In the

United States Court of Appeals

For the Seventh Circuit

No. 18-3340

ZENON GRZEGORCZYK,

Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 1:16-cv-08146 — **Elaine E. Bucklo**, *Judge*.

ARGUED NOVEMBER 3, 2020 — DECIDED MAY 13, 2021

Before KANNE, SCUDDER, and ST. EVE, *Circuit Judges*.

ST. EVE, *Circuit Judge*. In the spring of 2012, Zenon Grzegorczyk hired two men to kill his ex-wife and five of her friends in exchange for $48,000. Fortunately, his plan was destined to fail—the two men he sought out for the task were undercover law enforcement officers. A grand jury returned a four-count indictment charging him with three counts of using a facility of interstate commerce with intent that murder be committed ("murder-for-hire") in violation of 18 U.S.C.

§ 1958(a), and one count of possession of a firearm in furtherance of a crime of violence in violation of 18 U.S.C. § 924(c)(1)(A). In July 2014, pursuant to a written plea agreement with the government, Grzegorczyk pled guilty to one count of murder-for-hire and the firearm charge. The district court sentenced him to 151 months in prison for the murder-for-hire count and a consecutive 60 months for the firearm count.

Grzegorczyk now seeks relief from his § 924(c) conviction pursuant to 28 U.S.C. § 2255. But because he signed an unconditional plea agreement, the district court found his challenge waived and denied relief. We affirm.

I. Background

A. Factual Background

In April 2012, Grzegorczyk hired two men to kill his ex-wife and several other individuals whom he deemed responsible for his divorce and the loss of custody of his son. Grzegorczyk was unaware at the time that the two men he hired were undercover law enforcement officers.

Grzegorczyk met the men at a fast-food restaurant in Chicago two weeks later to put his plan in motion. After meeting them in the parking lot of the restaurant, he got into their vehicle and directed them to the residences of his intended victims. Grzegorczyk produced photographs of some of his intended victims and described them in more detail. He also provided license plate numbers for two of the intended victims' vehicles. Grzegorczyk told the men that he wanted the murders completed before June 2012 because he would have an alibi during that time. He agreed to a $3,000 down payment for the murders.

The following week, Grzegorczyk met the men for a final time. He entered their vehicle again, this time carrying a small duffle bag. Grzegorczyk showed the men photos of additional individuals he wanted murdered, bringing the total to six. Grzegorczyk then opened the duffle bag and gave the undercover officers $3,000 in cash as the down payment he had promised. He also showed them the remaining contents of the bag: $45,000 in cash that he intended to pay upon completion of the murders, a 9mm semi-automatic handgun, and two magazines loaded with 40 live rounds of ammunition. Grzegorczyk left the officers' vehicle and returned to his car. He was then arrested.

B. Procedural Background

On July 17, 2014, Grzegorczyk pled guilty to one count of murder-for-hire in violation of 18 U.S.C. § 1958(a) and one count of possession of a firearm in furtherance of a crime of violence in violation of 18 U.S.C. § 924(c)(1)(A). Pursuant to the written plea agreement, Grzegorczyk waived, among other rights, the right to "all appellate issues that might have been available if he had exercised his right to trial." Under the agreement, he could only appeal the validity of his guilty plea and the sentence imposed. On October 24, 2014, the district court imposed a within-Guidelines sentence of 151 months for the murder-for-hire offense, and a consecutive 60 months for the firearm offense. We affirmed that sentence on appeal. *United States v. Grzegorczyk*, 800 F.3d 402 (7th Cir. 2015).

That same year, the Supreme Court decided *Johnson v. United States*, invalidating as unconstitutionally vague the definition of a "violent felony" under the residual clause of the Armed Career Criminal Act. 576 U.S. 591, 606 (2015); *see* 18 U.S.C. § 924(e)(2)(B)(ii). The Court later extended the logic

of *Johnson* to the residual clause of § 924(c), invalidating the definition of "crime of violence" in that statute's residual clause as unconstitutionally vague. *United States v. Davis*, 139 S. Ct. 2319 (2019); *see* § 924(c)(3)(B). Following *Davis*, a § 924(c) conviction based on a crime of violence may rely only on the statute's "elements clause." *See* § 924(c)(3)(A).

