NONPRECEDENTIAL DISPOSITION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 March 13, 2024
Decided March 18, 2024

Before

ILANA DIAMOND ROVNER, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 23-1749

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

REGIS HOSKINS,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 1:20-CR-00927-1

John Robert Blakey,
Judge.

O R D E R

Regis Hoskins pleaded guilty to conspiring to distribute a controlled substance. Hoskins appeals, but his appointed lawyer asserts that the appeal is frivolous and moves to withdraw. *See Anders v. California*, 386 U.S. 738 (1967). 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. We notified Hoskins of counsel's motion, and he did not respond to it. *See* CIR. R. 51(b). 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).

While on supervised release, Hoskins operated a narcotics distribution telephone line with his family. Hoskins obtained heroin and fentanyl from a supplier and repackaged it. Hoskins, his wife, or his adult son would answer the phone to take an order and then one or more of them would deliver the drugs to a distribution point. Undercover officers and confidential sources working with a Drug Enforcement Administration Task Force purchased drugs this way nine times in August and September 2020. During one such transaction, Hoskins resolved a dispute between his son and a buyer about how many bags of narcotics the buyer should receive for $200. And evidence presented at his son's sentencing showed that the son "had to consult" Hoskins on the price of drugs on another occasion.

Hoskins was charged with one count of conspiring to possess with intent to distribute at least 40 grams of fentanyl and heroin, 21 U.S.C. §§ 846, 841(a)(1); and four counts of distribution of a controlled substance, 21 U.S.C. § 841(a)(1); 18 U.S.C. § 2. The indictment also charged his wife and son with the conspiracy and with three individual counts of distribution each. Pursuant to a written plea agreement, Hoskins pleaded guilty to the conspiracy count and, in exchange, the government dismissed the other counts against him. Hoskins further agreed to refund the government the $360 it had spent buying drugs from him. At the change of plea hearing, the district court determined that the plea was knowing and voluntary and supported by a sufficient factual basis. Sentencing followed.

In the presentence investigation report (PSR), a probation officer calculated a total offense level of 23. The base offense level was 24, based on the converted drug weights of the substances. U.S.S.G. § 2D1.1(a)(5), (c)(8). The probation officer added two levels for Hoskins's role as an organizer, leader, manager, or supervisor of the conspiracy, *id.* § 3B1.1(c), and subtracted three levels for timely acceptance of responsibility, *id.* § 3E1.1(a), (b). Hoskins's criminal history category was II because he committed the offense of conviction while on supervised release and had a previous drug possession conviction. *See id.* § 4A1.1(c), (d). The offense level of 23 and criminal history category of II yielded a guidelines range of 51 to 63 months' imprisonment. *Id.* Ch. 5, Pt. A (Sent'g Tbl.). The guidelines range of supervised release was three to five years. *Id.* § 5D1.2(c). Before the sentencing hearing, the government withdrew its allegation about the amount of drugs involved in the conspiracy, so no statutory minimum prison sentence applied, and the statutory minimum term of supervised release fell to three years. 21 U.S.C. § 841(b)(1)(C).

Hoskins objected to the two-level increase for participating as a manager or supervisor in the conspiracy. He contended that the conspiracy was not hierarchical, that he did not control, punish, or oversee his family members, and that the family dynamics of the conspiracy presented "unique circumstances" outside the purview of § 3B1.1(c). Further, without the enhancement, Hoskins would qualify for the two-level "safety valve" reduction, U.S.S.G. § 2D1.1(b)(18), for a total offense level of 19 (and, therefore, a guidelines range of 33 to 41 months, *id.* Ch. 5, Pt. A (Sent'g Tbl.)). In its sentencing memorandum, the government agreed that Hoskins fulfilled the requirements for the safety valve but for the aggravating role enhancement, though it argued that the enhancement should apply notwithstanding.

At the sentencing hearing, the government maintained that Hoskins was a manager or supervisor because he was involved in each transaction, set pricing, and resolved disagreements. Hoskins argued that he did not have punitive authority over his son (an adult who lived independently), set territories or boundaries, or do anything else to manage or supervise the other participants. The court, considering Hoskins's prior drug experience, his involvement with every transaction, and his role in setting the drug prices and resolving disputes, agreed with the government and applied the enhancement. The court then calculated the guidelines range to be 51 to 63 months' imprisonment—in line with the PSR's calculations—and noted that it was required to impose at least three years of supervised release.

After hearing the parties' arguments, the court sentenced Hoskins to 51 months' imprisonment, the bottom of the guidelines range. The judge explained that he considered the seriousness of the offense and the need to deter Hoskins, as well as the need to protect the public. The court further observed that Hoskins's mental and physical health struggles, childhood trauma, family support, and substance abuse history were mitigating factors. The court cited as aggravating factors Hoskins's prior criminal history and his commission of this offense while on supervision, as well as the dangerousness of fentanyl and heroin. The court also noted that, even without the aggravating role enhancement, he would impose the same sentence under 18 U.S.C. § 3553(a). The court imposed a three-year term of supervised release but no financial penalty beyond the $360 reimbursement.

