

NONPRECEDENTIAL DISPOSITION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 April 5, 2023

Decided April 5, 2023

BeforeDAVID F. HAMILTON, *Circuit Judge*AMY J. ST. EVE, *Circuit Judge*JOHN Z. LEE, *Circuit Judge*

No. 22-1402

UNITED STATES OF AMERICA,
*Plaintiff-Appellee,**v.*DANIEL HOLLAND,
*Defendant-Appellant.*Appeal from the United States District
Court for the Southern District of Indiana,
Indianapolis Division.

No. 1:21CR00216-001

James Patrick Hanlon,
*Judge.***ORDER**

Daniel Holland was sentenced to 63 months' imprisonment and three years' supervised release after pleading guilty to unlawful possession of a firearm by a felon. *See* 18 U.S.C. § 922(g)(1). Although his plea agreement contains a broad appellate waiver, Holland filed a notice of appeal. His appointed counsel asserts that the appeal is frivolous and moves to withdraw. *See Anders v. California*, 386 U.S. 738, 744 (1967). Counsel's brief explains the nature of the case and addresses the issues that an appeal of this kind might be expected to involve, and Holland did not respond to the motion with additional potential issues. *See* CIR. R. 51(b). Because counsel's analysis appears

thorough, we limit our review to the subjects that she discusses. *See United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014).

An Indianapolis police officer was conducting surveillance at an apartment complex and observed Holland standing outside a parked car with a black handgun tucked into the right side of his waistband. Holland got into the passenger seat, and the car drove away, with the officer following. Another officer pulled the car over for numerous traffic violations and, when approaching, saw Holland remove a gun from his waistband and put it under his leg. When Holland got out of the car, the gun was resting on the passenger seat. At the time, Holland had multiple felony convictions in Indiana for offenses including robbery, theft, and drug possession.

Holland was charged under 18 U.S.C. § 922(g)(1) with unlawfully possessing a firearm, and he pleaded guilty. In a written plea agreement, he expressly waived his right to directly appeal “the conviction and sentence imposed in this case on any ground,” including “the length and conditions of the period of supervised release.” He further waived his right “to contest, or seek to modify, [his] conviction or sentence or the manner in which either was determined” in any later proceedings, including under 18 U.S.C. § 3582 or 28 U.S.C. § 2255, with some enumerated exceptions.

The probation office submitted a presentence investigation report (PSR) that calculated the options under the Sentencing Guidelines. A total offense level of 19 and a Category VI criminal-history score yielded a range of 63 to 78 months’ imprisonment. Holland objected to the base offense level of 20, arguing that his prior conviction was not for a crime of violence for purposes of U.S.S.G. § 2K2.1(a)(4)(A), but the district court overruled the objection. Holland had no other objections to the PSR, including the proposed term and conditions of supervised release. After hearing the parties’ arguments and weighing the sentencing factors under 18 U.S.C. § 3553(a), the court imposed a sentence of 63 months in prison and three years of supervised release.

Counsel begins by noting that Holland wishes to withdraw his guilty plea so that he can challenge his sentence unburdened by the waiver in his plea agreement; counsel therefore addresses whether there is any nonfrivolous argument about the validity of the guilty plea. *See United States v. Konczak*, 683 F.3d 348, 349 (7th Cir. 2012); *United States v. Knox*, 287 F.3d 667, 670–71 (7th Cir. 2002). Because Holland did not move to withdraw his plea in the district court, we would review this challenge only for plain error. *See United States v. Schaul*, 962 F.3d 917, 921 (7th Cir. 2020). And, as counsel correctly concludes, any such challenge would be frivolous.

The record shows that the district court complied with Rule 11 of the Federal Rules of Criminal Procedure. *See United States v. Davenport*, 719 F.3d 616, 618 (7th Cir. 2013). The court confirmed that Holland read and understood his plea agreement, which explained the trial and appellate rights he was forsaking, the maximum penalties for the offense, and the role of the Sentencing Guidelines. *See* FED. R. CRIM. P. 11(b)(1). The court also apprised Holland of his right to a jury trial, and Holland swore at his hearing that the stipulated factual basis for his plea was true, so any argument contradicting his statements under oath would also be fruitless. *See United States v. Collins*, 796 F.3d 829, 835 (7th Cir. 2015).

Counsel next addresses whether Holland could raise nonfrivolous arguments about his sentence and correctly concludes that his appellate waiver precludes them all. An appellate waiver “stands or falls with the underlying agreement and plea,” *United States v. Nulf*, 978 F.3d 504, 506 (7th Cir. 2020), and as we have just explained, Holland lacks any sound basis for challenging his plea. Counsel also appropriately rejects any argument that an exception to the waiver’s enforceability applies: Holland’s 63-month sentence is less than the applicable statutory maximum sentence of 10 years’ imprisonment, and the court did not consider any constitutionally impermissible factor at sentencing. *See id.* Moreover, the waiver covers “the length and conditions” of supervised release, which are also consistent with applicable statutory limits.

Finally, appellate counsel notes that Holland would like to argue that his (different) trial counsel provided ineffective assistance in violation of the Sixth Amendment. Holland’s appellate waiver contains no exception allowing this issue to be raised on direct appeal, which makes it frivolous to raise now. The plea agreement leaves him free to raise a claim of ineffective assistance of counsel in a collateral attack, and, in any event, it is almost always best to reserve this argument for collateral review, when the defendant may develop a full record. *See Massaro v. United States*, 538 U.S. 500, 504–05 (2003); *United States v. Cates*, 950 F.3d 453, 457 (7th Cir. 2020).

Therefore, we GRANT counsel’s motion to withdraw and DISMISS the appeal.