NONPRECEDENTIAL DISPOSITION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 January 16, 2024
Decided January 16, 2024

Before

DIANE S. SYKES, *Chief Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 23-1226

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

DEVAN PIERSON,
Defendant-Appellant.

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

No. 1:16CR00206-001

Jane Magnus-Stinson,
Judge.

O R D E R

A jury found Devan Pierson guilty of possessing a controlled substance with intent to distribute, 21 U.S.C. § 841(a)(1), carrying a firearm in relation to a drug trafficking offense, 18 U.S.C. § 924(c), and possessing a firearm with a prior felony conviction, *id.* § 922(g)(1). Pierson collaterally challenged his sentence successfully, *see* 28 U.S.C. § 2255, and the district judge resentenced him below his guidelines range to the statutory minimum sentence. Pierson appeals, but his appointed lawyer asserts that the appeal is frivolous and moves to withdraw. *See Anders v. California*, 386 U.S. 738, 744 (1967). We notified Pierson of counsel's motion and granted him an extension of time to respond, but he never did. *See* CIR. R. 51(b). Counsel has submitted a brief that explains the nature of the case and addresses the issues that a case of this kind might be

expected to involve. Because counsel's brief appears thorough, we limit our review to the subjects that counsel discusses. *See United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014). From our review of the brief and the record, we conclude that Pierson does not have an arguable issue on appeal. We thus grant the motion and dismiss the appeal.

At Pierson's resentencing on his three counts of conviction, the probation office proposed (and district judge adopted) a total guidelines range of 420 months to life. This range was based on an offense level of 37 and a criminal history category of VI (because Pierson was a career offender under the Guidelines), plus a mandatory consecutive 60-month sentence for carrying a firearm in furtherance of a drug crime. Pierson objected only to his classification as a career offender. He argued that his prior drug offenses under state law should not count as predicates to a career-offender designation under the Guidelines. He acknowledged that this position was "contrary to the law in the Seventh Circuit," *see United States v. Ruth*, 966 F.3d 642, 653–54 (7th Cir. 2020) (state drug offenses are predicate drug offenses for guidelines calculations), but noted that the circuits are split on the issue and maintained his objection for further review.

During resentencing, the judge heard the parties' views on the appropriate prison term. Pierson argued for a below-guidelines sentence of 240 months in prison because of his difficult childhood and trauma, rehabilitation, and strong character. The government urged the judge to sentence Pierson at the low end of the guidelines range, based on the harm Pierson had done to his community and his lengthy criminal history. After weighing the sentencing factors in 18 U.S.C. § 3553(a), including the impact of guns and drugs on a community and Pierson's personal growth since his initial sentencing hearing, the judge sentenced him to 240 months in prison—the statutory minimum, *see* 18 U.S.C. § 924(c)(1)(A)(i); *id.* § 924(a)(2); 21 U.S.C. § 841(b)(1)(A)—and 10 years' supervised release. (In applying the statutory minimum, the judge noted that the career-offender designation unduly enhanced the guidelines range for Pierson.) The judge also imposed a $250 fine and a special assessment of $100 per count.

In his *Anders* brief, counsel first states that he consulted with Pierson and confirmed that Pierson does not wish to challenge his conviction. Therefore counsel properly refrains from discussing potential arguments related to his conviction. *See United States v. Konczak*, 683 F.3d 348, 349 (7th Cir. 2012).

Next, counsel correctly concludes that Pierson could not plausibly challenge his sentence on any procedural ground set forth in *Gall v. United States*, 552 U.S. 38, 49–51 (2007). The district judge did not err when she calculated the guidelines range, and

Pierson's only objection—to the career-offender designation—is, as he admitted, foreclosed by Seventh Circuit precedent. *See Ruth*, 966 F.3d at 653–54. In any event, the career-offender designation did not affect Pierson's sentence because he received the statutory minimum, which did not depend on career-offender status. Likewise, the sentence also did not exceed any statutory maximums. Finally, the judge adequately explained the sentence by appropriately referencing the § 3553(a) factors.

Counsel also correctly concludes that Pierson could not reasonably argue that his sentence is substantively unreasonable. To begin, as just mentioned, the district judge sentenced him to the lowest possible sentence. And even if he had not received the statutory minimum, we would presume that Pierson's below-guidelines sentence is reasonable. *United States v. Jarigese*, 999 F.3d 464, 473 (7th Cir. 2021). Further, nothing in the record would rebut that presumption: The judge reasonably balanced the § 3553(a) factors by addressing the nature of the offenses (the impact of drugs on the community, including gun violence that often accompanies drug crimes) and Pierson's personal history and characteristics (his difficult childhood, including abuse, his criminal history, his steps towards rehabilitation, and his exhibited remorse).

Counsel next considers and properly rejects challenging the term or conditions of Pierson's supervised release. The release term does not exceed the statutory maximum and, because it is within the correctly calculated (and unobjected-to) range, we would presume the term to be reasonable. *See United States v. Jones*, 774 F.3d 399, 404 (7th Cir. 2014). Further, nothing in the record would rebut this presumption, because the judge's explanation for the sentence applies equally to the term of supervised release. *United States v. Bloch*, 825 F.3d 862, 869 (7th Cir. 2016). Counsel also correctly notes that any challenge Pierson might raise to the term or conditions of supervised release would be waived because he had advance notice of the term and conditions, confirmed that he reviewed them with his attorney, and did not object. *United States v. Flores*, 929 F.3d 443, 449 (7th Cir. 2019).

Finally, counsel is correct that Pierson could not plausibly challenge the $250 fine or the special assessment. The special assessment of $100 per conviction was mandatory. 18 U.S.C. § 3013(a)(2)(A). And we see no nonfrivolous argument that the $250 fine was clear error—the proper standard of review, *United States v. Davis*, 859 F.3d 429, 436 (7th Cir. 2017). It was below the low end of the guidelines range, and the judge properly considered Pierson's financial resources and ability to pay, both statutory factors in determining the amount of a fine. *See* 18 U.S.C. § 3572(a).

Counsel's motion to withdraw is GRANTED, and the appeal is DISMISSED.