

NONPRECEDENTIAL DISPOSITION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 6, 2026

Decided January 9, 2026

*Before*ILANA DIAMOND ROVNER, *Circuit Judge*MICHAEL Y. SCUDDER, *Circuit Judge*DORIS L. PRYOR, *Circuit Judge*

No. 25-1320

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

JULIAN BREAL,
Defendant-Appellant.

Appeal from the United States District
Court for the Northern District of
Illinois, Western Division.

No. 3:22-CR-50044(1)

Iain D. Johnston,
Judge.

ORDER

Julian Breal was convicted by a jury of the assault of a fellow federal prisoner resulting in serious bodily injury and sentenced to 108 months' imprisonment. Breal appealed, but his appointed counsel asserts the appeal is frivolous and moves to withdraw. *See Anders v. California*, 386 U.S. 738, 744 (1967). Because counsel's analysis appears thorough, we limit our review to the subjects that counsel discusses and that

Breal raises in the response he filed under Circuit Rule 51(b). *See United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014). We grant counsel's motion and dismiss the appeal.

Breal was sentenced in 2013 to 50 years in federal prison for kidnapping, conspiracy to commit hostage taking, hostage taking, and possession of a firearm in furtherance of a crime of violence. While incarcerated at FCI Thomson, Breal attacked his cellmate, Wilibaldo Martinez-Vivanco. Breal was indicted in 2022 for assault with the intent to commit murder, *see* 18 U.S.C. § 113(a)(1), and assault resulting in serious bodily injury, *see id.* § 113(a)(6). He pleaded not guilty to both counts.

The case proceeded to trial, at which the government presented the following evidence. Martinez testified through an interpreter that Breal began threatening him shortly after they were assigned to share a cell. One day, Breal threatened to kill Martinez if he returned to their cell after recreation. Martinez did return. Breal attacked him, punching and kicking him in the head until he fell unconscious. Martinez testified that he believed Breal stabbed him with a plastic knife, though correctional officers did not find a knife in the cell.

Martinez had several serious fractures and lacerations to his face and ears. One of Martinez's treating physicians was certified as an opinion witness and testified that the most serious fracture to Martinez's jaw was likely inflicted by over 200 pounds of force. That doctor operated to repair some of the fractures, installing metal plates and screws to realign Martinez's bones and jaw. Breal was uninjured. In a video admitted by the government, a nurse asked Breal if he was hurt, and Breal responded, "Golden Gloves 1994, Havana, Cuba," and "No injuries, Miss. I am untouchable."

Breal chose not to testify or put forward evidence. Before closing arguments, he moved for a judgment of acquittal under Rule 29(a) of the Federal Rules of Criminal Procedure, contending that the evidence did not show that he intended to kill Martinez or that Martinez suffered a serious bodily injury within the meaning of 18 U.S.C. § 113(a)(6). "Serious bodily injury" includes "extreme physical pain" or "protracted and obvious disfigurement," 18 U.S.C. §§ 113(a)(6), 113(b)(2), 1365(h)(3)(B)–(C); *see United States v. Wilson*, 698 F.3d 969, 970 (7th Cir. 2012), and Breal urged that Martinez's scars had begun to heal and thus were not obviously and permanently disfiguring. The court denied the motion based on the testifying doctor's statements, as well as the photographs and videos of the grisly injuries. Breal renewed his motion to acquit four months after the verdict, but the court again found the evidence sufficient to convict.

The parties discussed the jury instructions extensively, and Breal—through counsel—ultimately approved each instruction. The jury found Breal guilty of assault resulting in serious bodily injury.

