

**NONPRECEDENTIAL DISPOSITION**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 April 5, 2023

Decided April 6, 2023

**Before**

DAVID F. HAMILTON, *Circuit Judge*

AMY J. ST.EVE, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 22-2400

UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*

*v.*

DARIEL HILL,  
*Defendant-Appellant.*

Appeal from the United States District  
Court for the Southern District of  
Indiana, Indianapolis Division.

No. 1:21CR00091-001

Sarah Evans Barker,  
*Judge.*

**ORDER**

The district court sentenced Dariel Hill to 60 months' imprisonment and three years' supervised release after he pleaded guilty to possessing a firearm as a felon. 18 U.S.C. § 922(g)(1). He appeals, but his appointed counsel<sup>1</sup> asserts that the appeal is frivolous and moves to withdraw. *See Anders v. California*, 386 U.S. 738 (1967). Counsel's

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<sup>1</sup> The *Anders* brief in this case was filed by federal public defender Peter Henderson. On March 24, 2023, he was replaced in this case by his colleague Johanna Christiansen.

brief explains the nature of the case and addresses potential issues that this kind of appeal would typically involve. Hill has not responded to the motion with additional potential issues. *See* CIR. R. 51(b). Because counsel's analysis appears thorough, we limit our review to the issues he discusses. *See United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014).

Hill was arrested and charged with state crimes related to his possession of a firearm. The federal government took over the prosecution and filed a criminal complaint asserting a violation of 18 U.S.C. § 922(g)(1), after which the state dismissed its charges and transferred Hill to federal custody. The federal government obtained an indictment 38 days later. But this timing exceeded the 30-day requirement of the Speedy Trial Act, so the district court dismissed the indictment. *See* 18 U.S.C. § 3161(b). The court did not specify whether the dismissal was with or without prejudice.

The government promptly initiated a new prosecution and about a month later obtained a second indictment. The court ordered that any pretrial motions be filed within 30 days of the appearance of Hill's counsel. Hill, however, filed no pretrial motions within this timeframe.

Some ten months after the deadline for pretrial motions, Hill moved to dismiss the indictment. He argued that (1) the first indictment should have been dismissed under the Speedy Trial Act *with prejudice*, thus barring the current prosecution on the second indictment; (2) he was deprived of his right to a preliminary hearing because he was not timely brought before a judge after the first criminal complaint; (3) the delay between his detention and the determination of probable cause by a grand jury violated his Fourth Amendment rights; and (4) the Speedy Trial Act violation infringed on his Fifth and Sixth Amendment rights. To excuse the untimeliness of the motion to dismiss, Hill's counsel explained that he sought to present legal theories proposed by Hill, who had needed extensive time to conduct his own legal research to develop these theories. The court denied Hill's motion as untimely, without good cause for the delay, and meritless.

Hill entered an unconditional guilty plea without a plea agreement. The court sentenced him to 60 months' imprisonment and three years' supervised release.

In his *Anders* brief, counsel represents that he consulted with Hill and confirmed that Hill does not wish to challenge his sentence or guilty plea. Thus, counsel properly refrains from discussing those potential challenges. *See United States v. Caviedes-Zuniga*,

948 F.3d 854, 856 (7th Cir. 2020); *United States v. Konczak*, 683 F.3d 348, 349 (7th Cir. 2012).

We agree with counsel that Hill's guilty plea would waive any potential challenge to the denial of Hill's motion. An unconditional plea waives all nonjurisdictional defects arising before the plea. *United States v. Turner*, 55 F.4th 1135, 1139 (7th Cir. 2022). These include defects of the sort asserted here by Hill—case-specific constitutional defects, *see id.*; *Class v. United States*, 138 S. Ct. 798, 804–05 (2018), and Speedy Trial Act issues. *See United States v. Gaertner*, 583 F.2d 308, 311 (7th Cir. 1978); *United States v. Lozano*, 962 F.3d 773, 779–80 (4th Cir. 2020).

Counsel considers whether Hill could challenge the constitutionality of 18 U.S.C. § 922(g)(1), notwithstanding his unconditional guilty plea. Counsel says that after *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022), it is unclear what restrictions, if any, the government may place on firearm possession. In *Bruen*, the Supreme Court held that the Second Amendment requires the government to prove that firearm statutes such as § 922(g)(1) are “consistent with this Nation's historical tradition of firearm regulation.” *Id.* at 2126. Because Hill did not challenge the statute's constitutionality in the district court, our review would be for plain error. FED. R. CRIM. P. 52(b); *see Greer v. United States*, 141 S. Ct. 2090, 2096 (2021). According to counsel, the only federal appellate court to address this question after *Bruen* determined that § 922(g)(1) was constitutional, *Range v. Att'y Gen. U.S.*, 53 F.4th 262 (3d Cir. 2022), so it would be frivolous for Hill to argue that § 922(g)(1) is plainly unconstitutional.

We agree with counsel that this argument would be frivolous, though for reasons different from those proposed by counsel. Since counsel's submission of his *Anders* brief, the Third Circuit has vacated its decision in *Range* and voted to rehear the case en banc. *Range v. Att'y Gen. U.S.*, 56 F.4th 992 (3d Cir. 2023). In any event, after *Bruen*, no appellate court has held that § 922(g)(1) violates the Second Amendment. This court, for that matter, has acknowledged that the historical evidence is mixed about whether the Second Amendment's protections apply to felons and therefore has not decided the question. *See, e.g., Kanter v. Barr*, 919 F.3d 437, 445–47 (7th Cir. 2019), *abrogated on other grounds by Bruen*, 142 S. Ct. at 2127; *United States v. Williams*, 616 F.3d 685, 692 (7th Cir. 2010). Because the law is unsettled, any error, if there was one, would not be plain. *United States v. Hosseini*, 679 F.3d 544, 552 (7th Cir. 2012).

Counsel next considers and rightly rejects arguing that the court erred when it determined that the additional time Hill needed to do legal research was not good cause

for his untimely motion to dismiss. *See* FED. R. CRIM. P. 12(c)(3). Such determinations are within the court's discretion, *see, e.g., United States v. Young*, 955 F.3d 608, 615 (7th Cir. 2020), and the court appropriately explained that it was never incumbent on Hill to perform such research because he had been represented throughout the proceedings by counsel, who was responsible for identifying legal defenses and conducting the necessary research.

Last, counsel considers whether Hill could raise a claim of ineffective assistance based on his trial counsel's failure to file the pretrial motion on time. But as counsel explains, ineffective-assistance claims are best saved for collateral review, where an evidentiary foundation can be developed. *Massaro v. United States*, 538 U.S. 500, 503–05 (2003); *United States v. Cates*, 950 F.3d 453, 456–58 (7th Cir. 2020).

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