FILED
United States Court of Appeals
Tenth Circuit

October 27, 2026

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

TAURUS TAFFORES BROWN,

Defendant - Appellant.

No. 26-6027
(D.C. No. 5:25-CR-00218-D-1)
(W.D. Okla.)

ORDER AND JUDGMENT*

Before **HARTZ**, **TYMKOVICH**, and **McHUGH**, Circuit Judges.

In this direct criminal appeal, counsel for appellant Taurus Taffores Brown filed a brief under *Anders v. California*, 386 U.S. 738, 744 (1967), along with a motion to withdraw. We have jurisdiction under 28 U.S.C. § 1291. Having obtained a response directly from Mr. Brown, and having conducted the independent review that *Anders* requires, *see* 386 U.S. at 744, we conclude there is no arguable ground for appeal. We therefore grant the motion to withdraw and dismiss the appeal.

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* After examining the briefs and 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). The 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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

BACKGROUND

Brown was confined at the Federal Correctional Institution in El Reno, Oklahoma (FCI El Reno), when correctional staff observed him under the influence of an unknown intoxicating substance. A search of his person revealed a tube with brown residue and a rolled-up piece of paper. Two correctional officers were exposed to the substance and taken to the hospital; one was affected severely enough that he was administered twelve doses of naloxone at the prison and then given a naloxone drip through an IV while in the ambulance. Both officers later tested positive for fentanyl exposure.

Brown was indicted with one count of possession of a prohibited object (a Schedule I controlled substance), in violation of 18 U.S.C. § 1791(a)(2) and (b)(2). The district court accepted his plea of guilty without a plea agreement. In conjunction with his plea, Brown admitted that "[o]n April 28, 2025, at FCI El Reno, [he] knowingly possessed a prohibited object, a Schedule I controlled substance 5F-ADB." R., vol. I at 20. 5F-ADB is a synthetic cannabinoid.

With an offense level of 4 and a criminal-history category of VI, the advisory Guidelines range was 6 to 12 months. The district court upwardly varied to 18 months' imprisonment, to run consecutive to the term Brown already was serving. It explained that Brown had a "significant criminal history, including weapons-related and violent felonies," and "one of the worst disciplinary records while incarcerated that [the court had] ever seen," R., vol. III at 31-32. It noted that

Brown's "conduct here not only endangered himself but led to the hospitalization of two correctional officers who were exposed to the substance the defendant was using." *Id.* at 32. While the court "recognize[d] and accept[ed] [Brown's] statement that he did not intend to affect the officers in that way, . . . through his conduct and recklessness in that regard, he, in fact, did." *Id.* It therefore concluded that an above-Guideline sentence was "needed to reflect the seriousness of the offense, promote respect for the law, provide just punishment, to deter the defendant and others, and to protect others who come into contact with the defendant." *Id.*

After the district court imposed the sentence, the court stated, "Mr. Brown, I think one of the important takeaways from this whole situation is that you're lucky that that drug didn't kill you." *Id.* at 34. Brown retorted that other people had done worse with no punishment. The court and Brown then apparently spoke over each other, until the court directed Brown to be quiet and then continued its remarks. Brown then protested that "y'all are still bringing up shit from 20, 25 years ago. I'm not that dude," and "I would feel better if I would have probably killed the officer myself. At least I would be punished for something that I did." *Id.* at 36-37. The court stated it could reopen the proceeding and reconsider the sentence, but after further exchange with Brown it ordered him removed from the courtroom. After Brown was removed, the court stated, "the defendant's conduct, better than anything that [the court had] said, justifies the upward variance from the advisory guideline range." *Id.* at 38.

DISCUSSION

Brown is represented by counsel on appeal. Under *Anders*, if counsel finds an appeal "to be wholly frivolous, after a conscientious examination of it, [s]he should so advise the court and request permission to withdraw . . . accompanied by a brief referring to anything in the record that might arguably support the appeal." 386 U.S. at 744. After allowing the defendant an opportunity to respond, we "then proceed[], after a full examination of all the proceedings, to decide whether the case is wholly frivolous." *Id.* If we "find[] any of the legal points arguable on their merits (and therefore not frivolous) [we] must, prior to decision, afford the indigent the assistance of counsel to argue the appeal." *Id.* But if we do not find any arguable points, we may grant the motion to withdraw and dismiss the appeal. *See id.*

As stated, counsel filed an *Anders* brief and a motion to withdraw, and Brown filed a pro se response. The government filed a notice of intent not to file a brief. Having reviewed the proceedings, we do not identify any arguable issues for appeal.

I. Plea

Brown made no motions before entering his plea and made no objections regarding the plea. He therefore did not preserve potential issues for appeal, and we see no grounds for arguing for plain error. *See United States v. Rollings*, 751 F.3d 1183, 1191 (10th Cir. 2014) (recognizing we review a plea for plain error when a defendant did not raise an objection).

Brown was advised of his rights through a written plea petition and in person at the plea colloquy. We agree with counsel's assessment that nothing in the record indicates his plea was not knowing, intelligent, and voluntary.

In his pro se response, Brown objects to a statement in counsel's brief that testing of the paper indicated the presence of various substances other than 5F-ADB. He asserts tests showing anything but 5F-ADB are falsified, and "stating [he] exposed the officers to fentanyl is not a fact . . . It[']s a[n] outright lie." Pro Se Resp. at 3 (all-caps omitted). He also states another test on the paper identifying 5F-ADB "confirmed not only its true contents but also the outright falsified document from the prison staff." *Id.* at 2. But Brown's unsupported allegations do not present an arguable issue regarding the plea because the record shows he pleaded guilty to possessing 5F-ADB, and he does not contest that he possessed 5F-ADB.

