

NONPRECEDENTIAL DISPOSITION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 28, 2023

Decided April 3, 2023

BeforeDIANE S. SYKES, *Chief Judge*ILANA DIAMOND ROVNER, *Circuit Judge*MICHAEL B. BRENNAN, *Circuit Judge*

No. 22-1568

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

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

v.

No. 3:20-CR-30116-SMY-4

JOSE J. ANGULO,
Defendant-Appellant.

Staci M. Yandle,
Judge.

ORDER

Jose Angulo pleaded guilty to two counts of distributing methamphetamine, one count of conspiring to distribute methamphetamine, and one count of conspiring to launder money. 21 U.S.C. §§ 841(a)(1), (b)(1)(A)(viii), 846; 18 U.S.C. §§ 1956(a)(1)(B)(i), (h). The district judge sentenced him to 30 years in prison and 5 years of supervised release and ordered a \$1,000 fine. Angulo appeals, but his appointed attorney asserts that the appeal is frivolous and moves to withdraw. *See Anders v. California*, 386 U.S. 738 (1967). Counsel's brief explains the nature of the case and addresses potential issues that an appeal of this kind would typically involve. Angulo did not respond to counsel's

motion. *See* CIR. R. 51(b). Because counsel's analysis appears thorough, we limit our review to the subjects identified in the brief. *See United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014).

Angulo headed an organization that mailed meth throughout the United States, including to Southern Illinois. He convinced family members, including his adult sons, to participate in the operation and directed organization members to launder money on his behalf. Angulo was arrested after an investigation, and he pleaded guilty without a plea agreement to the four charges described above. In a later filing, Angulo stipulated to distributing 29 kilograms of meth over three years.

At the sentencing hearing, the district judge largely adopted the guidelines recommendations in the presentence investigation report (PSR), which grouped the four charges together to yield a single guidelines range. U.S.S.G. § 3D1.2(c). The only change the judge made was to the base offense level: the PSR listed it as 38 because Angulo distributed more than 4.5 kilograms of "ice," a form of meth that is at least 80% pure. *See id.* § 2D1.1(c)(1). The judge, however, expressed a policy disagreement with harsher sentences based on the purity of the meth and chose a base offense level of 36, given that Angulo distributed between 15 and 45 kilograms of meth. *See id.* § 2D1.1(c)(2). The PSR added two upward adjustments: a two-level adjustment for Angulo's conviction for money laundering under 18 U.S.C. § 1956, U.S.S.G. § 2S1.1(b)(2)(B), and a four-level adjustment for leading an extensive criminal activity, *id.* § 3B1.1(a). Angulo received a three-level downward adjustment for acceptance of responsibility, *id.* § 3E1.1, resulting in a final offense level of 39. Angulo's criminal-history category was II based on one prior felony conviction for which he served 42 months in prison. *Id.* § 4A1.1(c). These calculations yielded a guidelines range of 292 to 365 months' imprisonment and 5 years' supervised release (the statutory minimum for the drug charges). *Id.* § 5D1.2(c); 21 U.S.C. § 841(b)(1)(A)(viii).

The judge then weighed the factors under 18 U.S.C. § 3553(a) and concluded that a sentence within the guidelines range was appropriate. In mitigation, the judge considered Angulo's difficult upbringing, mental health concerns, and substance abuse issues. Then, weighing the factors in aggravation, she discussed at length the "staggering" amount of drugs that Angulo moved into small communities in Southern Illinois and his decision to include his adult sons in his criminal enterprise. She was also troubled that after Angulo served a prior sentence for running another drug-trafficking organization—albeit with marijuana—and money laundering, he was not deterred and instead committed even more serious crimes. The judge concluded by sentencing

Angulo to a within-guidelines sentence of 360 months on the drug counts and the statutory maximum of 240 months on the money-laundering count, to be served concurrently. She also sentenced Angulo to a supervised-release term of five years on the drug counts, which was the statutory minimum, and three years on the money-laundering count, which was the statutory maximum.

Counsel informs us that Angulo wishes to challenge only the amount of drugs used to calculate his sentence and the sentence itself, but not his conviction. Counsel thus properly refrains from discussing the validity of the guilty plea. *United States v. Konczak*, 683 F.3d 348, 349 (7th Cir. 2012); *United States v. Knox*, 287 F.3d 667, 671 (7th Cir. 2002).

Counsel first considers whether Angulo could plausibly argue that the district judge miscalculated Angulo's base offense level of 36, but rightly concludes that any challenge would be frivolous. Angulo distributed 29 kilograms of meth; as a result the Guidelines put his base offense level at 36. *See* U.S.S.G. § 2D1.1(c)(2). And because Angulo stipulated to this amount of the drug and withdrew any objection to the PSR's calculation of his base-offense level, he waived any dispute about this point. *See United States v. Syms*, 846 F.3d 230, 234 (7th Cir. 2017). Furthermore, the judge used the lower base offense level of 36 because of her policy disagreement with harsher sentences for "ice"; thus Angulo could have properly received a higher base offense level than what the judge calculated.

Second, challenging the two enhancements would also be futile. Angulo pleaded guilty to money laundering under 18 U.S.C. § 1956, which automatically creates a two-level enhancement under U.S.S.G. § 2S1.1(b)(2)(B). And Angulo withdrew his objection to the four-level enhancement for organizing or leading the offense. *Id.* § 3C1.1(a). Thus any argument against the enhancement would be waived. *Syms*, 846 F.3d at 234.

Counsel also rightly concludes that it would be hopeless to challenge the calculation of Angulo's criminal-history category. Angulo's one prior conviction resulted in a prison term longer than one year and one month, which corresponds to three points under U.S.S.G. § 4A1.1(a) and a criminal history category of II.

Counsel next correctly observes that a challenge to the substantive reasonableness of Angulo's prison term would be frivolous. His within-guidelines prison term of 360 months is "presumed reasonable against a defendant's challenge that it is too high." *United States v. De La Torre*, 940 F.3d 938, 953 (7th Cir. 2019) (internal

citation omitted). This presumption can be rebutted only by showing that the sentence does not reasonably comport with the § 3553(a) factors. *Id.* But Angulo could not plausibly make that contention. Counsel's brief (and our own review of the judge's consideration of the § 3553(a) factors) show that the judge reasonably balanced the complex nature of the offense, the amount of drugs distributed, and Angulo's risk of recidivism against his mitigating arguments.

Finally, counsel correctly concludes that any challenge to the supervised-release provisions would be futile. A five-year term was mandatory for the drug counts, *see* 21 U.S.C. § 841(b)(1)(A)(viii), and the judge appropriately imposed a three-year term (the statutory maximum) for the money-laundering count, *see* 18 U.S.C. § 3583(b)(2). The judge's detailed explanation for Angulo's prison term also applies to and supports his terms of supervised release. Therefore, Angulo could not reasonably challenge the adequacy of the explanation for his supervised-release terms. *See United States v. Bloch*, 825 F.3d 862, 869 (7th Cir. 2016). It would also be frivolous to attack on appeal the conditions of his supervised release. Angulo received advance notice of the conditions, waived reading of them at sentencing, and did not object to them. Any appellate argument against the conditions would therefore be waived. *See United States v. Anderson*, 948 F.3d 910, 912 (7th Cir. 2020).

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