

NONPRECEDENTIAL DISPOSITION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 October 4, 2023

Decided October 5, 2023

BeforeDIANE S. SYKES, *Chief Judge*DIANE P. WOOD, *Circuit Judge*CANDACE JACKSON-AKIWUMI, *Circuit Judge*

No. 22-2771

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

DUJUAN LUCAS,
Defendant-Appellant.

Appeal from the United States District
Court for the Southern District of
Indiana, Indianapolis Division.

No. 1:20-cr-00277-TWP-DML

Tanya Walton Pratt,
Chief Judge.

ORDER

Dujuan Lucas pleaded guilty to two counts each of Hobbs Act robbery and brandishing a firearm in furtherance of a crime of violence. Lucas appeals, but his appointed lawyer asserts that the appeal is frivolous and moves to withdraw. *See Anders v. California*, 386 U.S. 738 (1967). Counsel has submitted a brief that explains the nature of the case and addresses the issues that a case of this kind might be expected to involve. We notified Lucas of counsel's motion, and he did not respond. *See* CIR. R.

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

On two separate days in August 2020, Lucas posted items for sale online, arranged to meet interested buyers, and then robbed them at gunpoint. During the second robbery, Lucas later admitted, he grabbed one victim and wrapped an arm around his neck.

Lucas was charged with two counts each of Hobbs Act robbery, 18 U.S.C. § 1951(a), and brandishing a firearm in furtherance of a crime of violence, *id.* § 924(c)(1)(A). Shortly before trial, Lucas pleaded guilty without a plea agreement. The district judge accepted the plea, and sentencing followed.

In the presentence investigation report (PSR), a probation officer calculated a total offense level of 22 for the robberies. The base offense level was 20. U.S.S.G. § 2B3.1. The probation officer added two levels to the second robbery because Lucas physically restrained the victim to facilitate the crime, *id.* § 2B3.1(b)(4)(B), added two levels under the grouping rules because there were multiple offenses, *id.* § 3D1.4, and subtracted two levels because Lucas accepted responsibility, *id.* § 3E1.1(a). Next, the probation officer calculated Lucas's criminal history category as IV based on offenses he had committed as a juvenile. *See id.* § 4A1.2(d). The total offense level of 22 and the criminal history category of IV yielded a guidelines range of 63 to 78 months' imprisonment for the robberies. *Id.* Ch. 5, Pt. A (Sentencing Table). And the guidelines range for each brandishing count was the statutory minimum of 84 months' imprisonment, *id.* §§ 2K2.4(b), 5G1.1(b), which had to run consecutively to all other sentences, 18 U.S.C. § 924(c)(1)(A), (D)(ii), for a minimum of 168 months total. The PSR also calculated the ranges of supervised release as one to three years for the robberies and two to five years for the firearm offenses. U.S.S.G. § 5D1.2(a). Finally, the PSR noted that restitution is mandatory for the robberies under 18 U.S.C. § 3663A(b)(1)(A). It recommended ordering restitution of \$1,000 to "Victim 1" and \$1,500 to "Victim 5" while noting that additional victims had not yet quantified their losses. Timely payment of restitution was also a proposed condition of supervised release. U.S.S.G. § 5E1.1.

Neither party objected to the PSR, but Lucas filed a sentencing memorandum arguing for a below-guidelines sentence because of his mental illnesses and his difficult childhood: His parents were murdered when he was an infant, he began using drugs at a young age, and he grew up facing violence and extreme poverty, including the murder of several friends. At his sentencing hearing, his aunt and grandmother testified about his childhood and mental illnesses.

Also at the sentencing hearing, the judge adopted the PSR, with the parties' assent. Because the government was preparing for trial when Lucas pleaded guilty, it declined to move for the additional one-level reduction for acceptance of responsibility. *Id.* § 3E1.1(b). The judge noted that Lucas faced an overall guidelines range of 231 to 246 months—the minimum consecutive 168 months' imprisonment for the two § 924(c) counts added to the range of 63 to 78 months' imprisonment for the robberies.

The judge sentenced Lucas to a total of 231 months' imprisonment (two concurrent terms of 63 months for the robberies and two consecutive terms of 84 months for brandishing the firearm). She explained that, although Lucas had experienced tragedy and extreme difficulties as a child and continued to struggle with mental illness and drug abuse as an adult, the sentence was appropriate given the violent nature of his crimes and their impact on the victims. The judge further observed that Lucas had not responded well to previous rehabilitative opportunities. Next, the judge imposed three years of supervised release, confirmed that Lucas had reviewed the proposed conditions with his attorney and had no objections, and imposed those conditions. The judge left open the amount of restitution for 30 days so that more victims could request restitution and quantify their losses. When no further victims came forward, the judge entered final judgment, which included \$2,500 in restitution.

