

NONPRECEDENTIAL DISPOSITION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 April 4, 2025

Decided April 4, 2025

BeforeDIANE S. SYKES, *Chief Judge*CANDACE JACKSON-AKIWUMI, *Circuit Judge*JOSHUA P. KOLAR, *Circuit Judge*

No. 24-1580

UNITED STATES OF AMERICA,
*Plaintiff-Appellee,**v.*JOSTEN DENWOOD,
*Defendant-Appellant.*Appeal from the United States District
Court for the Southern District of Illinois.

No. 4:21-CR-40052-JPG-7

J. Phil Gilbert,
*Judge.***ORDER**

Josten Denwood pleaded guilty to conspiracy to distribute methamphetamine and was sentenced to 262 months' imprisonment and 5 years of supervised release. Denwood 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 addresses issues that an appeal of this kind might be expected to involve. Because counsel's analysis appears thorough, we limit our review to the subjects that counsel discusses and the additional arguments that Denwood proposes in his responses under Circuit Rule 51(b). *See United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014).

Denwood participated in a drug-trafficking organization that sold large quantities of methamphetamine in southern Illinois. In May 2023 a grand jury returned a third superseding indictment charging Denwood with conspiring to distribute 50 grams or more of actual methamphetamine. *See* 21 U.S.C. §§ 841(a)(1), (b)(1)(A)(viii), 846. Denwood pleaded guilty without a written plea agreement and entered a factual stipulation admitting that he participated in two transactions in which he delivered a total of 9 ounces—or 255.15 grams—of methamphetamine.

At the change-of-plea hearing, Denwood confirmed under oath that he understood the charge, including the allegation that the conspiracy involved at least 50 grams of actual methamphetamine and the resulting sentencing range of 10 years to life imprisonment. The judge found the stipulated facts supported Denwood's guilty plea and accepted the plea.

A probation officer then prepared a presentence investigation report (PSR). The PSR recounted the facts of the offense and Denwood's criminal history, which included charges that were pending at the time. The PSR started from a base offense level of 26, based on the stipulated 255.15 grams of methamphetamine, which for these purposes the officer assumed was only a mixture containing the drug because it had not been tested. *See* U.S.S.G. § 2D1.1(c)(7). The officer further concluded that Denwood's two prior convictions for robbery and armed robbery under Illinois law rendered him a career offender. Accordingly, he assigned Denwood a criminal history category of VI, and because the statutory maximum sentence for his charge was life imprisonment, 21 U.S.C. § 841(b)(1)(A)(viii), his offense level was raised to 37, U.S.S.G. § 4B1.1(b)(1). After a reduction for acceptance of responsibility, the result was a total offense level of 34 and a guidelines range of 262 to 327 months' imprisonment.

At the sentencing hearing, Denwood objected to the PSR's inclusion of pending charges, and the judge overruled that objection. Denwood then requested a downward variance, arguing that his robbery convictions arose when he was 18 and 20 years old and in an unstable environment. Now at 32 years old and participating in a community outreach program, he argued he posed a lower risk of recidivism. The judge questioned Denwood's pattern of recidivism and discussed his difficult life circumstances before imposing a sentence of 262 months' imprisonment and 5 years' supervised release.

Counsel's *Anders* brief omitted any discussion of the plea colloquy because Denwood had told counsel he sought to challenge only his sentence. But Denwood's response appeared to dispute whether there was a factual basis to show he conspired to distribute "actual" methamphetamine. Further, the record did not include a transcript

of the change-of-plea hearing. We therefore ordered counsel to obtain the transcript, consult again with Denwood to determine whether he seeks to challenge his plea, and file a supplemental statement. *See United States v. Larry*, 104 F.4th 1020, 1022 (7th Cir. 2024). Counsel complied, reiterating that Denwood did not want to withdraw his plea and explaining that Denwood's response was only disputing the PSR's drug-quantity findings. Denwood has signed a written waiver confirming as much and submitted a supplemental response limited to sentencing arguments. Counsel thus properly refrained from exploring the voluntariness of the plea. *See id.*

Counsel first considers whether Denwood could plausibly argue that the judge miscalculated his guidelines range but correctly determines that he could not. Because Denwood had two prior Illinois convictions for robbery and armed robbery, the offense level and criminal history category were entirely controlled by the career-offender Guideline. U.S.S.G. §§ 4B1.1, 4B1.2(a); *United States v. Carr*, 107 F.4th 636, 646 (7th Cir. 2024) (reaffirming that robbery and armed robbery under Illinois law are "crimes of violence" for purposes of the career-offender Guideline).

Denwood proposes challenging the sentence based on the drug quantity involved, but counsel rightly rejects this theory because it rests on a misunderstanding of the quantity's relevance to the Guidelines. Denwood observes that the probation officer calculated his base offense level by assuming his relevant conduct involved only 255.15 grams of a methamphetamine mixture, rather than 50 grams of actual methamphetamine, which would have set the base offense level to at least 30. U.S.S.G. § 2D1.1(c)(5). Denwood further notes that under 21 U.S.C. § 841(b)(1), a crime involving 250 grams of a mixture containing methamphetamine is punishable by only up to 40 years' imprisonment. He thus argues that the court should have used this lower statutory maximum to adopt an offense level of 34 under the career-offender Guideline. U.S.S.G. § 4B1.1(b)(2).

The flaw in this argument is that this Guideline looks to the maximum sentence under the statute of conviction, not to the facts found at sentencing. *See id.* § 4B1.1 cmt. 2. Denwood pleaded guilty to participating in a conspiracy involving 50 or more grams of actual methamphetamine. As he acknowledged at the change-of-plea hearing, that crime carries a maximum sentence of life imprisonment, *see* 21 U.S.C. § 841(b)(1)(A)(viii), leading to an offense level of 37, U.S.S.G. § 4B1.1(b)(1). A voluntary plea acts as a complete waiver of any challenge to this drug quantity, making the PSR's findings irrelevant. *See United States v. Robinson*, 964 F.3d 632, 640–41 (7th Cir. 2020).

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Denwood has squarely declined to challenge his plea, so any challenge to his resulting guidelines calculation would be frivolous.

Counsel next considers whether Denwood could argue the judge otherwise erred during sentencing, and we agree that such a challenge would be meritless. Denwood objected to the inclusion of his pending charges in the PSR, but nothing in the record suggests the judge relied on them. And the judge considered Denwood's mitigating arguments but explained how Denwood's criminal history still warranted a within-guidelines penalty to deter him and protect the public. *See* 18 U.S.C. § 3553(a)(1), (2)(B)–(C); *United States v. Barr*, 960 F.3d 906, 914 (7th Cir. 2020). We would also presume his within-guidelines sentence was reasonable, *see United States v. McDonald*, 981 F.3d 579, 581 (7th Cir. 2020), and like counsel, we see nothing in the record that might rebut that presumption.

Finally, Denwood suggests that future amendments to the Sentencing Guidelines would be a basis for an appeal. But that argument would be frivolous because a judge must apply the Guidelines that are in effect at sentencing, U.S.S.G. § 1B1.11(a), even assuming changes are imminent, *United States v. Deloney*, 578 F.3d 690, 693–94 (7th Cir. 2009).

Therefore, we GRANT counsel's motion to withdraw and DISMISS the appeal.