II. Sentence

"We review a trial court's imposition of a sentence under an abuse of discretion standard to determine whether it was reasonable. The reasonableness inquiry has both a procedural component and a substantive component." *United States v. Brooks*, 736 F.3d 921, 941 (10th Cir. 2013) (citation omitted).

A. Procedural Reasonableness

"Procedural reasonableness involves using the proper method to calculate the sentence, and encompasses selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence." *Id.* (internal quotation marks omitted).

As Brown's counsel recognizes, the sentence was within the statutory maximum and was required to be imposed consecutive to the sentence that Brown was already serving. *See* 18 U.S.C. § 1791(b)(2), (c). Before the district court, Brown submitted two objections to the presentence report, one to the consideration of his prison disciplinary record and one to the probation officer's recital of grounds that could support an upward variance. We do not see any non-frivolous argument arising out of the district court's resolution of those objections.

As stated, Brown's pro se response to counsel's brief challenges any finding that he possessed anything but 5F-ADB and that he exposed the officers to fentanyl. But counsel's recitation of facts comes from the presentence report, and Brown did not object to these facts, either through counsel or when the district court gave him the opportunity to speak. Nothing in the record supports a non-frivolous argument that the district court relied on clearly erroneous facts in sentencing. *See United States v. Vazquez-Garcia*, 130 F.4th 891, 898 (10th Cir. 2025) ("If a defendant does not object to a factual allegation in a [presentence report], then the district court can properly rely on that allegation as a finding of fact for purposes of sentencing.").

The pro se response also states that Brown "had made numer[ous] request[s] to [his] attorney about the [presentence] report and the use of a 20 year old state prison sentence that had nothing to [do] with [his] federal matter," but his attorney failed to object. Pro Se Resp. at 2. It appears that when he says "20 year old state prison sentence," Brown refers to a 2005 conviction for harassment by persons in a correctional facility, which resulted in the assessment of 3 criminal history points.

But there is no non-frivolous argument that assessing criminal history points for this conviction was error, much less plain error. Although the conviction was twenty years old, the assessment was proper because, according to the presentence report, Brown was incarcerated for the offense during the fifteen-year period prior to the conviction. *See* U.S. Sentencing Guidelines § 4A1.1(a); *id.* appl. n.1.[1] And in any event, the 2005 conviction had no effect on the calculation of the Guidelines range. Brown had a total of 18 criminal history points, and criminal history category VI applies to defendants with 13 or more points. Even omitting any points from the 2005 conviction, Brown would still be in criminal history category VI.

If Brown wishes to assert his counsel was ineffective with regard to sentencing, such claims generally must be brought in post-conviction proceedings. *See United States v. Galloway*, 56 F.3d 1239, 1240 (10th Cir.1995) (en banc). Such claims may be considered on direct appeal "only where the issue was raised before and ruled upon by the district court *and* a sufficient factual record exists." *United States v. Flood*, 635 F.3d 1255, 1260 (10th Cir. 2011). Here, the issue was not raised before and ruled upon by the district court, and the record is insufficient. Any ineffective-assistance claim therefore is not arguable in this appeal.

[1] To the extent Brown intended to refer not to the 2005 conviction but to a 1999 conviction for manslaughter, the same analysis would apply because, according to the presentence report, he also was serving his sentence of imprisonment for that offense within the fifteen-year period prior to the instant conviction.

B. Substantive Reasonableness

Substantive reasonableness requires us to "determine 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)." *Brooks*, 736 F.3d at 942 (internal quotation marks omitted). "In reviewing the sentence, we do not reweigh the sentencing factors; rather, we ask whether the sentence fell within the range of rationally available choices that the facts and law at issue can fairly support." *United States v. Dias*, 174 F.4th 1266, 1281 (10th Cir. 2026) (internal quotation marks omitted). "We reverse only if the sentence exceeded the bounds of permissible choice, such that the sentence is arbitrary, capricious, whimsical, or manifestly unreasonable." *Id.* (internal quotation marks omitted).

Brown's counsel recognizes that his sentence was 50 percent higher than the high end of the Guidelines range, but also that in objective terms, the variance increased the sentence by only six months. Based on this court's precedent, she identifies no non-frivolous argument why the sentence was substantively unreasonable. In light of the record support for the § 3553(a) factors identified by the district court, we find no basis to contend that the upward variance exceeded the bounds of permissible choice.

Counsel also discusses the verbal exchange between Brown and the district court at the end of the sentencing hearing. While stating that the district court's "post-sentencing lecturing was arguably unprofessional, inappropriate, and exceeded his constitutional role in the criminal justice system," counsel nevertheless opines

that it "does not present grounds for appeal" because it came after the court imposed the sentence, and although it was "unwise," "it had no rational relationship to [Brown's] ultimate sentence." *Anders* Br. at 28-29. She therefore concludes that "any error that might be alleged arising out of the post-sentencing argument would – at best – be harmless." *Id.* at 29. We agree that this exchange does not present an arguable issue for appeal. If there were any error, it would be harmless.

Finally, Brown's pro se response asserts that he "was given an upward variance due to the falsified documents and testimony in regards to . . . posses[s]ing an[d] exposing officers to" fentanyl. Pro Se Resp. at 2; *see also id.* at 3. As with procedural reasonableness, this assertion does not constitute a non-frivolous challenge to his sentence's substantive reasonableness. First, as already recognized, nothing in the record supports Brown's assertions that evidence was falsified. Second, the district court cited several reasons for imposing an upward variance. Subjecting the officers to the need for medical treatment was one of the stated reasons, but the specific nature of the illicit substance was not.

CONCLUSION

Having identified no arguable issues for appeal, we grant counsel's motion to withdraw and dismiss the appeal.

Entered for the Court

Timothy M. Tymkovich
Circuit Judge