

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Nos. 25-2993

UNITED STATES OF AMERICA

v.

ROBERT J. PENNINGTON,
also known as KILLA,
Appellant

On Appeal from the U.S. District Court, E.D. Pa.
Judge Cynthia M. Rufe, No. 5:08-cr-00137-001

Before: SHWARTZ, CHUNG, and FISHER, *Circuit Judges*
Submitted: Oct. 1, 2026; Filed: Oct. 8, 2026

NONPRECEDENTIAL OPINION*

SHWARTZ, *Circuit Judge*.

Robert Pennington appeals his sentence for Hobbs Act robbery and firearms offenses. His counsel argues that his appeal presents no nonfrivolous issues and moves to withdraw under Anders v. California, 386 U.S. 738 (1967). We agree and will grant the motion and affirm.

I

Pennington was tried and convicted of multiple Hobbs Act robberies in violation of 18 U.S.C. § 1951, attempting another robbery, *id.*, and using and carrying a gun during

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

crimes of violence in violation of 18 U.S.C. § 924(c), was sentenced to 1,896 months' imprisonment, and appealed his conviction, which we affirmed. United States v. Pennington, 505 F. App'x 101, 102, 105 (3d Cir. 2012) (not precedential). Thereafter, and as a result of United States v. Taylor, 596 U.S. 845 (2022), and United States v. Stoney, 62 F.4th 108 (3d Cir. 2023), the District Court vacated one of Pennington's § 924(c) convictions¹ and resentenced him.

At resentencing, the District Court concluded that Pennington's Sentencing Guidelines range for his robbery and attempted robbery convictions was 135 to 168 months' imprisonment based on a total offense level of thirty-one and a criminal history category of III before applying the consecutive mandatory minimum sentence of sixty months for each of the remaining six § 924(c) counts. The District Court concluded that the effective Guidelines range was increased by 360 months, resulting in a range of 495 to 528 months' imprisonment. After considering the 18 U.S.C. § 3553(a) factors, including Pennington's background and violent offense conduct, his rehabilitation efforts, as well as the need for deterrence and mental health treatment, the District Court varied downward and imposed a sentence of twelve months' imprisonment for each Hobbs Act robbery count, including the attempted robbery, to run concurrently, plus sixty months'

¹ United States v. Taylor, 596 U.S. 845 (2022) held that attempted Hobbs Act robbery is not a crime of violence under § 924(c), id. at 860, and United States v. Stoney, 62 F.4th 108 (3d Cir. 2023), held that a completed Hobbs Act robbery is a crime of violence, id. at 114. Pennington's § 924(c) conviction based on attempted Hobbs Act robbery was vacated, but the other § 924(c) convictions remained intact.

imprisonment for each of the six § 924(c) counts to run consecutively, for a total of 372 months' imprisonment.

Pennington appeals, and his counsel moves to withdraw under Anders.²

II³

A

“Third Circuit Local Appellate Rule 109.2(a) reflects the guidelines the Supreme Court promulgated in Anders to [ensure] that indigent clients receive adequate and fair representation.” United States v. Youla, 241 F.3d 296, 300 (3d Cir. 2001). Rule 109.2(a) allows defense counsel to file a motion to withdraw and a supporting brief when counsel has reviewed the record and concluded that “the appeal presents no issue of even arguable merit.” 3d Cir. L.A.R. 109.2(a) (2011). When counsel submits an Anders brief, we must determine: “(1) whether counsel adequately fulfilled the rule’s requirements; and (2) whether an independent review of the record presents any nonfrivolous issues.” Youla, 241 F.3d at 300. An issue is frivolous if it “lacks any basis in law or fact.” McCoy v. Ct. of Appeals of Wis., Dist. 1, 486 U.S. 429, 438 n.10 (1988).

To determine whether counsel has fulfilled Rule 109.2(a)’s requirements, we examine the Anders brief to see if counsel: (1) thoroughly examined the record in search of appealable issues, identifying those that arguably support the appeal, and (2) explained

² Pennington also submitted a pro se brief.

³ The District Court had jurisdiction under 18 U.S.C. § 3231. We have jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742. We exercise plenary review to determine whether there are any nonfrivolous issues for appeal. Penson v. Ohio, 488 U.S. 75, 80 (1988).

why those issues are frivolous. United States v. Langley, 52 F.4th 564, 569 (3d Cir. 2022); United States v. Marvin, 211 F.3d 778, 780 (3d Cir. 2000). If the Anders brief meets these requirements, “we confine our scrutiny to those portions of the record identified.” Youla, 241 F.3d at 301.

Defense counsel’s Anders brief satisfies both elements, and an independent review of the record reveals no nonfrivolous issues for appeal. First, the brief demonstrates a thorough examination of the record and correctly identifies the reasonableness of Pennington’s sentence as the only potentially appealable issue.⁴ Second, the brief explains why any challenge to Pennington’s sentence would be frivolous. Counsel’s Anders brief is therefore sufficient, and we will proceed to review the resentencing issues counsel and Pennington, pro se, have identified.

B⁵

Pennington’s sentence is procedurally and substantively reasonable. With respect to procedural reasonableness, the District Court followed the required sentencing framework by: (1) correctly calculating the Guidelines range based on the facts and Pennington’s criminal history and (2) meaningfully considering the § 3553(a) factors,

⁴ In a previous appeal, we rejected challenges to Pennington’s conviction. United States v. Pennington, 505 F. App’x 101, 102-04 (3d Cir. 2012) (not precedential). Accordingly, defense counsel properly limited its Anders brief to Pennington’s resentencing.

⁵ Because Pennington did not object to the procedural reasonableness of his sentence before the District Court, we review any procedural challenge to his sentence for plain error. United States v. Flores-Mejia, 759 F.3d 253, 256 (3d Cir. 2014) (en banc). We review the substantive reasonableness of a sentence for abuse of discretion. Gall v. United States, 552 U.S. 38, 46, 51 (2007).

including the seriousness of Pennington’s conduct, the need for deterrence, and rehabilitation. See United States v. Tomko, 562 F.3d 558, 567 (3d Cir. 2009) (en banc).⁶

The sentence was also substantively reasonable because we cannot say “no reasonable sentencing court would have imposed the same sentence . . . for the reasons the district court provided.” Id. at 568. First, the sentence was below the applicable Guidelines range and is thus presumptively reasonable. See Rita v. United States, 551 U.S. 338, 347 (2007). Second, Pennington’s sentence reflects consideration of Pennington’s childhood challenges, his rehabilitation efforts, his brandishing a firearm during multiple robberies, as well as the needs to protect the public, for general deterrence, to further his education, and for his mental health treatment. Thus, any challenge to the substantive reasonableness of Pennington’s sentence is meritless.

III

Because counsel thoroughly examined the record and identified no nonfrivolous grounds for appeal, we will grant counsel’s motion to withdraw and AFFIRM.

⁶ Pennington’s pro se contention that the “One Big Beautiful Bill Act” limited his sentencing exposure on the § 924(c) count is meritless because that law did not address § 924(c) or sentencing issues. See Pub. L. 119-21 (2025). Furthermore, his claim that his gun counts are limited to a total of five years fails because § 924(c) requires mandatory minimum consecutive sentences of five years for each count of conviction for using and carrying a firearm. 18 U.S.C. § 924(c)(1)(A)(i).