NONPRECEDENTIAL DISPOSITION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

Argued June 6, 2023
Decided February 27, 2024

Before

MICHAEL B. BRENNAN, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 22-2250

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

WAITH A.E. WILLIAMS,
Defendant-Appellant.

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

No. 4:21-CR-40048-SMY-10

Staci M. Yandle,
Judge.

O R D E R

Waith Williams pleaded guilty to possession with intent to distribute a mixture or substance containing methamphetamine in violation of 21 U.S.C. § 841(a)(1). At the sentencing hearing, he argued that he qualified for the "safety valve" under 18 U.S.C. § 3553(f) based on his cooperation with the government. If the safety valve applied, the statutory minimum sentence for his crime would drop away, and his imprisonment range under the Sentencing Guidelines would decrease. *See* 18 U.S.C. § 3553(f); U.S.S.G. §§ 5C1.2(a), 2D1.1(b)(18).

The parties submitted briefs on the safety-valve issue, and Williams's counsel informed the district court at the sentencing hearing that he had nothing more to add. As a result, rather than entertaining further argument, the court ruled that Williams had not satisfied the requirements of § 3553(f) and, after reviewing the § 3553(a) sentencing factors, imposed the mandatory minimum sentence. On appeal, Williams contends that the court's failure to provide for oral argument on this issue violated Federal Rule of Criminal Procedure 32 and denied him his Sixth Amendment right to assistance of counsel. We disagree. Williams's lawyer affirmatively represented that he had nothing more to say and had submitted his arguments in writing. In any event, any error would have been harmless because Williams could not have shown that he qualified for the safety valve in the first place. Accordingly, we affirm.

I. BACKGROUND

Williams was charged with possession with intent to distribute methamphetamine after law enforcement officers intercepted text messages suggesting that he had planned to buy methamphetamine from a Jaylen Vinson. Officers stopped Williams after he met with Vinson and found about 300 grams of methamphetamine in Williams's car. He later pleaded guilty to possessing methamphetamine with intent to distribute. 21 U.S.C. § 841(a)(1).

In anticipation of sentencing, the probation office issued a presentence investigation report (PSR) on April 28, 2022, which concluded that Williams's guidelines range was 120 to 121 months (the range actually was 97 to 121 months, but his offense carried a 120-month minimum sentence). *See id.* § 841(b)(1)(A)(viii); U.S.S.G. § 5G1.1(c)(2). Shortly thereafter, on May 3, Williams and his attorney met with the government to try to qualify for the safety valve under § 3553(f). Williams told the prosecutors that a third person—whom Williams did not name—had introduced him to Vinson. He also admitted that he had bought small amounts of methamphetamine from Vinson on two previous occasions, but he did not identify his own buyers. And Williams acknowledged that he knew Jason Akes, one of his codefendants, but he refused to talk about Akes.

After the meeting with the government, Williams's lawyer objected to the PSR, arguing in part that Williams was eligible for safety-valve relief. In that case, Williams would have faced no minimum sentence, and his guidelines range would have been 78 to 97 months' imprisonment. In response, the probation office issued a revised PSR on May 23, 2022, but maintained its position that § 3553(f) did not apply.

Prior to the sentencing hearing, the parties filed briefs on whether Williams qualified for the safety valve. They disputed only its fifth and final requirement—that Williams had "truthfully provided to the Government all information and evidence [he] ha[d] concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan." 18 U.S.C. § 3553(f)(5). In Williams's view, he met that requirement because he had identified Vinson as his supplier, admitted to the two earlier purchases, and "answered all of the [g]overnment's questions truthfully." The government—relying on a summary of the interview—responded that Williams's statements fell short because he had not identified the person who had introduced him to Vinson, had not identified his own methamphetamine buyers, and had refused to talk about Akes. Williams did not file a reply, which the court's local rules allowed.

The district court made a point of raising the safety-valve issue at the sentencing hearing. The court first asked Williams's attorney whether he had any additional evidence on the issue. The attorney replied that he had only the arguments in his sentencing brief. Given this, the court thought any further argument unnecessary and ruled that Williams had not satisfied § 3553(f) because he had refused to talk about Akes. Nor had Williams disclosed other relevant information, such as the names of his buyers and the identity of the person who had introduced him to Vinson. Later, when the court asked if Williams's lawyer had any more objections, he replied that he had "nothing additional."

In the end, the court sentenced Williams to 120 months' imprisonment, the statutory minimum. The court added that, in the absence of the statutory minimum, it would have "seriously and likely grant[ed] a variance down" based on its disagreement with the Guidelines' treatment of methamphetamine offenses.

II. ANALYSIS

On appeal, Williams argues that the district court's failure to entertain oral argument on the safety-valve issue during the sentencing hearing violated Rule 32 and denied him assistance of counsel. But, for the reasons below, we conclude that the court did not err in either respect, and even if it had, any error was harmless.

A. Rule 32

Rule 32 requires the district court at sentencing to "allow the parties' attorneys to comment on … matters relating to an appropriate sentence." FED. R. CRIM. P. 32(i)(1)(C). Whether Williams qualified for the safety valve undoubtedly was a matter "relating to

an appropriate sentence." And, according to Williams, the court foreclosed his attorney from presenting his views on this issue during the sentencing hearing. But this is not accurate. In fact, the court asked his attorney whether he had anything else he wanted to add on the issue, and his attorney answered that all of his arguments were contained in his sentencing memorandum. Under these circumstances, Rule 32 does not require the court to provide counsel with an opportunity to repeat arguments already made.

