NONPRECEDENTIAL DISPOSITION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 December 20, 2023
Decided December 22, 2023

Before

DIANE S. SYKES, *Chief Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 22-2710

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

DERRICK OUTLAW,
Defendant-Appellant.

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

No. 1:21CR00140-001

Jane Magnus-Stinson,
Judge.

O R D E R

Derrick Outlaw appeals his conviction for distributing heroin, 21 U.S.C. § 841(a)(1), (b)(1)(A). His lawyer moves to withdraw and contends that the appeal is frivolous. *See Anders v. California*, 386 U.S. 738, 744 (1967). Although Outlaw did not respond under Circuit Rule 51(b) to counsel's motion, counsel describes several issues that Outlaw seeks to raise. Because counsel carefully explains the nature of the case and appears to address thoroughly the potential issues this appeal might raise, we limit our review to counsel's discussion. *United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014). We grant counsel's motion to withdraw and dismiss the appeal.

Outlaw was indicted for distributing more than one kilogram of heroin. § 841(a)(1), (b)(1)(A)(i). The government filed notice under 21 U.S.C. § 851 contending that Outlaw's federal conviction in 2000 for distributing more than 50 grams of cocaine and cocaine base was a "serious drug felony" that warranted a sentencing enhancement. Outlaw then unconditionally pleaded guilty under a plea agreement. In that agreement he accepted that the sentencing enhancement applied and waived his right to appeal the conviction. In exchange the government agreed to recommend the minimum sentence of 180 months. The district court accepted Outlaw's plea and sentenced him to 180 months in prison and 10 years of supervised release.

Counsel first tells us that Outlaw seeks to withdraw his plea because he believes that his prior conviction does not qualify as a serious drug felony. But the sentencing court decided, separately from accepting the plea, whether the enhancement applied, and misapplication of this enhancement does not invalidate the voluntariness of the plea. *See United States v. Vinyard*, 539 F.3d 589, 593–94 (7th Cir. 2008). But even if a misapplication of this enhancement could invalidate the plea, for the reasons below we agree with counsel that any challenge to the enhancement would be frivolous. *See United States v. De La Torre*, 940 F.3d 938, 948 (7th Cir. 2019).

Counsel correctly observes that to qualify for the enhancement, Outlaw's prior conviction must be a "serious drug felony" under 18 U.S.C. § 924(e)(2). This means a felony with a statutory maximum of at least 10 years in prison, an actual prison term of more than 12 months, and a release date within 15 years of Outlaw's present indictment in 2021. 21 U.S.C. § 802(57). Outlaw's prior conviction satisfies all three criteria.

To begin, he unarguably meets the first two criteria: Conspiring to distribute more than 50 grams of cocaine and cocaine base carries a statutory maximum of more than 10 years in prison. *See* § 924(e)(2)(A)(i); §§ 841(a)(1), 846. And Outlaw was sentenced to exactly 10 years in prison, which of course is greater than the 12 months required for the enhancement. Counsel correctly observes that had the First Step Act and Fair Sentencing Act been in force at his sentencing in 2000, he could have received a sentence under 10 years. *See* First Step Act of 2018, Pub. L. 115-391, § 404(b), 132 Stat. 5194, 5222. But a conviction for distributing more than 50 grams of cocaine or cocaine base—before or after the enactment of these Acts—always carried a statutory maximum above 10 years, and his actual sentence was never shortened.

Counsel also rightly states that Outlaw's prior conviction meets the last requirement for the enhancement because he was released within 15 years of his

indictment in 2021. To arrive at this conclusion, counsel (who does not have access to all the court records for the 2000 conviction) computes the earliest possible time that Outlaw could have been released: Because Outlaw was indicted in April 1999, the maximum preconviction time that Outlaw might have had credited to his prison term could start no earlier than then. *See* 18 U.S.C. § 3585(b)(1) (permitting the Bureau of Prisons to credit prisoners for pretrial time served). Counsel correctly concludes that if Outlaw had received credit for time served starting in April 1999, and if he had earned the maximum allowable credit for good conduct while in prison, then he would have been released no earlier than October 2007. *See id.* § 3624(b)(1) (permitting no more than 54 days of good time credit for each year of sentence). Counsel cannot identify any grounds for arguing that Outlaw's sentence might have been shortened further, such as for providing substantial assistance to the government. *See* FED. R. CRIM. P. 35(b). Therefore, because the earliest possible date of release—October 2007—was within 15 years of Outlaw's indictment in 2021, it would be frivolous to argue otherwise.

Having properly concluded that Outlaw cannot plausibly attack the plea based on the enhancement, counsel considers whether anything in the plea colloquy would undermine the plea's validity. Counsel rightly concludes that nothing would. Our review of the plea colloquy likewise assures us that Outlaw knowingly and voluntarily pleaded guilty. First, the judge complied with Rule 11 of the Federal Rules of Criminal Procedure. Further, although Outlaw indicated at the plea hearing that he wished to bring a claim of ineffective assistance of counsel against his prior attorneys, such a claim is best brought collaterally where Outlaw might develop a factual record. *See United States v. Stokes*, 726 F.3d 880, 898 (7th Cir. 2013). And we agree with counsel that Outlaw could not plausibly raise a claim of innocence because his guilty plea was unconditional. *See United States v. Carroll*, 412 F.3d 787, 792 (7th Cir. 2005). Because the plea was valid, we enforce the appeal waiver and do not review the conviction.

Additionally, we agree with counsel that any challenge to the procedural or substantive reasonableness of his sentence would be frivolous. The sentencing hearing complied with Rule 32 of the Federal Rules of Criminal Procedure, and Outlaw received the statutory minimum prison term and term of supervised release. *See United States v. Chess*, 610 F.3d 965, 967 (7th Cir. 2010). Consequently, no relief on sentencing length is possible. Finally, counsel does not identify any potential errors in the conditions of supervised release, nor can we. Thus, any attack on the sentence would be pointless.

Therefore, we GRANT counsel's motion to withdraw and DISMISS the appeal.