

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

June 20, 2023

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

TRAVIS DYLAN GARLAND,

Defendant - Appellant.

No. 22-6088
(D.C. No. 5:10-CR-00201-R-1)
(W.D. Okla.)

ORDER AND JUDGMENT*

Before **TYMKOVICH, KELLY, and ROSSMAN**, Circuit Judges.

Travis Dylan Garland appeals the eight-month prison sentence and lifetime supervised release sentence imposed following his fourth revocation of supervised release. Mr. Garland’s attorney seeks leave to withdraw under *Anders v. California*, 386 U.S. 738 (1967), asserting there are no non-frivolous

* After examining the *Anders* brief filed by Mr. Garland’s counsel and the entire appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). This case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

arguments on appeal. After careful, independent review of the record, we grant the motion to withdraw and dismiss the appeal.

I. Background

Mr. Garland pleaded guilty to one count of distribution of child pornography in violation of 18 U.S.C. §§ 2252(a)(2) and (b)(1) in 2011. He was subsequently sentenced to ninety-six months in prison and lifetime supervised release. Mr. Garland did not appeal his conviction or sentence.

In October 2017, Mr. Garland began serving his term of supervised release. The current appeal stems from Mr. Garland's fourth supervised release revocation.¹ The United States Probation Office filed a petition for a warrant or summons on November 8, 2021, and Mr. Garland was arrested the same day. The petition alleged two violations of Mr. Garland's supervised release conditions: (1) using methamphetamine and (2) failing to report for a drug test. A revocation hearing took place on November 23, 2022, where Mr. Garland stipulated to the violations in the petition and agreed to participate in a residential substance abuse program. The court delayed disposition of the

¹ Less than six months after he was released from prison, Mr. Garland violated the terms of his supervised release and was sentenced to eight months' imprisonment followed by lifetime supervision. Mr. Garland's supervised release was revoked a second time in February 2020, and he was sentenced to ten months' imprisonment, again followed by lifetime supervision. A year later, Mr. Garland's supervised release was revoked for a third time. He was sentenced to six months' imprisonment and lifetime supervised release.

case until March 2022 so Mr. Garland could attend residential treatment. After successfully completing the program and evidencing improvement, the revocation hearing was continued until June 27, 2022.

In May 2022, Probation filed an amended petition alleging Mr. Garland violated additional conditions of his supervised release, including not attending individual substance abuse counseling, not attending group sex offender counseling, viewing unauthorized adult pornography, and accessing the internet without prior approval. The highest grade of violation was Grade C. Combined with Mr. Garland's criminal history category II, the advisory Sentencing Guidelines range was four to ten months' imprisonment and five years to life of supervised release. Under the statute, Mr. Garland could be sentenced to twenty-four months in prison. *See* 18 U.S.C. § 3583(e)(3). Probation recommended a sentence of ten months' imprisonment.

The final revocation hearing occurred on May 23, 2022. Probation Officer Leslie Terrell testified about Mr. Garland's violations and explained the basis for the government's recommended ten-month prison sentence. Mr. Garland's attorney cross-examined Officer Terrell and presented argument requesting a below Guidelines sentence of no incarceration. The district court gave Mr. Garland an opportunity to allocute, but he declined. In imposing the sentence, the district court said it had "reread [the] presentence report" and was "certainly very familiar with that." ROA vol. III at 30. The court also explained

it “reviewed all the testimony” presented at the revocation hearing and “considered the factors in 18 U.S. Code 3553.” *Id.* at 30-31. Ultimately, the court sentenced Mr. Garland to eight months’ imprisonment followed by lifetime supervised release with the same conditions previously imposed. Mr. Garland, through counsel, submitted a timely notice of appeal on June 7, 2022.

On August 16, 2022, Mr. Garland’s counsel filed an *Anders* brief and moved to withdraw. That same day, this court sent Mr. Garland a copy of his counsel’s *Anders* brief by certified mail and informed him he had until September 16 to file a response. On September 19, having received no communication from Mr. Garland, this court notified him of his past due response and extended his response deadline until September 26. To date, Mr. Garland has not filed a response. The government subsequently notified the court it would not submit an answer brief.

II. Standard of Review

Under *Anders*, counsel may request permission to withdraw after a conscientious examination of the case reveals any appeal would be wholly frivolous. 386 U.S. at 744. To properly invoke *Anders*, “counsel must submit a brief to the client and the appellate court indicating any potential appealable issues based on the record.” *United States v. Calderon*, 428 F.3d 928, 930 (10th Cir. 2005) (citation omitted). The client may submit arguments to the court in response. *Id.* This court must then “conduct a full examination of the record to

determine whether defendant’s claims are wholly frivolous.” *Id.* Adhering to the mandate in *Anders*, we must review the record ourselves and decide if there are any non-frivolous claims for appeal. 386 U.S. at 744.

