

NONPRECEDENTIAL DISPOSITION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 June 23, 2023

Decided June 29, 2023

Before

DIANE P. WOOD, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

No. 22-2237

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

DIONDREA L. HOLT,
Defendant-Appellant.

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

No. 13-CR-201-JPS

J. P. Stadtmueller,
Judge.

ORDER

The district court revoked Diondrea Holt's supervised release after he admitted to violating several conditions of supervision. He appeals his revocation sentence—seven months' imprisonment and two years of additional supervised release—but his

appointed counsel asserts that the appeal is frivolous and moves to withdraw.¹ See *Anders v. California*, 386 U.S. 738, 744 (1967). Although a defendant has no absolute right to counsel in an appeal from a revocation of supervised release, see *Gagnon v. Scarpelli*, 411 U.S. 778, 789–90 (1973), we choose to apply the *Anders* framework in this context, see *United States v. Brown*, 823 F.3d 392, 394 (7th Cir. 2016). Because the analysis in the brief appears thorough, and Holt has not responded to counsel’s motion, see CIR. R. 51(b), we limit our review to the subjects that counsel discusses. See *United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014).

In April 2014, Holt was convicted of being a felon in possession of a firearm, see 18 U.S.C. § 922(g), and sentenced to 70 months in prison. He began supervised release in April 2021. About seven months later, Holt’s probation officer filed a petition to revoke Holt’s supervised release, alleging that he failed to report arrests, tested positive for marijuana, did not attend his court-ordered counseling program, left the judicial district without court permission, and tampered with his location-monitoring device (a GPS bracelet). The petition also alleged that Holt had been charged with multiple state crimes by prosecutors in Waukesha County (resisting an officer and disorderly conduct) and Milwaukee County (domestic violence and theft). It classified each alleged violation as Grade C. See U.S.S.G. § 7B1.1(a)(3). The district court issued a

¹ After serving the prison term for the revocation discussed in this appeal, Holt began a new supervised-release term in July 2022. In November 2022, his probation officer alleged that he again violated his conditions of release and requested a second revocation. Those proceedings are currently paused by the district court, see Minute Entry, Dkt. 83, *United States v. Holt*, No. 2:13-cr-00201-JPS-1 (E.D. Wis. Mar. 31, 2023), pending the resolution of a state prosecution of Holt. See Complaint, *Wisconsin v. Holt*, No. 2022CF005021 (Dec. 29, 2022), available at <https://wcca.wicourts.gov/case.html>. It is unclear why because the government has agreed not to seek revocation based on the violation addressing the same conduct that led to the ongoing state prosecution, in exchange for Holt’s agreement not to contest the other three charged violations. See Joint Statement, Dkt. 81, *United States v. Holt*, No. 2:13-cr-00201-JPS-1 (E.D. Wis. Mar. 28, 2023). Another revocation appears inevitable. In response to our requests for position statements on this issue, Holt’s counsel reported that Holt would not consent to withdrawing this appeal. And, this appeal, while perhaps pointless, is not moot because Holt’s first revocation sentence has not yet been overtaken by a new judgment, and if this appeal succeeded the district court could still reduce the current term of supervised release. See *United States v. Sutton*, 962 F.3d 979, 982 (7th Cir. 2020); *United States v. Corner*, 967 F.3d 662, 667 (7th Cir. 2020).

warrant, and Holt was detained in the Waukesha County Jail pending resolution of the revocation petition. Before the revocation hearing, the parties agreed that Holt should be sentenced to seven months in prison with another twenty-four months of supervised release. Holt agreed to admit to all the alleged violations, except those pertaining to conduct for which he was criminally charged in state court.

