

NONPRECEDENTIAL DISPOSITION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**

Argued April 23, 2024

Decided April 29, 2024

Before

FRANK H. EASTERBROOK, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 23-2283

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

AUBREY BURKS,
Defendant-Appellant.

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

No. 1:14-CR-00384(1)

Ronald A. Guzmán,
Judge.

ORDER

Aubrey Burks violated his supervised release when he was involved in a high-speed chase that caused a person's death. Because of this violation, the district court revoked Burks's supervised release and sentenced him to 24 months' imprisonment to run consecutively to any term of imprisonment imposed by the state court. Burks challenges the consecutive nature of his sentence, arguing that the district court failed to address his argument for a concurrent sentence. But a review of the record shows that the court addressed Burks's argument and amply justified its decision to impose a consecutive sentence, so we affirm.

I.

Burks pleaded guilty in September 2015 to conspiracy to engage in unlicensed firearms dealing and conspiracy to distribute 100 grams or more of heroin. The district court sentenced him to a term of 99 months' imprisonment and 5 years' supervised release.

In September 2021, Burks completed his term of imprisonment. As part of his conditions of supervision, the court ordered him to participate in a federal work-release program. But within a month into the work-release program, Burks violated its rules (e.g., failing a breathalyzer test and returning to the program past curfew). In addition, he walked out of the work-release program and never returned. The probation office, though, did not recommend court intervention, and so the court took no further steps.

In May 2022, however, the probation office filed a special report informing the court of Burks's arrest on state drug charges and seeking a hearing for a rule to show cause why supervised release should not be revoked. At the show-cause hearing the following month, Burks admitted to violating the terms of his supervised release by unlawfully using controlled substances. But the court denied the probation officer's recommendation for revocation of supervised release and, instead, verbally admonished Burks.

Four months later, in October, Burks was arrested in Wisconsin for his involvement in a high-speed chase that caused a person's death. According to the arrest report, Burks evaded police officers by driving 90 miles per hour before crashing into another vehicle occupied by two people. The driver was pronounced dead at the scene. The passenger suffered two broken femurs and a head injury. Based on this event, Burks faced various charges under Wisconsin law including first-degree reckless homicide and fleeing an officer resulting in a person's death. As a result, the government moved to revoke Burks's supervised release.

The district court then held an evidentiary hearing on the government's motion. After hearing arguments from both parties, the court found by a preponderance of the evidence that Burks committed reckless homicide in violation of Wisconsin law (thereby violating the condition of his supervision that required him to refrain from committing any federal, state, or local crime). The court thus revoked Burks's supervised release.

Under Chapter 7 of the Sentencing Guidelines, Burks's offense (reckless homicide)—a Grade A Violation—combined with his criminal history category of III, yielded a policy-statement range of 18 to 24 months' imprisonment. U.S.S.G. § 7B1.4(a). At the hearing that ensued, the government argued that a 24-month prison term consecutive to any state-court sentence was necessary to reflect the seriousness of the offense and Burks's breach of the court's trust. Burks countered that a 6-month prison term concurrent to a state-court sentence would be appropriate. He acknowledged that the offense he committed was serious but argued that the seriousness of the offense is only one factor the court should consider when determining an appropriate sentence. In his view, a concurrent sentence was sufficient because it would allow him to participate in a Wisconsin work-release program after his release from prison and thus transition to life outside of prison.

The court sentenced Burks to 24 months' imprisonment to run consecutively to any sentence imposed by the state court. The court found that a 24-month term was appropriate to protect the public and reflect the seriousness of Burks's offense. In rejecting Burks's argument for a concurrent sentence, the court explained that such a sentence would "essentially nullif[y] the harm that [Burks] has done by violating" the court's trust. In addition, the court added, Burks had demonstrated a disregard for being supervised when he committed multiple violations of his supervision.

Burks now appeals, contesting the district court's decision to impose his sentence consecutively to any term of imprisonment imposed by the state court.

II.

Our review of a sentence resulting from revocation of supervised release is "highly deferential." *United States v. Childs*, 39 F.4th 941, 944 (7th Cir. 2022). The sentence will be sustained "so long as it is not 'plainly unreasonable.'" *Id.* at 945 (quoting *United States v. Boultinghouse*, 784 F.3d 1163, 1177 (7th Cir. 2015)).

On appeal, Burks primarily argues that the district court erred by ignoring his principal argument for a concurrent sentence. As Burks sees things, the court did not consider his argument that a concurrent sentence would enable him to participate in a work-release program after the completion of his prison term. In support, he relies on *United States v. Jackson*, 546 F.3d 465 (7th Cir. 2008). In that case, we vacated a defendant's federal sentence because the district court did not sufficiently explain its decision to make the sentence consecutive to a state sentence imposed for similar

conduct. *Id.* at 471–72. We concluded that the district court’s “brief, cryptic response” to the defendant’s argument—a response stating only that a concurrent sentence would “unduly depreciate the seriousness of the offense”—was not sufficient to justify a consecutive sentence. *Id.*

But the problem with Burks’s argument is that the district court here offered much more than a “brief, cryptic response” to his argument. At the hearing, the court—in response to Burks’s request for a concurrent sentence to allow him later to participate in the work-release program—emphasized three points why a consecutive sentence was necessary. First, Burks previously walked out of the work-release program. Second, his employment while on supervised release was intermittent. Third, he breached the court’s trust by committing two serious violations of his conditions of supervised release. Indeed, “[s]o long as the record gives us confidence that the court meaningfully considered the defendant’s mitigation arguments, ‘even if implicitly and imprecisely,’ that is enough.” *United States v. Jones*, 798 F.3d 613, 618 (7th Cir. 2015) (quoting *United States v. Diekemper*, 604 F.3d 345, 355 (7th Cir. 2010)). The record here shows that the district court meaningfully considered Burks’s argument.

Burks also suggests that the district court erred by failing to consider § 5G1.3(c) of the Guidelines, a policy statement that recommends the imposition of a concurrent sentence when the federal sentence and the anticipated state sentence involve the same relevant conduct. True, Burks’s federal sentence and anticipated state sentence involve the same conduct (reckless homicide). But § 5G1.3(c) is irrelevant here because it applies to sentences for underlying *convictions*, see § 5G1.3(c) (concerning the “instant offense”); § 1B1.1 cmt. n.1(I) (defining offense as “offense of conviction”), and the sentence at issue involves the revocation of Burks’s supervised release. Moreover, the relevant policy statements generally recommend that the district court impose consecutive sentences when the supervised-release violation produces new criminal convictions. See § 5G1.3(d) cmt. n.4(C); § 7B1.3(f); see also *United States v. Taylor*, 628 F.3d 420, 424 (7th Cir. 2010) (recognizing “the U.S. Sentencing Commission’s policy favoring the consecutive sequencing of a sentence imposed upon revocation of supervised release and the sentence for the offense precipitating the revocation”). We see no error with the district court’s decision to follow this recommendation in Burks’s case.

AFFIRMED