Grzegorczyk petitioned the district court pursuant to 28 U.S.C. § 2255 for relief from his § 924(c) conviction in light of *Johnson* and *Davis*.* The district court denied relief, finding that Grzegorczyk waived his *Johnson* challenge when he pled guilty to a crime of violence. *United States v. Grzegorczyk*, No. 1-16-cv-08146, 2018 WL 10126077, at *1 (N.D. Ill. Oct. 17, 2018). The court did not address the merits of his claim. Grzegorczyk timely appealed.

II. Discussion

On appeal, Grzegorczyk asks us to vacate his § 924(c) conviction and remand for resentencing because, after *Johnson* and *Davis*, a predicate crime of violence must be a felony that satisfies § 924(c)'s elements clause and, he asserts, murder-for-hire is not such a felony. We agree with the district court that Grzegorczyk waived this challenge to the legal sufficiency of the § 924(c) charge by pleading guilty. Thus, we need not decide whether murder-for-hire is a crime of violence under § 924(c)(3)(A).

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* *Davis* had not yet been decided when Grzegorczyk filed his § 2255 petition, but he argued—and we had already held—that *Johnson*'s reasoning extended to the definition of "crime of violence" in § 924(c)(1)(B). *United States v. Cardena*, 842 F.3d 959, 996 (7th Cir. 2016).

We denied similar challenges in *Davila v. United States*, 843 F.3d 729 (7th Cir. 2016), and *United States v. Wheeler*, 857 F.3d 742 (7th Cir. 2017). In *Davila*, the petitioner pled guilty to conspiring to commit robbery in violation of the Hobbs Act, 18 U.S.C. § 1951, and to violating § 924(c)'s residual clause by possessing a firearm in connection with the planned robbery and in connection with a separate drug trafficking crime. Following *Johnson*, he filed a § 2255 petition seeking relief from his § 924(c) conviction on the theory that conspiracy to commit robbery could only be considered a crime of violence under § 924(c)'s residual clause. We rejected Davila's arguments and held that Davila had relinquished his right to challenge his § 924(c) conviction as a condition of his plea agreement. *Davila*, 843 F.3d at 732. Absent a lack of subject-matter jurisdiction or a constitutional problem with "the very institution of the criminal charge," Davila's guilty plea foreclosed his collateral attack. *Id.* at 733 (citing *United States v. Broce*, 488 U.S. 563, 569 (1989)).

We addressed an almost-identical challenge in *Wheeler*, where we reiterated that a criminal defendant who pleads guilty to a § 924(c) charge cannot automatically "reopen the subject and ask a court of appeals to upset the conviction" based on *Johnson*. 857 F.3d at 744. To the contrary, "an unconditional guilty plea waives any contention that an indictment fails to state an offense." *Id.* at 745.

Grzegorczyk pled guilty. In doing so, he admitted to knowingly using a facility of interstate commerce with intent that a murder be committed in violation of 18 U.S.C. § 1958(a), as well as to "possession of a firearm, in furtherance of a crime of violence,"—murder-for-hire—in violation of § 924(c)(1)(A). Grzegorczyk's challenge to his § 924(c) conviction is the exact

type of claim we deemed waived by an unconditional guilty plea in *Davila* and *Wheeler*. Indeed, his argument that murder-for-hire cannot be deemed a crime of violence "not only *could* have been presented by pretrial motion but also *had* to be so presented under Fed. R. Crim. P. 12(b)(3)(B)(v), which provides that 'failure to state an offense' is the sort of contention that 'must' be raised before trial." *Id.* at 744. Grzegorczyk acknowledges as much. Undeterred, he asks that we overrule those cases in light of the Supreme Court's more recent decision in *Class v. United States*, 138 S. Ct. 798 (2018).