In his brief, counsel first addresses whether Hoskins has nonfrivolous grounds for challenging the validity of his guilty plea. But counsel does not state that he consulted with Hoskins to provide advice about the risks and benefits of this course of action, nor did he confirm that Hoskins is interested in withdrawing the plea.

See United States v. Konczak, 683 F.3d 348, 349 (7th Cir. 2012). (Counsel's other filings suggest that he has had difficulty contacting his client.) We require this step because, often, withdrawing a plea will put a criminal defendant in a worse position, and we do not require appellate counsel to make arguments adverse to their clients' interests. *United States v. Knox*, 287 F.3d 667, 671 (7th Cir. 2002).

We may nevertheless proceed because, despite counsel's omission, his analysis and our review of the record convince us any challenge to the plea would be frivolous. *Konzcak*, 683 F.3d at 349. Hoskins did not move to withdraw his guilty plea in the district court, so our review would be only for plain error. *United States v. Austin*, 907 F.3d 995, 998 (7th Cir. 2018). In taking the plea, the district court substantially complied with Rule 11 of the Federal Rules of Criminal Procedure. Hoskins was placed under oath, and he verified that he had reviewed the plea agreement with his attorney, that all his questions about the agreement had been answered, and that he was satisfied with the representation he had received. Hoskins said that he had not been induced to plead guilty by any threats or promises. The court confirmed that Hoskins understood the charge against him and the possible penalties. The court also reviewed with Hoskins the rights he would be giving up by pleading guilty. And Hoskins affirmed that the factual basis presented by the government was accurate. We would presume Hoskins's sworn statements to be true, *see United States v. Barr*, 690 F.3d 906, 917 (7th Cir. 2020), so it would be frivolous to argue that accepting the plea was plain error.

Turning to sentencing, we agree with counsel that Hoskins could not plausibly challenge the application of the two-level leadership enhancement. We would review the court's factual findings about Hoskins's role for clear error. *United States v. Garcia*, 948 F.3d 789, 806 (7th Cir. 2020). A defendant generally qualifies for an upward adjustment if he "[told] people what to do and determine[d] whether they [did] it." *United States v. Figueroa*, 682 F.3d 694, 697 (7th Cir. 2012). The uncontested facts show that Hoskins managed the activities of his son on two occasions during the conspiracy: On one occasion, Hoskins stepped in to resolve a customer dispute, instructing his son to provide the customer with extra drugs for the same price, and on another, Hoskins's son relied on him to set prices. As the district court explained, it can be inferred from these facts—along with Hoskins's prior experience selling drugs—that Hoskins managed his son. It would be frivolous to argue on appeal that this inference was clearly erroneous. *See United States v. Salem*, 657 F.3d 560, 563 (7th Cir. 2011).

Regardless, any error in applying the manager/supervisor adjustment would be harmless because the district court specifically mentioned the role enhancement and

stated that it would have imposed the same sentence based only on its assessment of the § 3553(a) factors. *See United States v. Asbury*, 27 F.4th 576, 581–82 (7th Cir. 2022); *United States v. Abbas*, 560 F.3d 660, 667 (7th Cir. 2009).

Next, counsel correctly concludes that Hoskins could not plausibly challenge his sentence on any other procedural ground. *See Gall v. United States*, 552 U.S. 38, 49–51 (2007). A challenge to the calculation of the guidelines range would be frivolous, counsel submits, because the district court's calculation of Hoskins's offense level and criminal history category were based on the facts from the PSR, which were undisputed apart from the enhancement discussed above. As required, the court first calculated the guidelines range and then applied the sentencing factors under 18 U.S.C. § 3553(a) and explained the sentence. *See id.*; *United States v. Jarigese*, 999 F.3d 464, 471 (7th Cir. 2021).

Counsel also correctly concludes that Hoskins could not raise a nonfrivolous argument that his sentence is substantively unreasonable. The district court sentenced him to the bottom of the properly calculated guidelines range, 51 months, so we would presume the sentence reasonable on appeal. *Jarigese*, 999 F.3d at 473. The court thoroughly justified the sentence by addressing the § 3553(a) factors including the nature and circumstances of the offense (selling dangerous narcotics while under supervision) and Hoskins's personal history and characteristics (his criminal history, mental and physical health struggles, history of trauma, and support from family). Therefore, attempting to rebut the presumption of reasonableness would be unavailing.

We GRANT counsel's motion to withdraw and DISMISS the appeal.