NONPRECEDENTIAL DISPOSITION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 9, 2023*
Decided March 13, 2023

Before

FRANK H. EASTERBROOK, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

No. 22-1545

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

EUGENE FALLS,
Defendant-Appellant.

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

No. 3:19-CR-30034-SMY-1

Staci M. Yandle,
Judge.

O R D E R

Eugene Falls is serving a 405-month federal sentence for conspiracy to commit money laundering and multiple drug offenses. He challenges five aspects of his conviction and sentence: the absence of a pretrial detention hearing, the sufficiency of

* On Falls's request, we discharged his appointed counsel. We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

the indictment, the multiple delays of his trial, the admission of evidence from a wiretap, and the length of his prison sentence. We affirm.

Between December 2018 and March 2019, Falls received methamphetamine and heroin from a supplier and then distributed it in southern Illinois. Falls had met the supplier when they served time in prison together. Falls paid for some of the drugs he was fronted by using money transfers that he sent under false identities. In February 2019, a district judge in the Eastern District of Missouri—where the United States Drug Enforcement Administration had an electronic monitoring facility—authorized a wiretap of the phone of a suspected drug trafficker, who was not yet linked to Falls. Agents intercepted calls between that person and Falls during which they discussed the preparation of drugs for sale. This led to Falls's arrest in March 2019 during a controlled buy at a hotel in Fairview Heights, Illinois.

Later that month, the government filed a criminal complaint against Falls in the Southern District of Illinois. Falls signed a written waiver of a pretrial detention hearing, and a magistrate judge ordered him detained pending trial. About a week later, Falls was charged in a one-count indictment with attempted possession with intent to distribute methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A), 846. At that point, the trial date was set for May 20, 2019. Over the next few months, two superseding indictments added three more defendants and three additional charges against Falls. During this time, the district court continued the trial date multiple times, each time with a finding that the ends of justice outweighed the best interest of the public and the defendants in a speedy trial. Falls opposed just one of these continuances, which a co-defendant had requested.

The second and final superseding indictment was returned on October 23, 2019, and it charged Falls and three co-conspirators with attempted possession with intent to distribute methamphetamine, drug conspiracy, heroin distribution, and money-laundering conspiracy. *See id.* §§ 841(a)(1), (b)(1)(A), (b)(1)(C), 846; 18 U.S.C. § 1956(a)(1)(B)(i), (h). The indictment listed the relevant date and location of each charged offense, and it described each alleged crime according to the statutory elements. The final co-defendant was arraigned on December 11, 2019.

Over the next two years, the district court ordered around a dozen continuances, each time finding, for purposes of the Speedy Trial Act, that the ends of justice outweighed the best interest of the public and the defendants in a speedy trial, rendering the time excludable. Between November 2019 and July 2020, individual defendants filed a total of six motions to continue the trial date, each of which was granted. At that point, the trial was scheduled for October 13, 2020. In September 2020, and again in November, the court ordered two more continuances because of public-health dangers associated with COVID-19. In 2021, the court ordered four more continuances, based on two pandemic-related lockdowns at Falls's jail, the unavailability of a material government witness, and a request by Falls's new counsel immediately after being appointed. The trial was scheduled for November 29, 2021.

Falls filed various pretrial motions. As relevant to this appeal, in June 2020, he moved to dismiss the second superseding indictment, asserting, among other things, that it failed to state a violation of a criminal law and that it charged him multiple times for the same conduct. The court denied this motion, determining that the indictment stated the elements of each statutorily defined criminal offense and had no legal deficiencies. Falls filed another motion challenging the sufficiency of the indictment in June 2021, asserting similar arguments; the court denied this motion as well.

Falls also moved to suppress evidence obtained from the wiretap of his co-conspirator's phone, contending that the issuing judge lacked jurisdiction to authorize the wiretap. The district court denied the motions, concluding that, because the communication interception facility was located within the Eastern District of Missouri, the federal wiretap statute authorized the exercise of jurisdiction there.

Finally, Falls filed two motions to dismiss the case under the Speedy Trial Act because more than 70 days passed from his indictment to his trial. The court denied the motions, concluding that the speedy-trial clock reset with the arraignment of the last co-defendant and was tolled during the continuances, which were accompanied by the necessary findings that the ends of justice outweighed the defendants' interest in a speedy trial. The non-excludable time therefore did not add up to more than 70 days.