In *Class*, the defendant pled guilty to possession of a firearm on U.S. Capitol grounds in violation of 40 U.S.C. § 5104(e) after he left a firearm locked in his car parked in a lot on the grounds of the Capitol. He expressly waived several rights by the terms of the plea agreement, but nonetheless appealed his conviction on the grounds that the statute violated the Second Amendment and the Due Process Clause. The Supreme Court reversed the D.C. Circuit's decision to dismiss Class's claims as waived, stressing that his claims "challenge[d] the Government's power to criminalize Class' (admitted) conduct." *Class*, 138 S. Ct. at 805. The Court explained that while, in general, "a valid guilty plea relinquishes any claim that would contradict the admissions necessarily made upon entry of a voluntary plea of guilty,'" *id.* (quoting *Broce*, 488 U.S. at 573–74), Class's claims were different. In challenging the constitutional validity of his conviction, he did "not in any way deny that he engaged in the conduct to which he admitted." *Id.*

Here, unlike in *Class*, Grzegorczyk's claim *does* contradict the terms of his plea agreement. *See id.* at 804. In Grzegorczyk's written plea agreement, he specifically admitted that he "knowingly possessed a firearm, namely, a Taurus PT99

9mm semi-automatic pistol, in furtherance of a crime of violence"—murder-for-hire—in violation of § 924(c)(1)(A). Although *Davis* invalidated the residual clause's definition of a crime of violence, it left the elements clause intact. Grzegorczyk's conviction thus remains constitutionally permissible as long as murder-for-hire falls within the definition of a crime of violence under the elements clause. Grzegorczyk does not disagree, but nonetheless asserts that his challenge is constitutional in nature because, he argues, murder-for-hire is not a crime of violence under the elements clause.

Grzegorczyk misunderstands *Class* to mean that even though he pled guilty, he may nonetheless raise a constitutional challenge to his conviction, as long as his claim does not contradict the terms of the plea agreement (which, as we have explained, it does) and can be resolved by the facts in the record. We do not find *Class* so broad. Indeed, we recently rejected this argument in *Oliver v. United States*, 951 F.3d 841 (7th Cir. 2020). There, petitioners pled guilty to charges under § 924(c) for brandishing a firearm during a crime of violence—theft from a federally licensed firearm dealer in violation of 18 U.S.C. § 922(u). *Oliver*, 951 F.3d at 843. The petitioners sought relief pursuant to § 2255, arguing that, after *Davis*, theft from a federally licensed firearm dealer no longer counted as a crime of violence sufficient to sustain a conviction under § 924(c). Relying on *Class*, the petitioners asserted that their claims were nonwaivable because they challenged the constitutionality of the statute of their convictions. We determined, however, that "*Class* is not as sweeping as [petitioners] contend," and dismissed their petitions as waived. *Id.* at 846.

Class, we explained, held only that "a guilty plea, *by itself*, does not implicitly waive a defendant's right to challenge the constitutionality of his statute of conviction." *Id.* But as we have also explained, an unconditional plea of guilty *is* sufficient to waive a defendant's right to contest the proper interpretation of the statute of conviction. *See Wheeler*, 857 F.3d at 744–45. Here, as in *Wheeler*, Grzegorczyk does not maintain that § 924(c) is invalid. *See id*. at 745. He has not challenged the government's power to criminalize his admitted conduct. *See Class*, 138 S. Ct. at 805. Instead, Grzegorczyk merely asserts that murder-for-hire is not a "crime of violence" under the elements clause. This is an issue of statutory construction, not a claim of constitutional immunity from prosecution. *See Wheeler*, 857 F.3d at 745. As we have explained before, an unconditional guilty plea implicitly waives such challenges. *See id.* ("[A]n unconditional guilty plea waives any contention that an indictment fails to state an offense."); *see also United States v. Grayson Enterprises, Inc.*, 950 F.3d 386, 402 (7th Cir. 2020). Grzegorczyk's claim is waived.

In a final attempt to avoid waiver, Grzegorczyk challenges the validity of his plea altogether. A valid guilty plea is one that a criminal defendant has made voluntarily and intelligently. *See Bousley v. United States*, 523 U.S. 614, 618 (1998). An "intelligent" plea requires that the defendant have "real notice of the true nature of the charge against him." *Id.* Grzegorczyk argues that because *Johnson* and *Davis* changed the scope of conduct supporting a conviction under § 924(c), he lacked "real notice" of the charges against him when he entered his plea agreement in 2014.

