

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-4160

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JAMES MICHAEL CONLEY,

Defendant - Appellant.

Appeal from the United States District Court for the Northern District of West Virginia, at Clarksburg. Thomas S. Kleeh, Chief District Judge. (1:15-cr-00076-TSK-MJA-1)

Submitted: January 31, 2024

Decided: February 12, 2024

Before HARRIS and RUSHING, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

ON BRIEF: Scott C. Brown, SCOTT C. BROWN LAW OFFICE, Wheeling, West Virginia, for Appellant. Sarah Wagner, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Clarksburg, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

James Michael Conley appeals the district court's judgment revoking his supervised release and sentencing him to 18 months' imprisonment without an additional term of supervised release. Counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), stating that there are no meritorious grounds for appeal but questioning whether the sentence is plainly unreasonable. The Government has declined to file a brief. Although notified of his right to file a pro se supplemental brief, Conley has not done so. We affirm.

“A district court has broad discretion when imposing a sentence upon revocation of supervised release.” *United States v. Webb*, 738 F.3d 638, 640 (4th Cir. 2013). “We will affirm a revocation sentence if it is within the statutory maximum and is not plainly unreasonable.” *United States v. Slappy*, 872 F.3d 202, 207 (4th Cir. 2017) (internal quotation marks omitted). “When reviewing whether a revocation sentence is plainly unreasonable, we must first determine whether it is unreasonable at all.” *United States v. Thompson*, 595 F.3d 544, 546 (4th Cir. 2010). “A revocation sentence is procedurally reasonable if the district court adequately explains the chosen sentence after considering the Sentencing Guidelines' nonbinding Chapter Seven policy statements and the applicable 18 U.S.C. § 3553(a) factors.” *Slappy*, 872 F.3d at 207 (footnote omitted); *see* 18 U.S.C. § 3583(e). A revocation sentence is substantively reasonable if the court states a proper basis for concluding that the defendant should receive the sentence imposed, up to the statutory maximum. *United States v. Crudup*, 461 F.3d 433, 440 (4th Cir. 2006). “A court need not be as detailed or specific when imposing a revocation sentence as it must be when

imposing a post-conviction sentence, but it still must provide a statement of reasons for the sentence imposed.” *Thompson*, 595 F.3d at 547 (internal quotation marks omitted). Only if a sentence is either procedurally or substantively unreasonable is a determination then made as to whether the sentence is plainly unreasonable. *United States v. Moulden*, 478 F.3d 652, 656-57 (4th Cir. 2007). Although “we must consider the extent of [any] variance from the [policy statement] range,” we will not vacate a defendant’s sentence just because we conclude a different sentence might have been appropriate. *See United States v. McKinnie*, 21 F.4th 283, 292 (4th Cir. 2021).

We conclude that Conley’s sentence is both procedurally and substantively reasonable. Although the district court imposed a sentence above the Sentencing Guidelines’ policy statement range, it considered the relevant statutory factors and gave sufficiently detailed reasons for the imposed sentence, expressly noting Conley’s repeated inability to abide by the conditions of his supervised release and breach of the court’s trust.

In accordance with *Anders*, we have reviewed the entire record in this case and have found no meritorious grounds for appeal. We therefore affirm the district court’s judgment. This court requires that counsel inform Conley, in writing, of the right to petition the Supreme Court of the United States for further review. If Conley requests that a petition be filed, but counsel believes that such a petition would be frivolous, then counsel may move in this court for leave to withdraw from representation. Counsel’s motion must state that a copy thereof was served on Conley.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED