

NONPRECEDENTIAL DISPOSITION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 January 16, 2025

Decided May 28, 2026

BeforeMICHAEL B. BRENNAN, *Chief Judge*DIANE S. SYKES, *Circuit Judge*CANDACE JACKSON-AKIWUMI, *Circuit Judge*

No. 24-1851

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

MATTHEW MOSBY,
Defendant-Appellant.

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

No. 1:22CR00145-001

Matthew P. Brookman,
Judge.

ORDER

Matthew Mosby pleaded guilty to possessing a firearm as a felon in violation of 18 U.S.C. § 922(g)(1). The district court sentenced him to seven years in prison, above the range recommended by the Sentencing Guidelines. Mosby appealed, but his appointed counsel moved to withdraw and filed an *Anders* brief explaining that the appeal is frivolous. *Anders v. California*, 386 U.S. 738, 744 (1967). Mosby did not respond. 7TH CIR. R. 51(b). In January 2025 we suspended the appeal pending a decision in *United States v. Prince*, 171 F.4th 1009 (7th Cir. 2026), regarding the validity of § 922(g)(1) under

the Second Amendment. Our opinion in *Prince* has now been issued, and counsel filed a position statement on its relevance to this appeal.

Counsel's *Anders* brief explains the nature of the case and addresses the issues that this kind of appeal might be expected to involve. Because the analysis appears thorough, we limit our review to the subjects counsel discusses. *United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014).

Mosby's § 922(g)(1) conviction arises from a domestic dispute—more specifically, an argument with a former girlfriend who was trying to retrieve items of property she had left at his house. During the encounter Mosby became increasingly angry, and as his former girlfriend was pulling her car out of his driveway to leave the premises, he fired a gun in the air. Police responding to the scene found two handguns inside vehicles on or near Mosby's property; Mosby admitted to possessing the handguns. He also admitted that he fired his gun in the air while his former girlfriend was in her car leaving his house. Because Mosby's criminal record includes multiple felonies, a grand jury charged him with unlawfully possessing a firearm as a felon in violation of § 922(g)(1).

Mosby pleaded guilty, and a probation officer prepared a presentence investigation report. To calculate the Guidelines sentencing range, the probation officer started with a base offense level of 24 based on Mosby's prior state convictions for a crime of violence (domestic battery resulting in moderate bodily injury) and a controlled substance offense (dealing hydrocodone). U.S.S.G. § 2K2.1(a)(2). The probation officer added four offense levels because Mosby possessed a firearm in connection with another felony—namely, criminal recklessness with a deadly weapon. *Id.* § 2K2.1(b)(6)(B). With a three-level reduction for acceptance of responsibility, *id.* § 3E1.1, the final offense level was 25, which when combined with Mosby's criminal history category of IV, yielded an advisory sentencing range of 84 to 105 months in prison.

Mosby objected to the four-level enhancement under § 2K2.1(b)(6)(B), arguing that he did not use the gun in connection with the offense of criminal recklessness because he did not put anyone at substantial risk of harm. He otherwise agreed with the recommendations in the PSR.

At sentencing the district judge sustained Mosby's objection and removed the four-level enhancement, which lowered the total offense level to 21. With that reduction, the final Guidelines range was 57 to 71 months in prison. The judge then

considered the sentencing factors under 18 U.S.C. § 3553(a), emphasizing the seriousness of the offense, the need to protect the public, and Mosby's history of domestic violence and drug addiction. The judge accordingly imposed an above-range sentence of 84 months in prison, explaining that the Guidelines did not adequately account for Mosby's pattern of domestic violence or the danger he created when he fired the gun.

In his *Anders* brief, counsel first tells us that he consulted with Mosby about the risks and benefits of challenging his guilty plea and confirmed that Mosby does not wish to do so. Counsel therefore appropriately omits discussion of the validity of the plea. *United States v. Larry*, 104 F.4th 1020, 1022 (7th Cir. 2024).

Counsel next considers but rejects as frivolous any argument that the district court erred by treating Mosby's prior felony convictions as predicate convictions under § 2K2.1(a)(2). A base offense level of 24 applies if the defendant committed the offense after "sustaining at least two felony convictions of either a crime of violence or a controlled substance offense." § 2K2.1(a)(2). The PSR treated Mosby's 2013 state conviction for dealing in hydrocodone as a predicate controlled substance offense and his 2019 state conviction for domestic battery as a predicate crime of violence. Although the record does not specify the statutes underlying these convictions, Mosby did not object to counting them as § 2K2.1(a)(2) predicates, and there is no basis to conclude that the district judge committed plain error by doing so. *United States v. LeFlore*, 927 F.3d 472, 475 (7th Cir. 2019).

Counsel also rightly rejects as frivolous any argument that the above-Guidelines sentence of 84 months in prison is substantively unreasonable. We will uphold an above-Guidelines sentence if the district court sufficiently justified it based on the sentencing factors in § 3553(a). *United States v. Moultrie*, 975 F.3d 655, 661 (7th Cir. 2020). A judge may also consider whether the Guidelines calculations adequately account for any aggravating factors. *Id.* at 662. Here, the judge discussed the seriousness of the offense, particularly the danger Mosby created by shooting the gun, and the need to protect the public from further crimes of domestic violence. The judge also explained that these aggravating factors were not adequately accounted for by the Guidelines.

Finally, counsel considers whether Mosby could challenge his conviction under the Second Amendment and rightly concludes that any such challenge would be frivolous. We recently held that § 922(g)(1) is not facially unconstitutional. *Prince*, 171 F.4th at 1011–12. And although we reserved ruling on whether a nondangerous felon could raise an as-applied Second Amendment challenge to a § 922(g)(1) charge,

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id.; *United States v. Watson*, 171 F.4th 1012, 1024–25 (7th Cir. 2026), it would be frivolous for Mosby to raise such a challenge based on his criminal history of domestic battery and drug dealing.

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