Grzegorczyk faces two procedural obstacles in challenging the validity of his plea. First, he did not attack the validity

of his plea on direct appeal. Thus, he may only raise the issue in a § 2255 petition if he "can first demonstrate either 'cause' and actual 'prejudice,' or that he is 'actually innocent.'" *Bousley*, 523 U.S. at 622 (citations omitted). He has failed to do so. Second, Grzegorczyk did not raise this issue in his § 2255 petition before the district court. He asserts this argument for the first time on appeal. Construing Grzegorczyk's pro se petition liberally, as we must, *see McNeil v. United States*, 508 U.S. 106, 113 (1993), Grzegorczyk did not raise any arguments suggesting he was contesting the validity of his plea in his § 2255 petition. This second default is decisive—the issue is waived. That is because Grzegorczyk "has made no attempt to demonstrate why his case qualifies as one of these 'rare civil case[s] where exceptional circumstances exist'" warranting plain-error review. *S.E.C. v. Yang*, 795 F.3d 674, 679 (7th Cir. 2015) (quoting *Jackson v. Parker*, 627 F.3d 634, 640 (7th Cir. 2010)); *see also Bourgeois v. Watson*, 977 F.3d 620, 629–30 (7th Cir. 2020).

Even if we were to consider Grzegorczyk's claim forfeited rather than waived and review for plain error, his plea-withdrawal argument still fails. Grzegorczyk cannot prove that there was any error, let alone one that was "clear and obvious," affected his substantial rights, and that "seriously affects the fairness, integrity, or public reputation of judicial proceedings," as is required to satisfy plain error review. *See United States v. Williams*, 946 F.3d 968, 971 (7th Cir. 2020). A change in the law after a defendant pleads guilty does not change the voluntariness of the plea at the time it was entered and does not justify a defendant withdrawing his plea. *See United States v. Mays*, 593 F.3d 603, 607 (7th Cir. 2010) (highlighting defendant's inability to "point to any authority that holds that the mere possibility of a change in Supreme Court precedent is a fair and just reason for withdrawal of a guilty

plea"). Grzegorczyk has long waived his right to contest the validity of his plea agreement, and in any event, cannot demonstrate any error justifying withdrawal of the agreement.

III. Conclusion

Grzegorczyk pled guilty to possession of a firearm in furtherance of a crime of violence, murder-for-hire, in violation of § 924(c). By unconditionally pleading guilty, he waived his right to challenge the legal sufficiency of the § 924(c) charge.

AFFIRMED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

United States of America	)	
	)	
	)	
v.	)	No. 16 CV 8146
	)	(No. 12 CR 320)
	)	
	)	
Zenon Grzegorczyk,	)	
	)	
Defendant.	)	
	)	

Memorandum Opinion and Order

Zenon Grzegorczyk was charged with three counts of using a facility of interstate commerce with intent that a murder be committed, in violation of 18 U.S.C. § 1958(a), and one count of possessing a firearm in furtherance of a crime of violence, in violation of 18 U.S.C. § 924(c)(1)(A). Pursuant to a written agreement, petitioner pled guilty to one of the § 1958(a) counts (Count Three) and the § 924(c) count (Count Four), and the government agreed to dismiss the remaining charges after sentencing. In his plea, petitioner admitted that he "knowingly possessed a firearm...in furtherance of a crime of violence" as charged in Count Three. Petitioner expressly waived his right to appeal his conviction, agreeing that he "may only appeal the validity of this plea of guilty and the sentence imposed." I imposed a sentence of 151 months of confinement on the first

offense and a consecutive 60 months on the second. Petitioner appealed his sentence and the Seventh Circuit affirmed. *U.S. v. Grzegorczyk*, 800 F. 3d 402 (7th Cir. 2015). Before me is petitioner's 28 U.S.C. § 2255 motion to vacate his sentence. The motion is denied for the reasons explained below.