Trial began as scheduled on November 29, 2021, and lasted four days. The jury found Falls guilty of all four counts in the second superseding indictment. According to his presentence investigation report (PSR), Falls had a total offense level of 40 and a criminal-history category of III under the Sentencing Guidelines, resulting in imprisonment ranges of 360 months to life on each of the first two counts (attempted methamphetamine possession and drug conspiracy), 360 months on the third count (heroin distribution), and 240 months on the fourth count (money laundering conspiracy). Falls raised no objections to the PSR.

The district court sentenced Falls to 405 months' imprisonment and 10 years of supervised release. The court explained its reasoning based on the sentencing factors under 18 U.S.C. § 3553(a), first highlighting that Falls and his co-conspirators had trafficked "serious and dangerous drugs" in "staggering" quantities. The court also referred to Falls's lengthy criminal history, noting that he met his supplier while incarcerated for a previous offense, "began to plan for his drug trafficking conduct while he was still in prison[,]" and started carrying it out while on supervised release for previous federal crimes. Finally, the court explained that it had selected a sentence with the goals of both general and specific deterrence.

Falls appeals, articulating five challenges to his conviction and sentence. First, he argues that the district court's failure to hold a pretrial detention hearing, and thus the resulting detention, violated his rights under the Eighth Amendment because he faced dangerous exposure to COVID-19 while in jail. But we cannot consider this challenge under the Bail Reform Act because Falls failed to raise it in the district court before his conviction. *See* 18 U.S.C. §§ 3142(f), 3145(c); *United States v. Schock*, 891 F.3d 334, 339 (7th Cir. 2018). We note, however, that Falls signed a written waiver of a pretrial-detention hearing at his initial appearance, and he does not argue that the court overlooked any of the necessary considerations when ruling that he could not be released on bond. *See United States v. Robinson*, 964 F.3d 632, 639–40 (7th Cir. 2020). To the extent he believes the conditions of his confinement violated the Eighth Amendment, that has nothing to do with the legality of his detention.

Second, Falls reprises his challenge to the sufficiency of the indictment, asserting that the charges were not supported by probable cause and failed to allege that his criminal conduct involved any victim. We review the denial of a motion to dismiss an indictment de novo. *United States v. Friedman*, 971 F.3d 700, 710 (7th Cir. 2020). An indictment is sufficient if it "(1) states the elements of the offense charged; (2) fairly informs the defendant of the nature of the charge so that he may prepare a defense; and (3) enables him to plead an acquittal or conviction as a bar against future prosecutions for the same offense." *United States v. Miller*, 883 F.3d 998, 1002 (7th Cir. 2018) (citations omitted). The second superseding indictment satisfied these criteria: Each count set forth a single charge against Falls, tracking the language of the pertinent criminal statute and stating the location and time frame of the alleged offense. Falls cannot challenge the presence of probable cause at this stage because the petit jury's guilty verdict rendered harmless any error in the grand jury's charging decision. *United States v. Mechanik*, 475 U.S. 66, 73 (1986). And the lack of identified victims does not make the indictment insufficient. *Miller*, 883 F.3d at 1003.

Third, Falls challenges the numerous delays of his trial date. He contends that the lengthy two-and-a-half-year period he spent in a county jail, at the height of the COVID-19 pandemic, violated both the Speedy Trial Act and his constitutional rights.

We review the district court's interpretation of the Speedy Trial Act de novo, and any decisions to exclude time for abuse of discretion. *United States v. Bell*, 925 F.3d 362, 373 (7th Cir. 2019). Under the Act, a defendant's trial must begin within 70 days of the later of his indictment or first appearance, plus any time excluded from the 70-day total. 18 U.S.C. § 3161(c)(1), (h)(1)–(8); *United States v. Patterson*, 872 F.3d 426, 433 (7th Cir. 2017). Although Falls was first indicted in March 2019, the speedy-trial clock restarted on December 11, 2019, when the last of his co-defendants was arraigned. *United States v. Farmer*, 543 F.3d 363, 368 (7th Cir. 2008). And the delays over the next two years, before the trial began on November 29, 2021, were justified by continuances the court ordered in response to a party's reasonable motion or the COVID-19 pandemic. *See* 18 U.S.C. § 3161(h)(7)(A) (continuances ordered by the district court toll the speedy-trial clock). Falls has not argued that the court improperly excluded time in any specific instance. With the exclusions, at no point before the trial did 70 countable days amass, thus foreclosing any argument under the Act. *See Patterson*, 872 F.3d at 434.