At the revocation hearing, the court first confirmed that Holt had reviewed the revocation report and discussed it with his attorney. The parties then presented arguments supporting the agreed sentence. The government reviewed Holt's violations, highlighting his repeated cutting of his GPS bracelet as the "most egregious" violation. It argued that because Holt violated the conditions of his release soon after leaving custody, he demonstrated a lack of respect for the law. The government contended that seven months' imprisonment would be an adequate deterrent and provide an incentive to follow the conditions of his supervision in the future. Meanwhile, Holt argued that seven months was an appropriate sentence because he had been awaiting a revocation hearing for six months already in the county jail, which he contended was "very punitive time to serve." He also pointed out that he was struggling with mental health problems but that he had obtained a job offer that would begin upon his release. Holt then apologized for his conduct and said he was "accepting full responsibility for my actions and the decision I made."

Based on Holt's Grade C violations and criminal history category of V, the court calculated an undisputed range of seven to thirteen months' reimprisonment and one to three years of additional supervised release under Chapter 7 of the Sentencing Guidelines. See U.S.S.G. §§ 7B1.3(g); 7B1.4(a). The court recognized that supervised release conditions can interfere with daily life and that remaining in the local jail while awaiting a hearing was difficult and "unproductive." But, it said, through his repeated violations, Holt had demonstrated that he could not "conform [his] conduct to the requirements of the law," necessitating incarceration, and that more supervised release would "ensure an appropriate level of reintegration with the community." The court further explained that Holt's tampering of his GPS bracelet was particularly serious misconduct, for which it would "ordinarily ... impose an eight- or nine-month sentence," but it honored the parties' joint recommendation and imposed a seven-month sentence.

Counsel first considers whether it would be frivolous for Holt to try to withdraw his admissions or otherwise assert that the revocation was invalid. In his motion to withdraw, counsel does not tell us, as he should, whether Holt now wishes to assert

that his admissions were not knowing and voluntary. See *United States v. Wheeler*, 814 F.3d 856, 857 (7th Cir. 2016) (citing *United States v. Knox*, 287 F.3d 667 (7th Cir. 2002)). Nevertheless, we agree with counsel that any challenge to the revocation of supervised release would be frivolous. Because Holt did not attempt to withdraw his admissions in the district court, we would review for plain error. *United States v. Nelson*, 931 F.3d 588, 590–91 (7th Cir. 2019). The transcript of the hearing reflects that the court complied with Rule 32.1(b)(2) of the Federal Rules of Criminal Procedure: Holt confirmed that he received a written revocation report and reviewed it with his attorney, he did not dispute the stipulated violations and the evidence, and he freely accepted responsibility and admitted the conduct. See *United States v. Jones*, 774 F.3d 399, 403 (7th Cir. 2014). Based on Holt’s admissions, the court properly revoked his term of supervised release. See 18 U.S.C. § 3583(e)(3).

Perhaps because the parties agreed on the sentence, counsel does not discuss potential procedural errors, but we note that a challenge to the calculation of the sentencing range would be frivolous. As required, the court considered the guidelines’ policy statements to arrive at a range of seven to thirteen months. See U.S.S.G. § 7B1.4(a); *United States v. Childs*, 39 F.4th 941, 945 (7th Cir. 2022). And it correctly stated the statutorily authorized term of one to three years of supervised release. See 18 U.S.C. § 3583(h).

Finally, counsel correctly concludes that any challenge to the reasonableness of Holt’s sentence would be frivolous. First, Holt expressly agreed to the sentence and therefore waived any appellate challenges to its duration. See *United States v. Golden*, 843 F.3d 1162, 1167 (7th Cir. 2016). Regardless, because the sentence was within the properly calculated range under the policy statements, we would presume that it is not unreasonably long. See *Jones*, 774 F.3d at 404. It would be futile to try rebutting the presumption because the court explained why it believed imprisonment was necessary and accepted the parties’ recommendation of seven months’ imprisonment despite its belief that a slightly longer prison sentence was warranted. The court also discussed the § 3553(a) factors, including the nature and severity of the violations (highlighting the number of violations and the seriousness of the GPS-bracelet tampering), and the need to deter Holt from future criminal activity and protect the public (explaining that it intended for the sentence to prompt Holt to conform to the law and be integrated back into his community).

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