

NONPRECEDENTIAL DISPOSITION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, 2024

Decided March 29, 2024

BeforeDIANE S. SYKES, *Chief Judge*DAVID F. HAMILTON, *Circuit Judge*MICHAEL B. BRENNAN, *Circuit Judge*

No. 23-1545

UNITED STATES OF AMERICA,
*Plaintiff-Appellee,**v.*PAO XIONG,
*Defendant-Appellant.*Appeal from the United States District
Court for the Eastern District of
Wisconsin.

No. 07-CR-112

William C. Griesbach,
*Judge.***ORDER**

Pao Xiong appeals the sentence imposed upon the revocation of his supervised release, but his appointed counsel asserts that the appeal is frivolous and moves to withdraw. *See Anders v. California*, 386 U.S. 738, 744 (1967). We grant the motion and dismiss the appeal.

A defendant does not have a constitutional right to counsel in revocation proceedings, *see Gagnon v. Scarpelli*, 411 U.S. 778, 787 (1973), but our practice is to apply

the safeguards of *Anders* to them anyway. See *United States v. Brown*, 823 F.3d 392, 394 (7th Cir. 2016). In her brief, counsel explains the nature of the case and addresses issues that an appeal of this kind would typically involve. Because counsel's analysis appears thorough, and Xiong did not respond to the motion, see CIR. R. 51(b), we limit our review to the subjects that she discusses. See *United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014).

Xiong served 180 months in prison for several felonies related to an arson fire at his mother's grocery store in Green Bay, Wisconsin. See 18 U.S.C. §§ 844(h)(1)–(i), 3559(a)(3)–(4). During the first two years of his supervised release, Xiong committed nine Grade C violations, including speeding and driving under the influence. This string of violations culminated in a Grade B violation for offenses arising out of a violent dispute with his fiancée in which he punched a hole in the wall, spat at her, stopped her from leaving the basement, head-butted her, and told her he would kill her if she called the police. At his revocation hearing, Xiong did not contest the violations. The district judge revoked his supervised release and sentenced him to a 12-month prison term followed by a new two-year term of supervised release.

Because Xiong has completed his 12-month prison term, we briefly address the matter of mootness. Counsel does not discuss this issue in her brief, but we have an independent obligation to do so. See *E.F.L. v. Prim*, 986 F.3d 959, 962–63 (7th Cir. 2021). Here, Xiong's release from prison does not moot this appeal because he is still in custody serving his two-year term of supervised release and could "benefit from success on appeal." See *Pope v. Perdue*, 889 F.3d 410, 414 (7th Cir. 2018).

Counsel reports that Xiong wants to challenge the revocation of supervised release because he believes that the evidence against him was unreliable. We agree with counsel that this challenge would be frivolous because the hearing transcript reflects that Xiong knowingly and voluntarily admitted the government could prove the violations. See *United States v. Wheaton*, 610 F.3d 389, 390 (7th Cir. 2010). And counsel correctly concludes that there were no procedural defects with the revocation hearing: Xiong received notice of the alleged violations and disclosure of the evidence against him; he appeared at the hearing and was represented by counsel; and he had the opportunity to make a statement and present mitigating arguments. See FED. R. CRIM. P. 32.1(b)(2).

Counsel also correctly concludes that Xiong could not raise a non-frivolous challenge to the revocation sentence. First, it would be pointless to argue that the

sentence was procedurally unsound: Xiong admitted that the government could prove he committed a Grade B violation, and the district judge correctly assessed Xiong's previous criminal history category at III. From there, the judge properly calculated a policy-statement range of 8–14 months in prison. *See* U.S.S.G. § 7B1.4(a). It would be equally fruitless to argue that the sentence was “plainly unreasonable.” *United States v. Yankey*, 56 F.4th 554, 560 (7th Cir. 2023). Because Xiong's 12-month prison term falls within the policy-statement range, it is presumptively reasonable, *see id.*, and we see nothing in the record to rebut this presumption. The judge properly considered the Chapter 7 policy statements and the factors in 18 U.S.C. § 3553(a) to justify the sentence. *See id.* at 559–60. He noted, for example, that Xiong's threats to his fiancée were “serious violations” and that “nothing less” than a year of incarceration was necessary to deter that behavior and protect this family and the public.

Similarly, a challenge to Xiong's new term of supervised release would be frivolous. A district judge need not separately justify prison and supervised-release terms when the same explanation justifies both, *see United States v. Manyfield*, 961 F.3d 993, 997 (7th Cir. 2020), and here the judge's concerns about deterrence and protection of the public reasonably support his decision to supplement Xiong's sentence with a term of supervision. And, based on Xiong's original offenses (Class C and D felonies), the new two-year term of supervised release did not exceed the statutory maximum. *See* 18 U.S.C. § 3583(b)(2), (h) (capping term of supervised release upon revocation at the term of supervised release authorized by statute for the original offense, less any term of imprisonment imposed upon revocation). Finally, Xiong waived any challenge to the conditions of his new term of supervised release when his counsel affirmatively told the judge that Xiong did not object to those conditions. *See United States v. Smith*, 906 F.3d 645, 650 (7th Cir. 2018).

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