The district court sentenced Breal to 108 months (to run consecutively to the 30-plus years remaining on his original sentence), well above his guideline range of 41 to 51 months (based on an offense level of 21 and criminal history category of II). A key determinant in the calculation of Breal's offense level was a seven-level enhancement for assault causing permanent injury. *See* U.S.S.G. § 2A2.2(b)(3)(C). In addition, the court noted that Breal's criminal history category of II failed to account for much of his extensive criminal background, including a history of assaults and other crimes too dated to be considered in the criminal-history calculations, several prison-disciplinary proceedings, and a pending charge for the assault of a state correctional officer (about which the officer testified at Breal's sentencing). Breal objected to the weight given to the new assault but conceded that the court could consider it. As for the sentencing factors under 18 U.S.C. § 3553(a), the court highlighted Breal's extensive criminal history, the severity of the beating, and the need to protect the public.

Counsel first considers whether Breal could plausibly challenge any aspect of the jury instructions and correctly concludes that he cannot. Counsel notes that the only disputed jury instruction related to assault with intent to commit murder—the charge of which Breal was acquitted—and that the defense in fact approved of it. And although the jury instructions omitted an element necessary to prove assault—that the assault occur in a location subject to federal jurisdiction—any error would be harmless because evidence that the fight occurred at FCI Thomson was overwhelming. *See United States v. Maez*, 960 F.3d 949, 964 (7th Cir. 2020).

Counsel next considers and rightfully rejects any challenge to the sufficiency of the evidence to convict Breal. To obtain a conviction for assault causing serious bodily injury, the government had to prove beyond a reasonable doubt that Breal assaulted Martinez and caused serious bodily injury—e.g., an injury involving “extreme physical pain” or “protracted and obvious disfigurement.” 18 U.S.C. §§ 113(a)(6), 113(b)(2), 1365(h)(3)(B)–(C). Although Breal denied that Martinez's pain was “extreme” or his scars sufficiently visible and permanent, a reasonable jury could find otherwise, given the severity of the beating and scars that remained visible more than six months after the assault. *See Wilson*, 698 F.3d at 971.

For the same reasons, counsel determines that Breal could not successfully challenge the seven-level enhancement for assault causing permanent or life-

threatening injury under U.S.S.G. § 2A2.2(b)(3)(C). Under the Guidelines, permanent injury includes “obvious disfigurement” like permanent scarring. *See* U.S.S.G. § 1B1.1, cmt.1(J); *United States v. Webster*, 500 F.3d 606, 608 (7th Cir. 2007). As counsel notes, testimony conclusively established that Martinez was scarred, a sufficient basis for applying the enhancement.

Counsel also rightly rejects arguing that the above-guidelines sentence of 108 months is substantively unreasonable. We would uphold an above-guidelines sentence if the district court sufficiently justifies it based on the sentencing factors in 18 U.S.C. § 3553(a). *See United States v. Cook*, 108 F.4th 574, 585 (7th Cir. 2024). Here, the court emphasized the seriousness of the offense (“You certainly don’t need a medical degree to look at those CT scans and just be mortified. ... It is the miracle of the human body that the human body is able to recover from something like that.”); Breal’s relentless and violent criminal history (“an unbroken chain of criminal conduct, including violence, all the way up until this incredibly horrific offense and conviction in 2012”) that was otherwise unaccounted for in the guidelines calculation; and the need to protect the public (here correctional officers and fellow inmates).

In his Rule 51(b) response, Breal proposes arguing that the court should not have considered his assault of the state correctional officer because it occurred in a state jail, after his conviction. But Breal waived this challenge at sentencing when his counsel told the court that Breal objected not to consideration of the assault but only to the weight it should be given. *See United States v. Flores*, 929 F.3d 443, 448 (7th Cir. 2019).

Breal also asserts that his attorneys dissuaded him from testifying, prevented him from arguing that he acted in self-defense, and were incommunicative and inattentive to his case. But a claim that counsel was ineffective is best saved for collateral review, at which stage the record can be more fully developed. *See United States v. Cates*, 950 F.3d 453, 457 (7th Cir. 2020).

Lastly, Breal moves for the appointment of new counsel. Because there are no nonfrivolous issues to raise on appeal, we deny the motion.

For these reasons, we GRANT the motion to withdraw, DENY the motion for new counsel, and DISMISS the appeal.