B. Sixth Amendment Right to Counsel

Williams next contends that the district court "completely" denied his Sixth Amendment right to the assistance of counsel by not permitting additional argument on the applicability of the safety valve at the hearing, thereby creating a presumption of prejudice under *United States v. Cronic*, 466 U.S. 648 (1984). And even if the denial was not "complete," Williams argues in the alternative, it was still a partial denial and, thus, unconstitutional.

Under *Cronic*, courts presume that defendants are prejudiced when they are completely denied assistance of counsel at a critical stage of the case. 466 U.S. at 659; *see also Schmidt v. Foster*, 911 F.3d 469, 478–79 (7th Cir. 2018) (*en banc*). Only deprivations "on par with total absence" trigger the *Cronic* presumption of prejudice. *Schmidt*, 911 F.3d at 478–80 (quoting *Wright v. Van Patten*, 552 U.S. 120, 125 (2008)). It is beyond dispute that sentencing is a critical stage. *Lewis v. Zatecky*, 993 F.3d 994, 1003 (7th Cir. 2021). Thus, the analysis turns on whether the district court's actions completely denied Williams assistance of counsel.

Our decision in *Schmidt* is instructive. Schmidt, facing a state charge for murder, wanted to invoke the affirmative defense of provocation before the jury. The state objected on numerous grounds, and the trial court asked Schmidt's counsel to provide a written offer of proof, which he did. Unpersuaded by the proffer, the court decided to examine Schmidt about the factual basis for the provocation defense but conducted the proceedings *in camera* and *ex parte* (with the agreement of the parties) so that the state would not get an unfair preview of defendant's theory. The court allowed defense counsel to talk to Schmidt before the *in camera* hearing and attend the proceeding, but to ensure that Schmidt would not merely parrot his attorney, the court ordered his attorney not to speak during it. *Id.* at 473–74. As the examination proceeded, however, the court allowed Schmidt to review his counsel's written proffer and to consult with him during a break. Later that day, the court ruled that the facts Schmidt raised did not rise to provocation; the case proceeded to trial, and Schmidt was convicted.

Schmidt later filed a habeas petition, and the matter came to us on appeal. Relying on *Cronic*, Schmidt primarily argued that the state trial court had denied him his right to counsel by prohibiting his counsel from speaking during the *in camera* proceeding. In rejecting this argument, we explained that the trial court had not completely denied Schmidt assistance of counsel because his counsel had presented the provocation defense to the judge in other ways. For example, his attorney had filed the initial notice that Schmidt wanted to argue that he had been provoked; a brief with Schmidt's legal argument; a proposed witness list; and a detailed offer of proof. *Id.* at 480–81. What is more, the trial court allowed Schmidt ample opportunity to consult with his attorney before the *in camera* hearing and during a break. Such circumstances, we concluded, fell well short of a "total absence" of counsel. *Id.*

Similarly, here, the district court did not "completely" deny Williams assistance of counsel. Williams, like Schmidt, had his lawyer's assistance in preparing and presenting his safety-valve argument to the court. The lawyer attended Williams's interview with the government, filed the response to the PSR asserting that Williams qualified for the safety valve, argued the issue in a sentencing memorandum, had the chance to submit more evidence at sentencing, and told the court at sentencing that he had nothing more to present. Indeed, given the level of assistance, Williams's alternative argument that he was "partially" denied counsel lacks grounding as well.

Williams offers two contrary arguments, but neither is persuasive. First, he contends that *Herring v. New York*, 422 U.S. 853, 858–59 (1975), supports his position that he was entitled to have his lawyer orally argue the safety-valve issue. But *Herring* held only that defendants enjoy a right to have their lawyers present closing argument at trial, not oral argument on an already-briefed sentencing matter. *See id.* To the extent that *Herring* suggests that defendants have a right to argue sentencing issues through counsel, Williams exercised that right by having his counsel respond to the PSR and submit a sentencing memorandum.

Second, Williams argues that the district court should have allowed oral argument because he had no other opportunity to reply to the government's brief and evidence. But he did—he could have filed a reply brief. *See* S.D. ILL. R. 7.1(g). And the district court permitted him to submit evidence at the sentencing hearing and asked his attorney if there was anything else he wanted to add.

C. Harmlessness

Finally, even if the district court had erred (which it did not), any error would have been harmless. *See* FED. R. CRIM. P. 52(a). True, the district court stated that it probably would have imposed a lower sentence but for the statutory mandatory minimum, which Williams would have avoided had he qualified for the safety valve. But the record simply does not support the latter contention.

To benefit from the safety valve, Williams was required to make a good-faith effort to cooperate with the government—providing "only limited information instead of complete disclosure" is not enough. *United States v. Acevedo-Fitz*, 739 F.3d 967, 970, 972 (7th Cir. 2014). As the district court explained, Williams's cooperation was incomplete. He withheld the name of the person who introduced him to his supplier, the names of his customers, and whatever information he had about Akes.

In retort, Williams argues that he provided sufficient information about the crime to which he pleaded guilty—possession of methamphetamine with intent to distribute. As he sees it, information about his customers and codefendants is unrelated to this offense and exceeded the scope of his obligation under § 3553(f).

This is incorrect on two fronts. First, as we have held elsewhere, district courts may decline to apply the safety valve when a defendant refuses to talk about customers and codefendants, even if the defendant's only offense was possessing drugs with intent to distribute. *See United States v. Nunez*, 627 F.3d 274, 277–78, 281–82 (7th Cir. 2010). Second, information regarding his customers and the person who introduced him to his supplier is plainly relevant to Williams's possession of the methamphetamine in question and his plans to distribute it.

AFFIRMED