

NONPRECEDENTIAL DISPOSITION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 21, 2025

Decided March 25, 2025

BeforeMICHAEL B. BRENNAN, *Circuit Judge*DORIS L. PRYOR, *Circuit Judge*NANCY L. MALDONADO, *Circuit Judge*

No. 24-1040

UNITED STATES OF AMERICA,
*Plaintiff-Appellee,**v.*ANTONIO MAXEY,
*Defendant-Appellant.*Appeal from the United States District
Court for the Northern District of
Illinois, Eastern Division.

No. 1:20-CR-00332(5)

Elaine E. Bucklo,
*Judge.***ORDER**

Antonio Maxey pleaded guilty to participating in a drug trafficking conspiracy. The district court sentenced him to 62 months in prison and 3 years of supervised release. Maxey appeals, but 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 brief explains the nature of the case and raises potential issues that an appeal like this would be expected to involve. Because counsel's brief appears thorough, and Maxey did not respond to the motion, *see* CIR. R. 51(b), we limit our review to subjects that counsel discusses. *See United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014).

From February to June 2019, Maxey worked with others to distribute crack cocaine in Chicago. Authorities intercepted Maxey's phone calls and heard him using code words to coordinate the delivery of the drug to customers approximately 14 times. Maxey was eventually charged in a superseding information with conspiracy to possess with intent to distribute, and to distribute, cocaine base. 21 U.S.C. §§ 841(a)(1), 846.

Maxey agreed to plead guilty. In his plea agreement, he admitted that he was responsible for approximately 627 grams of cocaine base and that, under the Sentencing Guidelines, he qualified as a career offender. For its part, the government agreed to move for a three-level reduction for acceptance of responsibility, *id.* § 3E1.1, and, if the court determined that Maxey was a career offender, to recommend a downward variance consistent with what Maxey's guideline range would have been had he distributed powder cocaine rather than crack.

At the change of plea hearing, the court accepted Maxey's plea after conducting a Rule 11 colloquy and determining that there was an adequate factual basis for his plea. The presentence investigation report (PSR) prepared after the hearing set forth the same guidelines calculations that were laid out in the plea agreement. The calculations resulted in a guidelines range of 151 to 188 months' imprisonment, based on a total offense level of 29 and a criminal history category of VI.

In a sentencing memorandum, Maxey requested credit for time he had served in state custody in a related case because the state offense was relevant conduct, but the Bureau of Prisons would not deduct that time. He also noted that without the powder-to-crack cocaine disparity and the career-offender guideline, he would have a guidelines range of 57 to 71 months, and he argued that this range more accurately reflected his offense. He believed that a 22-month sentence (including time served) would be appropriate based on his personal history (a difficult childhood and severe health challenges) and the need to avoid unwarranted sentencing disparities between his sentence and those of his coconspirators. The government agreed that Maxey correctly calculated his hypothetical guidelines range, but it requested a sentence of 87 months' imprisonment.

At the sentencing hearing, the district court first explained its understanding of the parties' positions on the Guidelines. The parties agreed that Maxey qualified as a career offender, and so the court ruled that the imprisonment range of 151 to 188 months applied. After discussing the implications of Maxey's anticipated state sentence and the § 3553(a) factors, the district court imposed 62 months' imprisonment. The court

informed Maxey that it had given him credit for 883 days to account for time served in state custody. It also imposed three years of supervised release.

In the *Anders* brief, counsel first reports that she consulted with Maxey and advised him about the risks and benefits of withdrawing his guilty plea, and Maxey affirmed that he wants to challenge only his sentence. Therefore, counsel 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).

As to the sentence, counsel correctly concludes that any challenge to the calculation of Maxey's guidelines range would be frivolous. His classification as a career offender drove the base offense level and criminal history category. *See* U.S.S.G. § 4B1.1. Because Maxey did not object to this determination, we would review it for plain error. *See United States v. Mikulski*, 35 F.4th 1074, 1077 (7th Cir. 2022). Before the offense of conviction, Maxey was twice convicted of controlled substance offenses that were punishable by more than a year of imprisonment. Therefore, the court correctly applied the career-offender guideline and identified the applicable range. *See* U.S.S.G. §§ 4B1.1, 4B1.2. And based on the sentencing transcript, we also agree with counsel that it would be frivolous to argue that the district court made any other procedural error, such as "failing to consider the section 3553(a) factors, selecting a sentence based on clearly erroneous facts, or failing to explain adequately the chosen sentence." *United States v. Griffith*, 913 F.3d 683, 687 (7th Cir. 2019).

Next, counsel concludes that challenging the substantive reasonableness of Maxey's sentence would be frivolous. We would presume that Maxey's below-guidelines sentence is not unreasonably long. *See United States v. Fitzpatrick*, 32 F.4th 644, 651 (7th Cir. 2022). And counsel appropriately determines that Maxey cannot rebut the presumption with his suggested argument—that his sentence is unreasonable because it is longer than his co-defendants'. Only "unwarranted" disparities are problematic. *See* 28 U.S.C. § 3553(a)(6); *United States v. Jarigese*, 999 F.3d 464, 474 (7th Cir. 2021). And here, the district court adequately explained that Maxey's sentence needed to be higher to account for his more significant criminal history and his possession of a firearm. It also explained the sentence with reference to other factors under § 3553(a), including that Maxey's prior incarceration had not deterred him, that his drug dealing was "destructive," and that despite his relatively young age, he was old enough to conform his behavior to the law.

Last, counsel correctly determines that it would be frivolous to challenge either the term or conditions of supervised release. The three-year term was statutorily

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required, 21 U.S.C. § 841(b)(1)(C), and the court's adequate justifications for Maxey's term of imprisonment apply to his term of supervised release as well, *see United States v. Bickart*, 825 F.3d 832, 839 (7th Cir. 2016). Further, Maxey had prior notice of the proposed conditions of supervised release, did not object to them in his sentencing memo or at the sentencing hearing, and, in fact, agreed that the conditions would aid in his adjustment to life after his term of imprisonment. Therefore, he waived any challenge to them. *See United States v. Flores*, 929 F.3d 443, 449 (7th Cir. 2019).

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