NONPRECEDENTIAL DISPOSITION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. 23-1613

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

MELVIN WILLIS,
Defendant-Appellant.

Appeal from the United States District Court for the Southern District of Illinois.

No. 4:10-CR-40059-JPG-1

J. Phil Gilbert,
Judge.

O R D E R

Melvin Willis appeals the four-year prison sentence imposed for the revocation of his second term of supervised release. His attorney, however, asserts that the appeal is frivolous and moves to withdraw. *See Anders v. California*, 386 U.S. 738 (1967). We grant the motion and dismiss the appeal.

Willis pleaded guilty in 2011 to conspiracy to distribute cocaine base, 21 U.S.C. §§ 841(a)(1) & (b)(1)(A), 846, and the district judge sentenced him to 20 years in prison and 10 years of supervised release. His prison term was later reduced to 108 months, and he was released on supervision in August 2018. Willis served part of his supervised release before being reimprisoned in 2019 for violating the conditions of his supervision. Specifically, the judge found that in addition to other transgressions, Willis had battered his ex-wife in violation of the mandatory condition that he not commit another federal, state, or local crime. The judge sentenced him to a four-year prison term and two more years of supervised release, and we affirmed. *United States v. Willis*, 814 F. App'x 156, 158 (7th Cir. 2020).

Shortly after Willis completed that prison sentence and began serving his second term of supervised release, his probation officer petitioned for revocation because Willis again violated the conditions of his supervision by committing domestic battery and other violations. The judge appointed counsel for Willis and held a revocation hearing. Willis admitted to several technical violations, including contacting Tajuana Sullivan, his wife, despite a no-contact order; failing to report to his probation officer; and failing to undergo mental-health treatment. But he denied that he had committed domestic battery, so the judge held an evidentiary hearing.

To support the charge, the government called as witnesses two police officers who had responded to reports of domestic violence in the early morning hours of December 11, 2022. The officers stated that they found Sullivan with her and Willis's daughter in a car at a gas station on that day and that Sullivan had an inch-long, bloody laceration above her left eye. One of the officers testified that Sullivan and her daughter reported that Willis had grabbed Sullivan by her hair, pulled her head back, punched her, and thrown her to the ground. He took pictures of Sullivan's injuries and collected her written statement. The other officer testified that he searched for Willis, who had left the scene before police arrived, and found him hiding behind a refrigerator in the backyard of a private residence. Officers then arrested Willis. Finally, Willis's probation officer testified that she talked to Sullivan after Willis's arrest, and Sullivan reiterated that Willis had attacked her.

Willis testified in his defense. He acknowledged that he was with Sullivan that night and admitted that the "situation between [them] ended up getting more heated and heated because [they] were arguing." But he denied hitting her. Instead, he suggested that she injured herself "with her car keys" while she was "being hysterical"

during their argument. And, according to Willis, Sullivan later told him that she did not know how she was injured.

The judge found that Willis had committed domestic battery, explaining that the supporting evidence was "overwhelming" and that Willis's testimony was not credible. The judge thus revoked his release, as is required for a Grade B violation. *See* U.S.S.G. § 7B1.3(a)(1). Proceeding to sentencing, the judge noted that Willis had a criminal history category of VI, so the policy statements in the Sentencing Guidelines recommended a prison term of 21 to 27 months. *See id.* § 7B1.4(a). Nevertheless, the judge explained, under 18 U.S.C. § 3583(e)(3), as modified by the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today ("PROTECT") Act of 2003, Pub. L. 108-21, § 101, 117 Stat. 650, he could sentence Willis to up to five years in prison for the violation.

Willis disagreed with the judge's interpretation of § 3583(e)(3), arguing that the judge was required to subtract the duration of Willis's previous revocation sentence from the statute's five-year maximum. He had already served four years in prison for the first revocation, he continued, so he could now be sentenced to a maximum of just one year in prison. The judge overruled Willis's objection and sentenced him to four years in prison and three years of supervised release. This appeal followed.