Further, Falls forfeited his constitutional speedy-trial challenge by failing to raise it in the district court, and so our review is only for plain error. *United States v. Thomas*, 933 F.3d 685, 694 (7th Cir. 2019). Although Falls grounds his argument in due process, the constitutional right to "a speedy and public trial" is found in the Sixth Amendment. U.S. CONST. amend. VI. To determine whether a constitutional violation occurred, we consider: "(1) the length of the delay, (2) the reason for the delay, (3) the defendant's assertion of his speedy trial right, and (4) the prejudice to the defendant caused by the delay." *Thomas*, 933 F.3d at 694 (citing *Barker v. Wingo*, 407 U.S. 514, 530 (1972)). Although delays of more than one year are presumptively prejudicial, *id.* at 694, Falls comes up short on the other factors: He or his co-defendants requested, and therefore bear primary responsibility for, more than half of the pretrial delays, and the COVID-related delays were unavoidable; he did not assert his constitutional right to a speedy trial in the district court; and he has not identified any actual harm resulting from the delays (such as a negative effect on his trial defense). We thus conclude that the pretrial delay in this case, though lengthy, does not amount to plain error under the Sixth Amendment. *See United States v. O'Connor*, 656 F.3d 630, 643 (7th Cir. 2011) (nearly three-and-a-half year delay did not violate Sixth Amendment, where defendant was responsible for many of the pretrial delays and witnesses' memory lapses during cross-examination were not prejudicial to defense).

Fourth, Falls appeals the denial of his motions to suppress evidence obtained from the wiretap of his co-conspirator's phone. In this context, we review questions of law de novo and questions of fact for clear error. *United States v. Santiago*, 905 F.3d 1013, 1018 (7th Cir. 2018).

Falls argues primarily that the judge in the Eastern District of Missouri lacked jurisdiction to authorize the wiretap because the criminal conduct occurred in and was charged in the Southern District of Illinois. This argument lacks merit. Under 18 U.S.C. § 2518(3), a district judge can "authoriz[e] or approv[e] interception of wire, oral, or electronic communications within the territorial jurisdiction of the court in which the judge is sitting." The communications here took place in Illinois, but federal agents intercepted (listened to and recorded) them in a wire room in St. Louis, within the Eastern District of Missouri; thus, the authorizing judge had jurisdiction to approve the wiretap. *Id.*; *see also United States v. Henley*, 766 F.3d 893, 911–12 (8th Cir. 2014) (authorizing court had jurisdiction when government agents' listening post was within the district and target phone was based in another).

Falls also asserts generally that the wiretap was invalid because, in its application under Title III of the Omnibus Crime Control and Safe Streets Act, the government did not adequately describe the type of communications it sought to intercept or the location of the wiretap monitoring room. *See* 18 U.S.C. § 2518. Falls did not raise these arguments in his pretrial motion to suppress the wiretap evidence, nor does he show "good cause" for failing to do so; therefore, he has waived them. FED. R. CRIM. P. 12(c)(3); 12(b)(3)(C); *United States v. Farmer*, 38 F.4th 591, 605 (7th Cir. 2022); *United States v. Johnson*, 655 F.3d 594, 600 (7th Cir. 2011) (applying former FED. R. CRIM. P. 12(e)).

Fifth, and finally, Falls challenges the substantive reasonableness of his 405-month prison sentence. He contends that the district court imposed an excessively long sentence without articulating a sufficient justification. We review the substantive reasonableness of a sentence for abuse of discretion. *United States v. Gill*, 889 F.3d 373, 378 (7th Cir. 2018). This sentence was within the properly calculated guideline range of 360 months to life, and so we presume it reasonable on appeal. *United States v. Cunningham*, 883 F.3d 690, 701 (7th Cir. 2018). Here, Falls does not demonstrate that the explanation for his sentence fell short of what is required. The district court meaningfully considered the factors enumerated in 18 U.S.C. § 3553(a): It discussed the nature and circumstances of the offense (noting that Falls had trafficked “serious and dangerous drugs” in “staggering” quantities), Falls’s history and characteristics (including his lengthy criminal history and the fact that he met his supplier and planned future crimes while in prison for another offense), and the need for general and specific deterrence.

AFFIRMED