

NONPRECEDENTIAL DISPOSITION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 June 25, 2024

Decided September 18, 2024

BeforeCANDACE JACKSON-AKIWUMI, *Circuit Judge*JOHN Z. LEE, *Circuit Judge*DORIS L. PRYOR, *Circuit Judge*

No. 23-3416

UNITED STATES OF AMERICA,
*Plaintiff-Appellee,**v.*JEFFREY ALAN BOSAW,
*Defendant-Appellant.*Appeal from the United States District
Court for the Central District of Illinois.

No. 20-cr-40070-001

Sara Darrow,
*Chief Judge.***ORDER**

Jeffrey Bosaw appeals his conviction for attempted enticement of a minor. 18 U.S.C. § 2422(b). 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 briefs explain the nature of the case and address the issues that an appeal of this kind would be expected to involve. Because the analysis appears thorough, and Bosaw has not

responded to counsel's motion, CIR. R. 51(b), we limit our review to the subjects that counsel raises. *United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014).

In November 2020, Bosaw contacted an undercover FBI agent who was posing as a father who had advertised his 11-year-old daughter online for sexual encounters. They arranged for Bosaw to come to a house to have sex with the (fictitious) girl, and Bosaw mentioned specific sexual acts he wanted to perform with the child—in his words, a “bucket list item.” The agent asked Bosaw to buy ice cream to bring to the child. Bosaw stopped at a dollar store, bought ice cream, and brought it to the prearranged location. On his phone was the chat conversation with the agent. He was promptly arrested and soon pleaded not guilty before a magistrate judge.

At a pretrial conference, Bosaw's defense counsel moved for a hearing to determine his competency. *See* 18 U.S.C. § 4241(a). Bosaw later was seen by a forensic psychologist, who concluded that Bosaw had “psychotic features” that prevented him from assisting counsel in his defense and made him not fit to stand trial. The government then arranged for Bosaw to be seen by a clinical psychologist, who determined that Bosaw had no diagnosable mental illness or cognitive impairment that interfered with his ability to proceed with trial. A competency hearing was then held. Both doctors testified, and the magistrate judge sided with the government's position that Bosaw was competent to stand trial.

Two weeks before the trial was scheduled to begin, the district judge held a hearing on Bosaw's motion to proceed pro se. The judge determined that Bosaw had a high school education, knew of his right to an attorney, had not been coerced into waiving the right, and understood that he would need to navigate all evidentiary and procedural issues on his own, without assistance from the court. His counsel also stated that she had discussed her representation of him and that Bosaw repeatedly expressed his desire to represent himself.

Bosaw pleaded not guilty and later represented himself at trial, at which he was convicted of attempted enticement of a minor. He was sentenced to 205 months' imprisonment and 15 years' supervised release, below the guidelines range of 235 to 293 months' imprisonment.

After reviewing counsel's *Anders* brief, we directed counsel to supplement the brief to address whether Bosaw could make a non-frivolous argument that he was not competent to stand trial or did not voluntarily and knowingly waive his right to counsel. We will review these arguments along with those in the original brief.

In her supplementary statement, counsel appropriately confirms that Bosaw could not establish clear error in the district court's determination of his competency. A defendant is competent to stand trial when he has "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" and "a rational as well as factual understanding of the proceedings against him." *United States v. Dusky*, 362 U.S. 402, 402 (1960). At the competency hearing, the court applied this standard to evaluate the examining doctors' testimony and reasonably found that Bosaw's mental illness would not prevent him from understanding the proceedings or assisting his lawyer in his defense. *United States v. Wessel*, 2 F.4th 1043, 1056 (7th Cir. 2021).

Counsel also correctly rejects any argument that Bosaw did not voluntarily and knowingly waive his right to counsel. To validly waive the right to counsel, the defendant must be aware of the "dangers and disadvantages of self-representation" and choose to represent himself with his "eyes open." *Faretta v. California*, 422 U.S. 806, 835 (1975). Because both the court and his counsel informed him of the risks, and Bosaw consistently indicated his desire to forgo counsel, the court reasonably found the waiver knowing and voluntary. See *United States v. Underwood*, 88 F.4th 705, 709–10 (7th Cir. 2023).

Turning to the trial phase, counsel evaluates whether Bosaw could raise a nonfrivolous challenge based on the sufficiency of the evidence against him and correctly concludes that he cannot. The government provided ample evidence to show that Bosaw used interstate commerce to take a substantial step toward enticing a minor into sexual activity. 18 U.S.C. § 2422(b); *United States v. Baird*, 70 F.4th 390, 393 (7th Cir. 2023). The government introduced evidence, for instance, that Bosaw communicated with the FBI agent via text on an iPhone, an instrumentality of interstate commerce. *Baird*, 70 F.4th at 394. In addition, according to chat logs introduced by the government, Bosaw was aware of the child's purported age, he talked extensively with the "father" about the child's sexual experience, and he was told he could win her over by bringing ice cream—a request that Bosaw indulged when he brought a pint of ice cream to the home. A reasonable jury could infer from these communications that Bosaw intended to use the ice cream to induce the child to engage in sexual conduct. See *id.*; *United States v. Hosler*, 966 F.3d 690, 692–93 (7th Cir. 2020).

Counsel next correctly rules out any procedural or substantive challenge to Bosaw's sentence. The court adequately explained the sentence in terms of the § 3553(a) sentencing factors. *United States v. Jerry*, 55 F.4th 1124, 1130 (7th Cir. 2022). The court referred to the seriousness of the offense (noting the victim's youth and Bosaw's clear

intent to assault her); the need to protect the public (given his high likelihood of recidivating); and the need for deterrence (given the gravity of these types of offenses). 18 U.S.C. § 3553(a)(2)(A), (B), (C). Bosaw's below-guidelines sentence also lent itself to a "nearly irrebuttable presumption" of reasonableness. *United States v. Holder*, 94 F.4th 695, 700 (7th Cir. 2024) (citation omitted).

Counsel finally appropriately rejects any challenge to the length and conditions of Bosaw's supervised release. Bosaw waived his right to challenge the conditions of his supervised release because he confirmed at his sentencing hearing that he had no objections to the PSR, which contained the proposed conditions of his supervision. *United States v. Flores*, 929 F.3d 443, 449 (7th Cir. 2019). The term of supervision is also within the statutory limit, 18 U.S.C. § 3583(k), and the district court's adequate justification of Bosaw's prison term necessarily extends to his term of supervised release. *United States v. Manyfield*, 961 F.3d 993, 997 (7th Cir. 2020); *United States v. Bloch*, 825 F.3d 862, 869–70 (7th Cir. 2016).

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