Although Willis does not have an unqualified constitutional right to counsel in revocation proceedings, s*ee Gagnon v. Scarpelli*, 411 U.S. 778, 789–91 (1973), we apply the *Anders* safeguards when appointed counsel moves to withdraw so that all potential issues receive consideration. *See United States v. Brown*, 823 F.3d 392, 394 (7th Cir. 2016). Because counsel's analysis appears thorough and Willis did not respond to counsel's motion, *see* 7TH CIR. R. 51(b), we limit our review to the issues that counsel discusses. *United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014).

In support of the motion to withdraw, counsel considers whether Willis could raise a nonfrivolous challenge to the revocation of his supervised release. We have noted previously that counsel should not explore a possible challenge to the revocation in an *Anders* brief unless the client (after counsel informs him of the risks) wants to challenge the revocation. *See United States v. Wheeler*, 814 F.3d 856, 857 (7th Cir. 2016); *United States v. Knox*, 287 F.3d 667, 671 (7th Cir. 2002). It is unclear whether such a consultation occurred here.

Regardless, we agree with counsel that Willis lacks a plausible argument against the revocation. We review the proceedings on the technical violations for plain error because Willis did not seek to withdraw his admissions in the district court. *United States v. Nelson*, 931 F.3d 588, 590–91 (7th Cir. 2019). At his hearing Willis confirmed that he understood the alleged violations and possible penalties and was satisfied with his legal representation before he voluntarily waived his right to contest the allegations and freely admitted that his conduct violated the conditions of his release. *See* FED. R. CRIM. P. 32.1(b)(2); *United States v. Jones*, 774 F.3d 399, 403 (7th Cir. 2014).

Nor could Willis raise a nonfrivolous argument contesting the determination that he violated his conditions by committing a domestic battery. The standard for proving a violation is preponderance of the evidence, § 3583(e)(3), and we would review any factual findings only for clear error. *United States v. Patlan*, 31 F.4th 552, 556 (7th Cir. 2022). Here the judge considered the evidence, including the testimony of Willis's probation officer and two police officers, the pictures of Sullivan's injuries, and her statements to the police and the probation officer. The judge also rejected Willis's testimony as not credible. The judge's weighing of such evidence was not clearly erroneous. *See United States v. Waldman*, 835 F.3d 751, 756 (7th Cir. 2016).

Counsel also considers and rejects other potential arguments related to the revocation hearing. Counsel rightly concludes that Willis was not entitled to confront Sullivan, whose hearsay testimony was introduced as evidence at the hearing. The Sixth Amendment's Confrontation Clause does not apply to revocation hearings, and the Due Process Clause of the Fifth Amendment would secure Willis's right to confront Sullivan only if her hearsay testimony was not substantially trustworthy. *United States v. Mosley*, 759 F.3d 664, 667 (7th Cir. 2014). But because Sullivan's account of the assault was corroborated by several sources, we would conclude that Willis did not have a right of confrontation. *See id.* at 667–68.

Finally, counsel considers whether Willis could challenge the determination that he could receive up to five years in prison, the statutory maximum, even though he had served four years for a prior revocation. Since the effective date of the PROTECT Act in 2003, the statute governing revocation sentences now provides, in relevant part, that a defendant "may not be required to serve *on any such revocation* more than 5 years in prison." § 3583(e)(3) (emphasis added); *see United States v. Perry*, 743 F.3d 238, 241 (7th Cir. 2014). "[O]n any such revocation" means that the statutory maximum applies anew after each revocation. *Perry*, 743 F.3d at 241–42. Thus, it would be frivolous to challenge this ruling.

Counsel does not identify any other potential issues with the procedural soundness or substantive reasonableness of Willis's revocation sentence, and we see none either. Therefore, we GRANT counsel's motion to withdraw and DISMISS the appeal.