In his brief, counsel first states that he consulted with Lucas and confirmed that Lucas does not wish to challenge his guilty plea, so counsel properly refrains from discussing potential arguments related to Lucas's plea. *See United States v. Konczak*, 683 F.3d 348, 379 (7th Cir. 2012).

Next, counsel correctly concludes that Lucas could not plausibly challenge his sentence on any of the procedural grounds set forth in *Gall v. United States*, 552 U.S. 38, 49–51 (2007). A challenge to the calculation of the guidelines range would be frivolous, counsel submits, because Lucas did not object to the calculations in the PSR, which set the offense level for the robberies based on Lucas's admissions and determined his criminal history category according to the applicable rules for juvenile convictions. And, as required, the district judge began by calculating the guidelines range, and then she applied the sentencing factors of 18 U.S.C. § 3553(a) and explained the sentence. *See id.*; *United States v. Jarigese*, 999 F.3d 464, 471 (7th Cir. 2021).

Counsel identifies no other potential procedural errors with respect to the sentence, including the restitution. Indeed, any challenge to the restitution portion of the sentence would be frivolous because defendants convicted of Hobbs Act robbery must pay restitution to their victims. 18 U.S.C. § 3663A(b)(1)(A); *see also United States v.*

Morrow, 5 F.4th 808, 818 (7th Cir. 2021). Lucas did not object to the fact or amount of restitution, which means that, at most, he would be entitled to review for plain error. See *United States v. Anderson*, 604 F.3d 997, 1001 (7th Cir. 2010). Nothing in the record suggests that the \$2,500 figure from the PSR is plainly erroneous.¹

Counsel also correctly concludes that Lucas could not raise a nonfrivolous argument that his sentence is substantively unreasonable. The district judge sentenced him to the bottom of the guidelines range for the robberies, 63 months, and to the consecutive minimum sentences for the firearm offenses, 168 months. We would presume that Lucas's within-range sentence is reasonable. *Jarigese*, 999 F.3d at 473. And the judge thoroughly justified the sentence under the § 3553(a) factors by addressing the nature and circumstances of the offenses (violent, armed robberies involving multiple victims) and Lucas's personal history and characteristics (his serious juvenile criminal history, prior opportunities for rehabilitation, family difficulties, mental health challenges, drug use, and remorse).

Finally, counsel considers and properly rejects challenges to the term or conditions of Lucas's supervised release. None of the four concurrent three-year terms of supervised release exceeds the statutory maximum for the associated convictions, and each is within the correctly calculated range and therefore would be presumed reasonable. See *United States v. Jones*, 774 F.3d 399, 404 (7th Cir. 2014). We agree with counsel that Lucas could not rebut that presumption given the judge's thorough explanation for the overall sentence. See *United States v. Bickart*, 825 F.3d 832, 839 (7th Cir. 2016). And, as to the conditions of supervised release, any appellate argument

¹ Victim 1 and Victim 5 requested \$1,000 and \$1,500 in restitution, respectively. The PSR recounts that Lucas took \$1,000 from Victim 1 during the first robbery. But there is no comparable statement with respect to Victim 5, nor any other record evidence of what the \$1,500 figure represents (for example, whether it is simply the value of what was stolen or whether it encompasses compensation for bodily injury, as the statute permits. See 18 U.S.C. § 3663A(b)(1)–(2)). A sentencing judge is required to obtain from the probation office “information sufficient for the court to exercise its discretion in fashioning a restitution order” which should include “to the extent practicable, a complete accounting of the losses to each victim.” 18 U.S.C. § 3664(a). Although we would expect a PSR to state, at a minimum, what the proposed restitution amount represents, we nevertheless conclude that it would be frivolous for Lucas to raise this issue for the first time on plain-error review, which would require him to establish that the amount is obviously wrong and that he was prejudiced by the error.

No. 22-2771

Page 5

would be waived because the PSR gave Lucas advance notice of the proposed conditions, he confirmed that he reviewed them with his attorney, and he affirmatively told the district judge that he had no objections to them. *See United States v. Flores*, 929 F.3d 443, 448–49 (7th Cir. 2019).

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