

No. 10-4504

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Nov 16, 2011
LEONARD GREEN, Clerk

UNITED STATES OF AMERICA,)	
)	
Plaintiff-Appellee,)	
)	
v.)	ON APPEAL FROM THE UNITED
)	STATES DISTRICT COURT FOR
DANIEL LEE JONES,)	THE NORTHERN DISTRICT OF
)	OHIO
Defendant-Appellant.)	

ORDER

Before: KEITH, GUY, and GIBBONS, Circuit Judges.

Pursuant to a plea agreement, Daniel Lee Jones pled guilty to mailing threatening communications, a violation of 18 U.S.C. § 876(c). The district court sentenced Jones to eighteen months imprisonment and three years supervised release with special conditions. Jones appeals his sentence, challenging two of the special conditions placed on his supervised release. The parties have waived oral argument, and this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a). For the reasons stated below, we dismiss this appeal for lack of jurisdiction.

From Portland, Oregon, Jones acting as director of the American National Socialist Workers Party (an organization that advocates white supremacy), mailed a hangman’s noose to Jason Upthegrove, president of the Lima, Ohio chapter of the National Association for the Advancement of Colored People (“NAACP”). Jones mailed the noose to convey a threat of injury to Mr. Upthegrove and to quell his public advocacy for African Americans in Lima.

In accordance with a plea agreement, Jones pled guilty to one count of mailing a threatening communication. Under this agreement, Jones expressly “waive[d] the right to appeal his guilty plea, conviction, and sentence on any ground” with the exception that he “reserve[d] the right to appeal with respect to: (a) any punishment imposed in excess of the statutory maximum, or the terms stated within [the] agreement; (b) any punishment to the extent it constitutes an upward departure from the [Sentencing G]uidelines range . . . ; and (c) any other issue directly relating to the interpretation, application, or enforcement of [the] [a]greement.” During the plea colloquy, the district court discussed the agreement’s terms with Jones, detailed the rights he would forego by pleading guilty, and found that he knowingly and voluntarily entered his plea. Thereafter, the district court sentenced Jones to eighteen months imprisonment and three years of supervised release with several special conditions. Jones appealed.

Jones takes issue with two special conditions imposed on his supervised release. He contends that restricting both his association with gangs or threat groups and his access to the Internet is unreasonable because these conditions do not reasonably relate to the offense for which he was convicted. Because Jones’ appeal involves only an attack on the conditions of his supervised release, the Government argues that the plea agreement’s waiver provision precludes this court’s jurisdiction to entertain this appeal. Jones counters that the waiver is inapplicable because the special conditions are not part of his sentence and because the special conditions are an upward departure from the Guidelines range. We agree with the Government.

The plea hearing transcript reveals that Jones knowingly and voluntarily entered his plea and that he was well aware of the plea agreement’s content. *See United States v. McGilvery*, 403 F.3d 361, 362-63 (6th Cir. 2005). According to the agreement, Jones waived the right to appeal his “sentence on any ground, including any appellate right conferred under Title 18, U.S.C. Section 3742.” Several of our Sister Circuits have held that supervised release conditions are part of a sentence. *See United States v. Sandoval*, 477 F.3d 1204, 1206-07 (10th Cir. 2007); *United States v. Joyce*, 357 F.3d 921, 922-24 (9th Cir. 2004); *United States v. Andis*, 333 F.3d 886, 892 n.7 (8th

Cir. 2003); *United States v. Sines*, 303 F.3d 793, 798 (7th Cir. 2002). And we have suggested the same. See *United States v. Lee*, 502 F.3d 447, 449 (6th Cir. 2007) (“Although the waiver of appeal may arguably foreclose his appeal, because this case possibly implicates ineffective assistance by his counsel, we will entertain his appeal.”).

Moreover, the waiver provision includes the waiver of any appellate right conferred under 18 U.S.C. § 3742. This section provides, *inter alia*, that an appeal can be taken from a sentence that “includes a greater fine or term of imprisonment, probation, or *supervised release* than the maximum established in the guideline range.” 18 U.S.C. § 3742(3) (emphasis added). Thus, “the waiver encompasses all appellate challenges to the sentence other than those falling within the explicit exception[s]” noted in the provision. *Sandoval*, 477 F.3d at 1207. Furthermore, the waiver specifically stated that Jones cannot appeal his “*sentence on any ground*” except the three provided therein, and Jones was aware of the appellate rights conferred by 18 U.S.C. § 3742. The Supreme Court has stated that “the law ordinarily considers a waiver knowing, intelligent, and sufficiently aware if the defendant fully understands the nature of the right and how it would likely apply *in general* in the circumstances — even though the defendant may not know the *specific detailed* consequences of invoking it.” *United States v. Ruiz*, 536 U.S. 622, 629 (2002) (emphasis in original).

Additionally, Jones’ contention that the special conditions are an upward departure from the Guidelines lacks merit. The Guidelines provide that the district court “shall order a term of supervised release to follow imprisonment when a sentence . . . of more than one year is imposed.” USSG § 5D1.1(a). And along with the mandatory conditions of supervised release, see USSG § 5D1.3(a), the Guidelines provide that the court “may impose other conditions,” USSG § 5D1.3(b). Thus, the district court’s imposition of special conditions on Jones’ supervised release is in accordance with the Guidelines.

Accordingly, we conclude that the special conditions of Jones' supervised release are part of the sentence contemplated by the plea agreement's waiver provision. In light of this waiver, we lack jurisdiction to entertain Jones' appeal. *See McGilvery*, 403 F.3d at 363.

The Government's unopposed motion to take judicial notice of the order setting forth the conditions of Jones' pretrial release is granted. This case is dismissed for lack of jurisdiction.

ENTERED BY ORDER OF THE COURT

A handwritten signature in cursive script, appearing to read "Edward J. ...", is written in black ink.

Clerk