

United States Court of Appeals
For the Eighth Circuit

No. 22-2182

United States of America

Plaintiff - Appellee

v.

Mack Edward Harris

Defendant - Appellant

Appeal from United States District Court
for the District of North Dakota

Submitted: November 14, 2022

Filed: February 7, 2023

[Unpublished]

Before COLLTON, SHEPHERD, and GRASZ, Circuit Judges.

PER CURIAM.

After Mack Edward Harris admitted to violating the terms of his federal supervised release, the district court¹ revoked supervised release and imposed a 12 month-and-one-day term of imprisonment. Harris appeals, arguing the district court

¹The Honorable Daniel M. Traynor, United States District Judge for the District of North Dakota.

lacked jurisdiction over his case at the time of revocation because Harris had pending before the United States Court of Appeals for the Ninth Circuit an appeal of the denial of his habeas petition. He also argues the sentence imposed is substantively unreasonable. We affirm.

I. Background

In 2015, a jury in the United States District Court for the District of Montana convicted Harris of two federal firearm-possession charges: (1) possessing a firearm after being convicted of a felony, 18 U.S.C. § 922(g)(1); and (2) possessing a firearm after being convicted of a misdemeanor crime of domestic violence, 18 U.S.C. § 922(g)(9). The district court then sentenced Harris to an 84-month term of imprisonment to be followed by three years of supervised release.

Harris later moved the Montana district court to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. Harris argued his criminal judgment was invalid because the government had not been required to prove that Harris knew he had been convicted of crimes making his later possession of a firearm illegal. *See Rehaif v. United States*, 139 S. Ct. 2191, 2200 (2019). In what he calls his double-jeopardy claim, Harris also argued controlling precedent dictated he could not be sentenced for two counts of illegal possession based on his possession of one firearm on one occasion. *See United States v. Mavromatis*, 769 F.3d 1194, 1195 (9th Cir. 2014). In August 2021, the Montana district court dismissed Harris's § 2255 motion with prejudice. It determined Harris's *Rehaif* claim was procedurally defaulted and his double jeopardy claim was time barred. The district court granted, however, a certificate of appealability on both claims for relief. Harris appealed to the United States Court of Appeals for the Ninth Circuit.

While his § 2255 motion was pending, Harris completed his prison term and was released to supervision in 2020. Harris relocated to North Dakota following his release from custody and the United States District Court for the District of North Dakota accepted his supervised release jurisdiction transfer in October 2020.

In April 2022, Harris was arrested and charged in North Dakota state court with domestic violence. The North Dakota federal district court later issued an arrest warrant for Harris based on alleged violations of conditions of supervised release, including committing domestic violence.

At his revocation of supervised release hearing, Harris argued the North Dakota district court lacked authority to revoke his supervised release because it had no jurisdiction due to his pending appeal of the denial of his § 2255 motion. The district court disagreed, concluding it had jurisdiction over the revocation proceedings. Harris ultimately admitted violations of his supervised release relating to the domestic violence assault, traveling out of state without approval, using alcohol, and a disorderly conduct conviction. This led the district court to find that Harris had in fact violated the conditions of his supervised release. The parties argued about the appropriate sentence, with the government asking the district court to impose a prison sentence of 14 months and Harris asking for six months or less. The district court imposed a sentence of 12 months and one day of imprisonment with no subsequent supervised release.

Harris appealed the North Dakota district court order, challenging the district court's jurisdiction and the substantive reasonableness of the revocation sentence. During the pendency of his appeal before this court, the Ninth Circuit affirmed the Montana district court's denial of his § 2255 motion. *See United States v. Harris*, No. 21-35633, 2022 WL 2593523, at *2 (9th Cir. July 8, 2022).

II. Analysis

We first consider de novo Harris's argument that the North Dakota district court lacked jurisdiction at the time of revocation because of the pending appeal in the Ninth Circuit. *See United States v. Mofle*, 989 F.3d 646, 647 (8th Cir. 2021) (applying the de novo standard to the question of subject-matter jurisdiction). "Although a federal district court and a federal court of appeals should not assert jurisdiction over a case at the same time, a notice of appeal only divests the lower

court of jurisdiction over aspects of the case that are the subject of the appeal.” *United States v. Queen*, 433 F.3d 1076, 1077 (8th Cir. 2006) (per curiam). “District courts retain jurisdiction to enforce their orders when the same issues are not simultaneously before the district court and appellate court.” *Id.* at 1078.

Here, Congress gave the Montana district court jurisdiction over Harris’s supervised release. *See* 18 U.S.C. § 3583. The district court then transferred that jurisdiction to the North Dakota district court under 18 U.S.C. § 3605. Thus, the North Dakota district court possessed jurisdiction over Harris’s supervised release at the time of Harris’s violations. Similar to *Queen*, which involved revocation of parole, we conclude the pending appeal before the Ninth Circuit Court of Appeals did not involve issues related to Harris’s violations of the conditions of his supervised release. 433 F.3d at 1078. The mere potential that the Ninth Circuit’s decision could have required amendment of his sentence is too tenuous a connection to make the issues before each court the same and thus deprive the district court of jurisdiction to enforce the conditions of supervised release.

We also reject Harris’s argument that his sentence is substantively unreasonable. “We review the substantive reasonableness of a district court’s revocation sentence under the same abuse of discretion standard that applies to initial sentencing proceedings.” *United States v. Horse*, 4 F.4th 687, 688 (8th Cir. 2021) (per curiam). “A sentence within the Guidelines range is accorded a presumption of substantive reasonableness on appeal.” *United States v. Petreikis*, 551 F.3d 822, 824 (8th Cir. 2009) (quoting *United States v. Perkins*, 526 F.3d 1107, 1110 (8th Cir. 2008)).

Harris does not contend the district court miscalculated the guidelines range of 8 to 14 months. The district court imposed a sentence within that range. And our review of the record satisfies us that the district court properly considered the appropriate factors set forth in 18 U.S.C. § 3553(a) as required by 18 U.S.C. § 3583(e). Thus, there is no basis to conclude Harris’s sentence is substantively unreasonable.

III. Conclusion

We affirm the district court's judgment.
