

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 23-2392

UNITED STATES OF AMERICA

v.

DENNIS CHESTON, a/ka/ Beans,
Appellant

On Appeal from the U.S. District Court, D.N.J.
Judge Georgette Castner, No. 3:19-cr-00134-011

Before: CHAGARES, *Chief Judge*, RESTREPO AND MONTGOMERY-REEVES, *Circuit Judges*
Submitted: June 10, 2026; Filed: Sept. 2, 2026

NONPRECEDENTIAL OPINION*

RESTREPO, *Circuit Judge*. In 2020, Dennis Cheston pled guilty to drug and gun charges and was sentenced to a term of imprisonment. He appealed to this Court. Counsel has filed an *Anders*¹ brief and requested leave to withdraw her representation. Following an independent review of the record, we are satisfied that there are no nonfrivolous issues for appeal. We will therefore grant counsel's motion to withdraw and affirm Cheston's conviction and judgment of sentence.

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

¹ See *Anders v. California*, 386 U.S. 738, 744 (1967) (holding that appointed counsel seeking to withdraw from a criminal appeal must submit a brief demonstrating there are no nonfrivolous issues for appeal).

I.

On September 8, 2018, Cheston was arrested exiting a train station in Trenton, New Jersey with a semi-automatic firearm in his backpack. Cheston had traveled from North Carolina to New Jersey to exchange the firearm for heroin. Law enforcement arrested Cheston in connection with a multi-year investigation into a drug-trafficking conspiracy. Prior to the 2018 arrest, Cheston had three felony convictions for controlled substances that had resulted in prison sentences longer than one year, qualifying him as a career offender under § 4B1.1 of the Sentencing Guidelines. U.S.S.G. § 4B1.1(a).

On June 11, 2020, Cheston pled guilty to distribution and possession of heroin with intent to distribute under 21 U.S.C. §§ 841(a)(1) and (b)(1)(C), and possession of a firearm as a convicted felon under 18 U.S.C. § 922(g)(1).² In the plea agreement between the parties, the government agreed to a two-level downward adjustment for his acceptance of responsibility. The government further agreed to move for an additional one-point reduction in the offense level at sentencing if Cheston abided by the terms of the plea agreement. *See* U.S.S.G. § 3E1.1(a). The agreement stated that the total Guideline offense level for Cheston's crimes was 29. Cheston's criminal history category was VI, which meant he pled guilty facing a Guideline range of 151 to 188 months imprisonment.

On October 20, 2021, the parties entered into a sentencing agreement whereby Cheston waived his right to appeal his sentence if it fell within, or below, the Guideline

² In October 2020, after the plea hearing, Cheston requested and received new court-appointed counsel to represent him at sentencing and on appeal.

range corresponding with an offense level of 12, rather than 29. The decrease in the offense level was in response to an opinion issued by District Court Chief Judge Freda L. Wolfson, who presided over Cheston's guilty plea, that found certain state drug offenses did not qualify as predicate offenses for career offender status under the Guidelines. *See United States v. Lewis*, No. CR 20-583, 2021 WL 3508810 (D.N.J. Aug. 10, 2021). Prior to Cheston's sentencing, however, this Court vacated Chief Judge Wolfson's decision, which meant Cheston's career offender status remained intact. *United States v. Lewis*, 58 F.4th 764 (3d Cir. 2023).

At his July 18, 2023 sentencing hearing before District Judge Georgette Castner,³ the parties agreed that Cheston should be sentenced consistent with the plea agreement, which meant facing a Guideline range corresponding with an offense level of 29 and a criminal history category of VI. Cheston was sentenced to 151 months of imprisonment, which is the bottom of the Guideline range for offense level 29 but above the range for offense level 12. Because Cheston maintained the right to appeal a sentence above the Guideline range for an offense level of 12, this appeal is not subject to the appellate waiver set forth in the sentencing agreement.

On August 1, 2023, Cheston filed a notice of appeal. Counsel, who represented Cheston at the sentencing stage and was appointed to handle his appeal, submitted an *Anders* brief on November 14, 2025.⁴

³ Cheston's case was reassigned from Chief Judge Wolfson to District Judge Georgette Castner on January 30, 2023.

⁴ Cheston did not file a *pro se* brief in response.

II.

