NONPRECEDENTIAL DISPOSITION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 November 21, 2023
Decided November 21, 2023

Before

FRANK H. EASTERBROOK, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 22-2670

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

CENTRAL HOLMAN IV,
Defendant-Appellant.

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

No. 3:19CR00024-001

Richard L. Young,
Judge.

O R D E R

Central Holman was arrested for supplying methamphetamine to a group that had been conspiring to procure and distribute the drug. He pleaded guilty to conspiring to distribute methamphetamine, 21 U.S.C. §§ 841(a)(1), 846, and the district court sentenced him below the Sentencing Guidelines to 260 months' imprisonment, followed by 5 years of supervised release. Holman 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 a case of this kind would typically involve. Counsel's analysis appears thorough, so we

limit our review to the subjects she discusses, *see United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014), as well as any issues Holman raised in his response to counsel's motion, *see* CIR. R. 51(b). We grant the motion and dismiss the appeal.

Counsel first tells us that she advised Holman about the risks and benefits of challenging his guilty plea, and she reports that Holman 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 States v. Knox*, 287 F.3d 667, 671 (7th Cir. 2002).

Counsel and Holman consider whether he could raise a nonfrivolous challenge to the calculation of his guidelines advisory range—360 months to life, based on a total offense level of 37 that was largely driven by his offense involving at least 4.5 kilograms of methamphetamine. Although Holman initially objected to the offense level, arguing that the government did not prove the quantity and purity of methamphetamine, he later expressly withdrew this objection, thereby waiving his right to raise the matter on appeal. *See United States v. Butler*, 777 F.3d 382, 387 (7th Cir. 2015). We agree with counsel that any challenge to the calculation would be frivolous.

Counsel next considers whether Holman could challenge his classification as a career offender. The probation office determined that Holman qualified as a career offender under § 4B1.1 of the Guidelines because his conspiracy conviction constituted a controlled substance offense. Counsel asks whether this classification was inappropriate because § 4B1.2(b)—which defines "controlled substance offense"—arguably excludes conspiracy. Counsel cites *United States v. Dupree*, 57 F.4th 1269, 1277–79 (11th Cir. 2023) (en banc), in which the Eleventh Circuit held that, after the Supreme Court's decision in *Kisor v. Wilkie*, 139 S. Ct. 2400 (2019),[1] the Sentencing Commission's commentary could not expand the interpretation of § 4B1.2, which unambiguously omits inchoate crimes. But counsel rightly concludes that it would be frivolous under plain-error review to raise this challenge, given that this court has yet to address *Kisor*'s effect on the Guidelines, and other circuits are split on the question. *See United States v. States*, 72 F.4th 778, 791 n.12 (7th Cir. 2023) (surveying cases). Regardless, any error would be harmless because the career-offender classification did not affect Holman's offense level or criminal history category.

[1] In *Kisor*, the Supreme Court clarified that no deference should be given to agencies' interpretations of their own rules unless the regulation is ambiguous.

Finally, counsel correctly concludes that it would be pointless to challenge the substantive reasonableness of Holman's below-guidelines sentence. We would presume the sentence to be reasonable, *see United States v. Solomon*, 892 F.3d 273, 278 (7th Cir. 2018), and nothing in the record could rebut this presumption. In applying the factors outlined in § 3553(a), the district court appropriately highlighted the nature and circumstances of the offense (identifying Holman as the source of methamphetamine for a "large-scale" conspiracy that exposed many people to a highly addictive drug); the need to promote respect for the law (pointing out that Holman had disregarded the law by violating parole several times); and Holman's personal history and characteristics (noting Holman's "significant criminal history" as well as his youth, intelligence and strong support system).

We GRANT the motion to withdraw and DISMISS the appeal.