain error, *United States v. Thomas*, 897 F.3d 807, 816 (7th Cir. 2018), and counsel correctly explains why it would be pointless to argue that plain error occurred. First, the court correctly set Gross's base offense level because Gross pleaded guilty to one count of 18 U.S.C. § 1344 for which the base offense level is 7. U.S.S.G. § 2B1.1(a)(1). Second, challenging the two adjustments based on Gross's specific-offense characteristics would also be futile. Nothing in the record would allow Gross to dispute the loss calculation (more than \$150,000 but less than \$250,000). § 2B1.1(b)(1)(F). Likewise, he admitted that he paid to recruit a buyer, used falsified documents, and signed a phony appraisal to secure a mortgage, rendering proper the adjustment for using "sophisticated means." § 2B1.1(b)(10)(C); *United States v. Friedman*, 971 F.3d 700, 716 (7th Cir. 2020). When determining whether that adjustment is appropriate, courts consider "the level of planning or concealment in relation to typical fraud of its kind," *Friedman*, 971 F.3d at 716, and Gross's recruitment and falsification efforts went beyond typical bank fraud.

Counsel also rightly concludes that it would be frivolous to challenge the calculation of Gross's criminal-history category. Gross's one prior conviction of theft resulted in a term of probation, without a term of imprisonment, which appropriately corresponds to one point under U.S.S.G. § 4A1.1(c), and a criminal history category of I.

Finally, counsel correctly observes that a challenge to the substantive reasonableness of Gross's prison term would be frivolous. His below-guidelines prison term of 13 months, nearly half of the bottom of the 21-to-27-months range, is "presumed reasonable against a defendant's challenge that it is too high." *United States v. De La Torre*, 940 F.3d 938, 953 (7th Cir. 2019) (citation omitted). This presumption can be rebutted only by showing that the sentence does not reasonably comport with the § 3553(a) factors. *Id.* But Gross could not plausibly make that contention. The court reasonably balanced the sophisticated (albeit aged) nature of the offense, the size of the loss, and his risk of recidivism against his history of substance abuse, his financial woes, and his acceptance of responsibility. The 13-month term thus reasonably reflects the seriousness of the offense, promotes respect for the law, provides just punishment for the offense, and affords adequate deterrence.

We thus GRANT counsel's motion to withdraw and DISMISS the appeal.