Petitioner argues that his § 924(c)(1) conviction is invalid because it depends on the "residual clause" of § 924(c)(3)(B), which is constitutionally indistinguishable from the residual clause the Supreme Court held unconstitutional in *Johnson v. United States*, 135 S. Ct. 2551 (2015) (residual clause of sentencing enhancements in the Armed Career Criminals Act void for vagueness). Indeed, the Seventh Circuit so held in *United States v. Cardena*, 842 F.3d 959, 995–96 (7th Cir. 2016) (*Johnson* invalidates residual clause of § 924(c)(3)(B)). Accordingly, had petitioner been convicted after a jury trial, he might have had a leg to stand on under § 2255. But that relief is unavailable to him because he pled guilty to a crime of violence, thereby waiving his *Johnson* challenge.[1] *United States v. Wheeler*, 857 F.3d 742, 744 (7th Cir. 2017) (defendant who pled guilty to attempted Hobbs Act robbery and a § 924(c)(1) offense waived argument that indictment did not

[1] Although I stayed briefing on the petition at the government's request pending the Supreme Court's decision in *Sessions v. Dimaya*, 138 S. Ct. 1204 (2018), which held the identically worded residual clause of 18 U.S.C. § 16(b) unconstitutionally vague, *Dimaya* does not disturb the ground on which I conclude that petitioner is ineligible for relief.

charge a "crime of violence," regardless of the fact that *Cardena* post-dated his guilty plea); *Davila v. United States*, 843 F.3d 729, 731-32 (7th Cir. 2016) (explaining that *Brady v. United States*, 397 U.S. 742 (1970), and *United States v. Broce*, 488 U.S. 563 (1989), precluded defendant who pled guilty to Hobbs Act conspiracy and a § 924 (c)(1) offense from relying on *Johnson* and *Cardena* to upset his conviction). Citing the Seventh Circuit's unequivocal holdings of these cases—which it has reiterated in a subsequent, non-precedential order, *United States v. Starwalt*, No 16-3505, 701 F. App'x 508 (7th Cir. Nov. 14, 2017)—several lower courts have denied *Johnson* relief to defendants seeking to vacate their sentences after pleading guilty to § 924(c)(1) charges predicated on crimes of violence. *Mediate v. United States*, 2018 WL 1366689, at *6 (S.D. Ind. Mar. 16, 2018); *United States v. Pullia*, Nos. 16 C 6450, 16 C 6455, 16 C 7631, 2017 WL 5171218, at *5-*6 (N.D. Ill. Nov. 8, 2017); *Pena v. United States*, No. 16 C 2239, 2017 WL 2588074, at *4 (C.D. Ill. Jun. 14, 2017); Ward v. United States, 3:16-cv-4640RLM, 2017 WL 784238, at *4 (N.D. Ind. Mar. 1, 2017); *but see United States v. Adams*, 2018 WL 3141829, at *2 (N.D. Ill. Jun. 27, 2018) (vacating sentences of defendants who pled guilty to Hobbs Act conspiracy and § 924(c)(1) offenses under *Johnson* and *Cardena*, but without examining *Wheeler* or *Davila*, which the government did not raise).

Because *Davila* and *Wheeler* are dispositive of petitioner's motion, I need not address the remaining arguments the parties raise.

ENTER ORDER:

Elaine E. Bucklo
United States District Judge

Dated: October 17, 2018

In the

United States Court of Appeals

For the Seventh Circuit

No. 14-3460

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ZENON GRZEGORCZYK,

Defendant-Appellant.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.
No. 12 CR 320 — **Elaine E. Bucklo**, *Judge.*

ARGUED MAY 26, 2015 — DECIDED SEPTEMBER 1, 2015

Before BAUER, KANNE, and WILLIAMS, *Circuit Judges.*

BAUER, *Circuit Judge.* Defendant-appellant, Zenon Grzegorczyk, pleaded guilty to knowingly using a facility of interstate commerce with intent that a murder be committed, in violation of 18 U.S.C. § 1958(a), and to knowingly possessing a firearm in furtherance of a crime of violence, in violation of 18 U.S.C. § 924(a)(1)(A). The district court sentenced Grzegorczyk to a within-Guidelines sentence of 151 months, plus 60 months' imprisonment to run consecutively, for a total

sentence of 211 months' imprisonment. Grzegorczyk appeals his sentence, arguing that the district court (1) erred in refusing to apply § 2X1.1 of the United States Sentencing Commission Guidelines Manual to reduce his Guidelines calculation by 3 levels; (2) erred in failing to consider his mental health at the time of the offense; and (3) imposed a substantially unreasonable sentence. We affirm.