To satisfy “[t]he constitutional requirement of substantial equality and fair process,” appointed counsel seeking to withdraw from appellate representation must demonstrate a “conscientious examination” of the record, evidenced by submission of “a brief referring to anything in the record that might arguably support the appeal.” *Anders*, 386 U.S. at 744. In filing the brief, counsel must (1) “satisfy the court that he or she has thoroughly scoured the record in search of appealable issues”; and (2) “explain why the issues are frivolous.” *United States v. Marvin*, 211 F.3d 778, 780 (3d Cir. 2000) (citing *United States v. Tabb*, 125 F.3d 583, 585–86 (7th Cir. 1997)).

Following the submission of an *Anders* brief, this Court must determine “(1) whether counsel adequately fulfilled the [Third Circuit Local Appellate Rule 109.2(a)] requirements; and (2) whether an independent review of the record presents any nonfrivolous issues.” *United States v. Youla*, 241 F.3d 296, 300 (3d Cir. 2001) (citing *Marvin*, 211 F.3d at 780). At step one, we assess whether counsel has “scoured the record in search of appealable issues” and “attempted to uncover the best arguments” for their client. *Marvin*, 211 F.3d at 780–81. At step two, we perform an independent review of the record for nonfrivolous issues. *See Youla*, 241 F.3d at 301 (citing *United States v. Wagner*, 103 F.3d 551, 553 (7th Cir. 1996)). If we are satisfied that counsel has met their burden in examining the record, our review is guided by counsel’s *Anders* brief. *Id.* In deciding whether there are “nonfrivolous issues,” we look to whether the potential claims hold “any basis in law or fact.” *McCoy v. Ct. of Appeals of Wis., Dist. 1*, 486 U.S. 429, 438 n.10 (1988).

When, as here, an *Anders* brief follows a guilty plea and entry of final judgment after sentencing, the scope of appealable issues is typically confined to “whether the defendant could be haled into court at all, the validity of the guilty plea, and the legality of the sentence.” *United States v. Brookins*, 132 F.4th 659, 667 n.9 (3d Cir. 2025) (citing *United States v. Broce*, 488 U.S. 563, 569, 575 (1989)).

A.

In her *Anders* brief, counsel addresses both the validity of the plea and the legality of the sentence and finds no nonfrivolous issues for appeal.⁵ Ultimately, we agree with this finding. However, our independent review of the record uncovered an issue worth presenting on appeal. In assessing the validity of the plea, counsel failed to raise the issue of Cheston’s mental capacity, an issue she herself raised at Cheston’s sentencing hearing. In scouring the record, counsel should have raised and addressed whether Cheston’s mental capacity undermined his ability to enter a knowing and voluntary plea.

In arguing for a downward variance, Cheston’s sentencing—now appellate—counsel asserted that he suffered from a “brain virus” as a teenager, causing him to be hospitalized for over two months and to have to re-learn how to walk and talk. A156. Counsel further argued that Cheston dealt with “learning disabilities,” which included

⁵ The government points out that counsel does not discuss whether the District Court had jurisdiction. Thus, the issue of whether Cheston could have been “haled into court” has not been addressed. Because the District Court plainly had jurisdiction under 18 U.S.C. § 3231, the absence of such a discussion is not fatal to counsel’s *Anders* brief. The government also points out that counsel misstated the terms of Cheston’s appellate waiver in her *Anders* brief. Although this misstatement is unfortunate, it does not give rise to a nonfrivolous issue on appeal and therefore does not render the *Anders* brief inadequate.

“mild retardation, dyslexia, perceptual[] impair[ment], and borderline intellectual functioning.”⁶ A147:3-6. Although raised in the sentencing context, these assertions of mental impairments could arguably support a claim that Cheston lacked the competency to enter a knowing plea. *See, e.g., Taylor v. Horn*, 504 F.3d 416, 430 (3d Cir. 2007) (holding that to be competent a defendant must have a sufficient “understanding of the proceedings against him” (quoting *Dusky v. United States*, 362 U.S. 402, 402 (1960))). But even if Cheston’s competency could be deemed an appealable issue, our review of the record reveals that it is not one that has any basis for relief.

