

**NONPRECEDENTIAL DISPOSITION**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 22, 2023

Decided February 23, 2023

**Before**

DIANE S. SYKES, *Chief Judge*

DAVID F. HAMILTON, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 22-2057

UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*

*v.*

ARTHUR CARTER,  
*Defendant-Appellant.*

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

No. 01-CR-10041-001

Michael M. Mihm,  
*Judge.*

**ORDER**

Arthur Carter appeals the modification of his supervised release to include 120 days of home confinement. 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.

A defendant does not have an unqualified constitutional right to counsel in revocation or modification proceedings, *see Gagnon v. Scarpelli*, 411 U.S. 778, 790–91

(1973), so the *Anders* safeguards need not govern our review. Even so, our practice is to apply them. *United States v. Brown*, 823 F.3d 392, 394 (7th Cir. 2016). Because counsel's analysis appears adequate, we limit our review to the subjects she discusses. *See id.* (We notified Carter of the motion, but he did not respond. *See* CIR. R. 51(b).)

We briefly summarize this case's procedural history. Carter was released from prison in 2020 after serving time for conspiracy to distribute cocaine. *See* 21 U.S.C. § 841(a)(1), (b)(1)(A). While on supervised release, Carter repeatedly was found to possess and use cannabis. In January 2022, Carter's probation officer petitioned the district court to modify Carter's terms of supervised release to require 120 days in home confinement.

At a hearing on the petition, Carter justified his cannabis possession on grounds that he held a valid medical marijuana license and had bought the marijuana from a licensed distributor, in compliance with state law. But the district judge, highlighting several positive test results and instances in which Carter admitted marijuana use to his probation officer, found that Carter violated the terms of his supervised release. The judge, in turn, determined that these violations sufficed to modify Carter's conditions of supervised release to include 120 days' home confinement.

In her motion to withdraw, counsel does not tell us, as she should, whether Carter wants to challenge the modification of his supervised release. *See United States v. Wheeler*, 814 F.3d 856, 857 (7th Cir. 2016). But as we explain below, any challenge to the modification would be frivolous.

Counsel first considers and appropriately rejects challenging the judge's justification for modifying Carter's conditions of supervised release. When imposing home confinement as a condition of supervised release, a judge must consider the sentencing factors under 18 U.S.C. § 3553(a) and sufficiently explain his reasoning. 18 U.S.C. § 3583(e)(4); *United States v. Nonahal*, 338 F.3d 668, 671 (7th Cir. 2003). Here, the judge said little, but his reason for approving the modification was apparent. Alluding to the nature of the offense, he explained that Carter's positive drug tests and admissions of use were "certainly enough here to justify a modification." *See* § 3553(a)(1).

Counsel also considers challenging the procedure used at the hearing, but rightly deems this challenge frivolous. Because counsel made no such challenge in the district court, our review would be for plain error. *See Wheeler*, 814 F.3d at 857. And the transcript of the hearing reflects that the judge complied with the requirements of Rule

32.1(c) of the Federal Rules of Criminal Procedure. The judge held a hearing at which the defendant had a right to counsel and provided an opportunity to the defendant to make a statement and present mitigation arguments.

Counsel next correctly concludes that any challenge to the reasonableness of the modification would be frivolous. We would review modifications of conditions of supervised release for abuse of discretion. *See United States v. Taylor*, 796 F.3d 788, 792 (7th Cir. 2015). Judges do not abuse their discretion if the modification is reasonably related to the § 3553(a) factors and consistent with the Sentencing Commission's policy statements. *United States v. Evans*, 727 F.3d 730, 733 (7th Cir. 2013). And the judge adequately supported his ruling with reference to § 3553(a)(1).

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