I. BACKGROUND

In April 2012, Grzegorczyk met with two undercover law enforcement officers posing as gun suppliers in order to procure firearms to ship to Poland. At some point during the conversation, Grzegorczyk asked the men to step outside, where he proceeded to tell them that he wanted to have killed certain individuals who he held responsible for his divorce and the loss of custody of his son. He explained that he would kill them himself, but that he needed an alibi. He also told the agents that another individual had offered to do the job for $2,000 per person, but that he didn't trust that person. The agents agreed to kill two individuals in exchange for $5,000 per person.

At the next meeting between the agents and Grzegorczyk, which took place a couple of weeks later, Grzegorczyk got into the agents' car and directed them toward the residences of his ex-wife and of two of his intended victims. He also showed the agents photographs of at least three individuals who he wanted killed, provided the agents with descriptions and license plate numbers of two of the intended victims' vehicles, and told the agents that he wanted the murders to be completed before a wedding in early June 2012, which the intended

victims were expected to attend. He then confirmed the $5,000 price per person and noted that, since there could be no witnesses, the number of victims could change depending on who was present when the agents arrived to kill the victims.

On May 2, 2012, Grzegorczyk met the agents and presented them with several photographs of additional victims who he wanted murdered, explaining that he wanted a total of six people killed. He told the agents that he wanted them to complete the murders carefully and reiterated the need for no witnesses. He then opened the duffle bag that he had carried with him, which contained $45,000 in cash, a 9mm semi-automatic firearm, and two magazines loaded with forty live rounds of ammunition. He showed the agents the contents of the bag and gave them $3,000 as a down payment for the murders. He also informed the agents that he intended to leave for Poland on June 8, 2012, and that the trip would provide his alibi for the murders.

On May 30, 2012, a federal grand jury returned a four-count indictment against Grzegorczyk, charging him with three counts of knowingly using a facility of interstate commerce with intent that a murder be committed, in violation of 18 U.S.C. § 1958(a) (Count 1 through Count 3), and one count of possession of a firearm in furtherance of a crime of violence, in violation of 18 U.S.C. § 924(c)(1)(A) (Count 4). Pursuant to a plea agreement with the government, Grzegorczyk pleaded guilty to Count 3 and Count 4.

At sentencing, Grzegorczyk's adjusted criminal offense level of 34, combined with his criminal history score of 0, yielded an advisory Guidelines range of 151 to 188 months'

imprisonment. Additionally, Grzegorczyk was subject to a 60-month consecutive sentence for the firearms offense in Count 4, bringing his total advisory sentencing range to 211 to 248 months. The government advocated for a sentence toward the middle to high end of the Guidelines range, based on the seriousness of the offense and the need to protect the community. Grzegorczyk urged the district court to impose a sentence of no more than 120 months' imprisonment and five years' supervised release. The district court sentenced Grzegorczyk to 151 months' imprisonment on Count 3, followed by a consecutive 60-month term of imprisonment on Count 4, and imposed a three-year term of supervised release on each count, to be served concurrently. This appeal followed.

II. ANALYSIS

We review the district court's interpretation of the Guidelines *de novo*, and review for clear error the factual determinations underlying the district court's application of the Guidelines. *United States v. Harper*, 766 F.3d 741, 744 (7th Cir. 2014). We review *de novo* procedural errors that occur when a sentencing court "fails to calculate or improperly calculates the [defendant's] Guidelines range, treats the Guidelines as mandatory, fails to consider the § 3553(a) factors, selects a sentence based on clearly erroneous facts, or fails to adequately explain the basis for the chosen sentence." *United States v. Castro-Alvarado,* 755 F.3d 472, 475 (7th Cir. 2014). Finally, we review the substantive reasonableness of a sentence for an abuse of discretion. *United States v. Conley*, 777 F.3d 910, 914 (7th Cir. 2015). Sentences that fall within a properly calculated Guidelines range are presumptively reasonable. *Id*.