III. Discussion

Mr. Garland’s counsel identifies only one issue in his *Anders* brief: the substantive reasonableness of Mr. Garland’s sentence. Although procedural reasonableness was not explicitly mentioned by counsel, our review of a sentence’s reasonableness “is a two-step process comprising a procedural and a substantive component.” *United States v. Verdin-Garcia*, 516 F.3d 884, 895 (10th Cir. 2008) (citation omitted). A challenge to the procedural reasonableness of a sentence implicates “the method of sentence calculation, including whether the advisory Guidelines range was proper, whether § 3553(a) sentencing factors were correctly considered, and whether the sentencing decision relied on clearly erroneous facts.” *United States v. Maldonado-Passage*, 56 F.4th 830, 842 (10th Cir. 2022) (citation omitted). By contrast, “[s]ubstantive unreasonableness occurs when the court imposes a sentence that does not fairly reflect the relevant sentencing factors or circumstances of the defendant.” *Id.* (citation omitted).

Typically, we “review a defendant’s claim of procedural unreasonableness for abuse of discretion,” analyzing the district court’s legal conclusions de novo and its factual findings for clear error. *United States v.*

Ortiz-Lazaro, 884 F.3d 1259, 1262 (10th Cir. 2018). But where, as here, no objection to procedural reasonableness was advanced in the district court, “we review only for plain error” on appeal. *Id.* (citation omitted).

Our review of the record confirms any procedural unreasonableness claim would be frivolous. Mr. Garland’s conviction for distribution of child pornography is a Class C felony, so the district court could sentence him to a maximum of two years in prison upon revocation. *See* 18 U.S.C. § 3583(e)(3). Mr. Garland’s advisory Guidelines range was correctly calculated: four to ten months’ imprisonment and five years to life of supervised release based on the Grade C violation and his criminal history category II. *See* U.S.S.G. § 7B1.4. At the revocation hearing, the district court explained its reasons for imposing Mr. Garland’s sentence. *See* 18 U.S.C. § 3553(c) (“The court, at the time of sentencing, shall state in open court the reasons for its imposition of the particular sentence.”).

As for substantive reasonableness, we also discern no error. We review the substantive reasonableness of the length of a sentence for an abuse of discretion. *Ortiz-Lazaro*, 884 F.3d at 1265 (citation omitted). A court abuses its discretion if the sentence is “arbitrary, capricious, whimsical, or manifestly unreasonable.” *United States v. Durham*, 902 F.3d 1180, 1236 (10th Cir. 2018) (citation omitted). In reviewing the substantive reasonableness of a sentence, we ask “whether the length of the sentence is reasonable given all the

circumstances of the case in light of the factors set forth in 18 U.S.C. § 3553(a).” *Id.* at 1238 (citation omitted). “A sentence within the correctly calculated Guidelines range is presumed to be reasonable; the burden is on the appellant to rebut the presumption.” *Verdin-Garcia*, 516 F.3d at 898 (citation omitted).

Mr. Garland’s eight-month prison sentence is within the correctly calculated Guidelines range of four to ten months. Thus, it is presumptively reasonable. After reviewing the record, we see no way Mr. Garland could overcome this presumption.

In addition to the eight-month prison sentence, Mr. Garland was also sentenced to lifetime supervised release. Mr. Garland’s attorney suggests a possible argument that the district court “failed to consider [Mr. Garland’s] progress on supervised release as countenancing against another period of lifetime supervised release.” *Anders Br.* at 12. While the record supports counsel’s claim that Mr. Garland made some progress on supervised release, counsel also recognizes “[n]either party, nor the district court, specifically addressed the re-imposition of lifetime supervision[;] . . . the singular focus of the revocation hearing was the length of Mr. Garland’s prison sentence.” *Id.* at 11-12.

As with his sentence of imprisonment, Mr. Garland’s lifetime supervised release term fell within the recommended Guidelines range of five years to life. Although this was at the top end of the range, the Sentencing Guidelines

expressly recommend “the statutory maximum term of supervised release” for sex offense convictions.² U.S.S.G. § 5D1.2(b) (Policy Statement). Therefore, we cannot say Mr. Garland’s supervised release term was substantively unreasonable.

IV. Conclusion

Mr. Garland’s counsel has complied with his obligations under *Anders*. We have also carefully examined the record and conclude there are no non-frivolous appellate claims. Thus, we **GRANT** counsel’s motion to withdraw and **DISMISS** this appeal.

ENTERED FOR THE COURT

Veronica S. Rossman
Circuit Judge

² We have previously determined, albeit in unpublished cases, that a sentence of lifetime supervised release for possession or distribution of child pornography is substantively reasonable. See *United States v. Miller*, 769 F. App’x 662, 664 (10th Cir. 2019); *United States v. Young*, 502 F. App’x 726, 730 (10th Cir. 2012).