NONPRECEDENTIAL DISPOSITION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 May 10, 2024
Decided May 10, 2024

Before

FRANK H. EASTERBROOK, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 22-2277

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

MARTINE MANZANALES,
Defendant-Appellant.

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

No. 16 CR 463-25

Virginia M. Kendall,
Judge.

O R D E R

Martine Manzanales pleaded guilty to conspiracy to commit racketeering activity, and the district court sentenced him to 150 months' imprisonment and 3 years of supervised release. He appeals, but his appointed counsel asserts that the appeal is frivolous and moves to withdraw. *See Anders v. California*, 386 U.S. 738 (1967). In her brief, counsel explains the nature of the case and addresses issues that an appeal of this kind would typically involve. Because counsel's analysis appears thorough, and Manzanales did not respond to the 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). We grant the motion and dismiss the appeal.

In a superseding indictment against 35 members of the Latin Kings street gang in Chicago, Manzanales was charged in February 2018 with a racketeering conspiracy related to his decades-long role as a member and, later, Inca (leader) of a local chapter of the gang. *See* 18 U.S.C. § 1962(d). The charged predicate acts of racketeering included crimes related to attacking rival gang members and protecting the gang's territory. Manzanales was alleged to have (among other things) set fire to a rival gang member's house (the blaze spread to three other structures) and conspired to commit murder. Manzanales was also involved in a drive-by shooting of suspected rival gang members—two of whom he shot in the legs—for which he served over six years in state custody after being convicted of aggravated battery.

Manzanales entered into a plea agreement with the government. It described in detail his involvement in the gang going back to the 1990s, including his leadership role and his participation in the drive-by shooting. At the change-of-plea hearing, Manzanales confirmed under oath that he understood the charge, the penalties, and the rights he was waiving, and he affirmed that his plea was voluntary. The court found a sufficient factual basis and accepted Manzanales's guilty plea.

A probation officer then prepared a presentence investigation report (PSR). Under the Sentencing Guidelines, the PSR treated each underlying racketeering act as if it were a separate count of conviction. *See* U.S.S.G. § 2E1.1 cmt. n.1. The officer noted that the government had provided "the most compelling evidence" for two acts: conspiracy to murder rival gang members and arson. The officer declined to treat the drive-by shooting as a separate conviction because Manzanales had been convicted in state court for the same conduct. *See id.* § 2E1.1 cmt. n.4. The PSR thus began with a base offense level of 33 for the conspiracy to commit murder, *see id.* §§ 2E1.1(a)(2), 2A1.5(a), and added three levels for Manzanales's role as a manager or supervisor, *see id.* § 3B1.1(b). For the arson, the offense level with the role adjustment was 27. *See id.* §§ 2K1.4(a)(1), 3B1.1(b). The report took the greater of the adjusted offense levels (36 for the murder conspiracy) and reduced by three levels for Manzanales's acceptance of responsibility. *See id.* § 3E1.1(a), (b). Based on a total offense level of 33, and Manzanales's criminal history category of III, the range for his sentence was 168 to 210 months' imprisonment and 3 years' supervised release.

At the sentencing hearing, the district court made some factual changes to the PSR at Manzanales's request and confirmed that the parties did not object to the PSR's guideline calculations. The court then heard the parties' arguments. The government requested a sentence of 168 months. It argued that, contrary to the PSR's approach, the drive-by shooting could have been treated separately as an attempted murder, but it also recognized that Manzanales's time in state custody for that conduct "should account for something." Manzanales requested a 56-month sentence. He urged the court to sentence him in the same manner it had approached a co-defendant, Michael Bravo, who also participated in the drive-by shooting and received 100 months after getting credit for all four years he served in state prison. Manzanales also offered a host of mitigating factors: The extraordinary trauma he endured as a child; his mental health issues; his need to care for his children, whose mother was unwell; and his "good chance" at rehabilitation. He argued that, given all this mitigation, it would be reasonable for the court to start with a below-guidelines sentence of 138 months, and then he asked the court to subtract 82 months for the time he served in pre- and post-conviction state custody for the drive-by shooting.

The court weighed the sentencing factors under 18 U.S.C. § 3553(a) and imposed a below-guidelines sentence of 150 months in prison followed by 3 years of supervised release. In varying from the Guidelines, the court took account of Manzanales's "horrible childhood" and some (though not all) of the "significant" time he had served in state prison. But to the extent that Manzanales wanted day-for-day credit, the court declined, and it clarified that it had not ultimately done so for Bravo either. The court further explained that it wanted to avoid an unwarranted sentencing disparity between Manzanales and a different co-defendant, Ruben Porraz—who, like Manzanales, had shot at rival gang members and had received a sentence of 188 months in prison (having served no other time for that conduct previously).

In her brief, counsel first tells us that she advised Manzanales about the risks and benefits of challenging his guilty plea, and she reports that he wishes to challenge only his sentence. Counsel therefore properly forgoes discussing whether the plea was valid. *United States v. Konczak*, 683 F.3d 348, 349 (7th Cir. 2012); *United State v. Knox*, 287 F.3d 667, 671 (7th Cir. 2002).

Counsel next considers whether Manzanales could raise a nonfrivolous challenge to his sentence and first concludes, correctly, that there are no potential procedural errors to argue. The sentence does not exceed the statutory maximum of 20 years, and Manzanales, who did not object to the guideline calculations in the district court, could

not show that there was any plain error. *See United States v. Castaneda*, 77 F.4th 611, 614 (7th Cir. 2023). To the extent there was some question at sentencing about whether to treat the drive-by shooting as a separate predicate act of attempted murder, not only did Manzanales waive any appellate challenge by arguing that it should not, *see United States v. Boyle*, 28 F.4th 798, 802 (7th Cir. 2022), but the argument also would be disadvantageous to him. The court conservatively chose not to calculate a separate offense level for the shooting and instead accounted for it in Manzanales's criminal history, as the Guidelines recommend when a defendant has previously been sentenced for conduct that is part of the instant offense. *See* U.S.S.G. § 2E1.1 cmt. n.4.

Further, the court did not plainly err in rejecting Manzanales's request to credit him with all the time he spent in state custody for the drive-by shooting. That sentence was discharged three years before the sentencing in this case. The Guidelines instruct that a court may—in its discretion—account for a discharged term of imprisonment for conduct related to the instant offense by departing from the sentencing range. *See id.* § 5K2.23. Here, the court exercised discretion to "recognize some time that was served," but nothing required it to do even that. Challenging the decision would be frivolous.

Counsel also correctly concludes that any challenge to the substantive reasonableness of Manzanales's below-guidelines sentence would be frivolous. We presume that a below-guidelines sentence is not unreasonably high, *see United States v. Solomon*, 892 F.3d 273, 278 (7th Cir. 2018), and nothing in the record could rebut this presumption here. In applying the factors in § 3553(a), the district court highlighted the seriousness of the offense (discussing Manzanales's "senseless fighting"); Manzanales's personal history and characteristics (describing his "long progression of criminal activity" but finding his "horrible" childhood and "severe" mental health issues to be mitigating); and the need to promote respect for the law (emphasizing his "decades" of criminal conduct). And, in considering the need to avoid unwarranted sentencing disparities, the court addressed Manzanales's request to be treated like Bravo but opted to align the sentence with the one it imposed for Porraz, whom the court believed to be more comparable.

We GRANT counsel's motion and DISMISS the appeal.