**NONPRECEDENTIAL DISPOSITION**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. 22-3293

UNITED STATES OF AMERICA,
*Plaintiff-Appellee*,

*v*.

CARL YOUNG, JR.,
*Defendant-Appellant*.

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

No. 1:22CR00051-001

Tanya Walton Pratt,
*Chief Judge*.

**O R D E R**

Carl Young was sentenced to 168 months in prison and 3 years of supervised release after he pleaded guilty to possessing crack cocaine and marijuana with the intent to distribute, 21 U.S.C. § 841(a)(1), possessing a firearm in furtherance of his drug crime, 18 U.S.C. § 924(c), and possessing a firearm as a felon, *id.* § 922(g)(1). Young appeals, but his appointed counsel asserts that the appeal is frivolous and moves to withdraw. *See Anders v. California*, 386 U.S. 738, 744 (1967). Counsel's brief explains the

nature of the case and raises potential issues that we would expect an appeal like this to involve. Because the analysis appears thorough and Young has not responded to the motion with additional arguments, *see* CIR. R. 51(b), we limit our review to the subjects counsel discusses. *See United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014).

In February 2022, Young's mother told police responding to a disturbance call that Young had stolen her Jeep. (Young also had fired a shotgun into the ceiling of her home.) When police approached the Jeep in a nearby alley, Young sped away, blew past a stop sign, and, at more than 70 miles per hour, struck another car, ejecting its two passengers. The crash victims survived but suffered catastrophic injuries. As more police cars arrived, Young rammed one before officers stopped him and got him out of the Jeep. They found on the Jeep's passenger seat a loaded shotgun, shells, and a backpack containing 6 pounds of marijuana and 26 grams of crack cocaine.

At his combined plea colloquy and sentencing hearing, Young admitted these facts, his intent to distribute the drugs, and his knowledge (at the time of the crime) that he had previously been convicted of felonies. Testimony and written statements detailed the crash victims' trauma, their long and ongoing treatment, and their upended life plans. The court adopted the Presentence Investigation Report's calculation of the sentencing guidelines range, considered the factors listed in 18 U.S.C. § 3553(a), and imposed 168 months in prison—21 months above the range—and 3 years of supervised release. The court also imposed a $2,000 fine.

Appellate counsel says that Young, after conferring about the risks and benefits of challenging his plea, wishes to contest only his sentence, not the plea. Counsel thus rightly avoids addressing 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 next concludes, properly, that Young has no nonfrivolous challenge to the length of his sentence. To start, counsel can identify no error in the calculation of the guidelines range. The court grouped Counts 1 (cocaine) and 2 (marijuana), cited a base offense level of 22 for the total converted drug weight, and added two levels for obstruction, for a total offense level of 24. *See* U.S.S.G. §§ 2D1.1(c)(9), 3C1.2. It then calculated an offense level of 26 for Count 4 (firearm possession), given an initial offense level of 20, *id.* § 2K2.1(a)(4)(A), plus four levels for possessing the gun in connection with another felony (automobile theft) and two for obstruction, *id.* §§ 2K2.1(b)(6)(B), 3C1.2. Using the greater offense level, *id.* § 3D1.4, and subtracting three levels for accepting responsibility, *id.* § 3E1.1, the court reached a total offense level of 23 for these counts. And Young's criminal history category was IV, given his 9

points (5 for felonies, 2 for a misdemeanor, and 2 for committing the present offenses while on probation). The total offense level of 23 and criminal history category of IV yielded a guidelines range of 70 to 87 months for Counts 1 and 4, *see* U.S.S.G. § 5A, and a 60-month statutory cap for Count 2, *see* 21 U.S.C. § 841(b)(1)(D). And the court rightly determined that the statutory minimum for Count 3 (the § 924(c) count) yielded a guidelines sentence of 60 months, to run consecutively to the other sentences. 18 U.S.C. § 924(c)(1)(A)(i). So the total range was 130 to 147 months' imprisonment.

Yet because Young's aggregate 168-month term is above that range, counsel considers arguing that it is substantively unreasonable, but concludes that doing so would be frivolous. On Counts 1 and 4, Young's concurrent terms of 87 months lie at the top of the range. Count 2 carries a (concurrent) 60-month guidelines sentence. Only as to Count 3 (the § 924(c) offense) did the court impose an above-range term: 81 months, rather than 60. But we would not disturb a district court's sentencing decision when, as here, the court reasonably justified the above-range sentence under the § 3553(a) factors. *See United States v. McIntyre*, 531 F.3d 481, 484 (7th Cir. 2008). The court recognized Young's difficult childhood and drug addiction but emphasized aggravating factors as well: the severity of his offense conduct, given his reckless flight and car crash, which seriously injured two people; his persistent criminal history, including eight felonies and various misdemeanors (some involving impaired or reckless driving); and the need for deterrence or incapacitation, since probation and community corrections had not previously steered Young away from crime.

Finally, counsel considers whether Young could challenge his terms of supervised release and financial penalty but properly concludes that he could not. The court imposed three years' supervision, which was within the guidelines range and justified by the § 3553(a) factors. *See United States v. Bloch*, 825 F.3d 862, 869–70 (7th Cir. 2016). And Young waived any challenge to the conditions of his supervised release when, at the sentencing hearing, he confirmed that he had read the conditions, did not object to them, and declined a formal reading of them. *See United States v. Flores*, 929 F.3d 443, 449–50 (7th Cir. 2019). As for his $2,000 fine, the court properly considered Young's financial condition, *see* U.S.S.G. § 5E1.2(e), imposing a fine well below not only the statutory maximum ($1 million, *see* 21 U.S.C. § 841(b)(1)(C)), but the minimum guidelines recommendation ($20,000, *see* U.S.S.G. § 5E1.2(c)(3)).

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