Because competency was not raised at the plea stage, we would review this claim for plain error. *United States v. Lessner*, 498 F.3d 185, 192 (3d Cir. 2007) (citing Fed. R. Crim. P. 52(b); *United States v. Vonn*, 535 U.S. 55, 58–59 (2002)). After a careful review of the record, we conclude that the District Court obtained sufficient assurances that Cheston knowingly and voluntarily pled guilty to the charged offenses, and there was no cause to question the validity of the plea. Cheston affirmed in his plea agreement that he did not believe he was “mentally incompetent in any respect.” A59. At the plea hearing,⁷ Cheston avowed that he was pleading guilty of his own free will and not under duress. He

⁶ The “brain virus” and dyslexia are corroborated in the presentence report but that information is “based solely on self-reported data.” PSR ¶¶ 255–56, 266. As for the retardation, perceptual impairment, and diminished intellectual functioning, the only reference in the record is that made by counsel at the sentencing hearing.

⁷ The District Court performed an extensive colloquy ensuring that, *inter alia*, Cheston understood the plea, the maximum punishment he faced, the rights he would forgo by pleading guilty, the requirement that the court apply the sentencing Guidelines and its discretion to depart from those Guidelines, and the requirement that the plea be of Cheston’s own volition.

affirmed that he read, signed and understood the plea, and engaged with the court by asking a clarifying question about his waiver of “post-sentencing relief.” A85. Counsel also affirmed in writing and at the plea hearing that Cheston’s guilty plea was made voluntarily and that he understood the consequences of the plea agreement. The plea satisfied the requirements of the Constitution, the Federal Rule of Criminal Procedure 11, and the standards for voluntary and knowing established in *Boykin v. Alabama*, 395 U.S. 238, 242–43 (1969). Because the record supports the conclusion that Cheston entered a knowing and voluntary guilty plea, we will affirm his conviction.

C.

With regard to Cheston’s sentence, we agree with counsel that it was both procedurally and substantively reasonable and therefore legal. *See United States v. Tomko*, 562 F.3d 558, 566–67 (3d Cir. 2009) (en banc). There was no objection for procedural error raised at sentencing, so we would again review for plain error. *See United States v. Flores-Mejia*, 759 F.3d 253, 255 (3d Cir. 2014) (en banc).

To impose a procedurally reasonable sentence, a district court must determine the Guidelines range, consider departure motions, and meaningfully consider all relevant 18 U.S.C. § 3553(a) factors. *United States v. Gunter*, 462 F.3d 237, 247 (3d Cir. 2006) (citing *United States v. King*, 454 F.3d 187, 194, 196 (3d Cir. 2006)). A sentence that falls within the applicable Guidelines range is presumed substantively reasonable, *United States v. Handerhan*, 739 F.3d 114, 119–20 (3d Cir. 2014) (citing *Rita v. United States*, 551 U.S. 338, 350–51 (2007)), and any sentence that can be considered “reasonable in light of the § 3553(a) factors, . . . must [be] affirm[ed],” *United States v. Wise*, 515 F.3d

207, 218 (3d Cir. 2008) (citing *United States v. McComb*, 519 F.3d 1049, 105–53 (10th Cir. 2007)). The District Court calculated the applicable range and gave both parties the opportunity to move for a departure, but neither party did. It heard from all parties before performing a thorough evaluation of the § 3553(a) factors and granted Cheston allocution. The District Court then imposed the shortest possible sentence within the applicable Guideline range, as identified in the plea agreement. Our review of the record finds no error, let alone plain error.

We will therefore affirm the District Court’s imposed sentence of 151 months imprisonment.⁸

III.

For the reasons stated above, we will grant counsel’s motion to withdraw and affirm the conviction and judgment of sentence.

⁸ We note that counsel erroneously argues that Cheston waived his right to appeal because his sentence of 151 months was within the Guidelines range that resulted from an offense level of twenty-nine. This argument overlooks that the sentencing agreement modified the terms of the appellate waiver found in the preceding plea agreement. In the sentencing agreement, Cheston agreed to waive his right to an appeal if the sentence awarded fell within or below the Guidelines range for an offense level of 12, which 151 months’ imprisonment does not. Despite counsel’s mischaracterization of the terms of the sentencing agreement, however, we conclude that Cheston’s sentence is reasonable and arguing otherwise would be frivolous.