A. Application of U.S.S.G. § 2X1.1

Grzegorczyk's first argument is that the district court erred in refusing to apply § 2X1.1 of the United States Sentencing Commission Guidelines Manual ("U.S.S.G."), which, if applicable, would have reduced his base offense level by three. Section 2X1.1, titled "Attempt, Solicitation, or Conspiracy (Not Covered by a Specific Offense Guideline)," provides for a three-level decrease for solicitation "unless the person solicited to commit or aid the substantive offense completed all the acts he believed necessary for successful completion of the substantive offense … ." U.S.S.G. § 2X1.1(b)(3)(A). It also states that "when an attempt, solicitation, or conspiracy is expressly covered by another offense guideline section," the sentencing court is to apply *that* Guideline section and not § 2X1.1. *Id.* at (c)(1). The district court held that § 2X1.1 is inapplicable to Grzegorczyk because his offense conduct is covered by another offense Guideline. We agree.

Grzegorczyk's offense conduct is specifically covered by § 2A1.5 ("Conspiracy or Solicitation to Commit Murder"), which, incidentally, is listed in the Application Notes to § 2X1.1 among the specific offense Guidelines that expressly cover solicitation. *See* U.S.S.G. § 2X1.1 cmt. n.1. Grzegorczyk does not appeal the district court's determination that § 2A1.5 applies to the underlying conduct of his offense, nor does he appeal the court's use of this section to calculate his base-offense level. He agrees that his offense conduct is covered by § 2A1.5 but argues that, since the offense was never carried through to completion, he is nevertheless entitled to a three-level reduction under § 2X1.1(b)(3)(A). In support of his argument, Grzegorczyk points to the commentary to § 2X1.1, which

notes that a reduction of three levels is appropriate "where an arrest occurs well before the defendant or any other co-conspirator has completed the acts necessary for the substantive offense." U.S.S.G. § 2X1.1 cmt. background.

Grzegorczyk's argument fails for two reasons. First, it ignores the plain language of § 2X1.1(c)(1), which instructs the court not to apply § 2X1.1 when a solicitation is expressly covered by another offense Guidelines section. Second, it fails to consider the fact that § 2A1.5 already accounts for instances where the acts necessary for the completion of the crime solicited have not occurred. This is evidenced by specific cross reference instructions directing the court to apply § 2A2.1 if the offense resulted in an attempted murder or assault with intent to commit murder (which would yield a base-offense level of 38) or § 2A1.1 if the offense resulted in the death of the victim (which would yield a base-offense level of 43). U.S.S.G. § 2A1.5(c). Accordingly, Grzegorczyk's claim as to the applicability of § 2X1.1(b)(3)(A) to his sentence fails.

B. Grzegorczyk's Arguments in Mitigation

Grzegorczyk's second argument is that his sentence was procedurally unreasonable because the district court failed to properly weigh the § 3553(a) factors in fashioning his sentence. Specifically, Grzegorczyk contends that the district court did not carefully or completely consider the evidence of his mental health status at the time of the offense and the impact of the subsequent trauma that he suffered at the Metropolitan Correctional Center.

At sentencing, the district court is obligated to consider the § 3553(a) factors and provide a record for us to review, but it is

not required to comprehensively discuss each of the factors. *United States v. Moreno-Padilla*, 602 F.3d 802, 811 (7th Cir. 2010). The court is also not required to discuss each factor in checklist fashion, *United States v. Dean*, 414 F.3d 725, 729 (7th Cir. 2005), nor extensively address non-principal arguments or "stock arguments that sentencing courts see routinely," *United States v. Tahzib*, 513 F.3d 692, 695 (7th Cir. 2008). *See also United States v. Shannon*, 518 F.3d 494, 496 (7th Cir. 2008) ("The court need not address every § 3553(a) factor in checklist fashion, explicitly articulating its conclusions regarding each one. Instead the court may simply give an adequate statement of reasons, consistent with § 3553(a), for thinking the sentence it selects is appropriate" (internal citations omitted)).

In this case, the sentencing transcript shows that the district court gave adequate consideration to Grzegorczyk's principal argument in mitigation, in accordance with § 3553(a). The principal argument advanced by Grzegorczyk at sentencing was that his conduct was not emblematic of how he "normally behaves." In support of this point, Grzegorczyk argued that his actions were brought on by the emotional trauma of his recent divorce, his history of alcoholism and a personality disorder, which was diagnosed by the doctor who evaluated his competency, Dr. Ostrov.[1] Contrary to Grzegorczyk's contention, however, the district court clearly considered this information in fashioning Grzegorczyk's sentence. After noting several mitigating factors, including the fact that Grzegorczyk had no

[1] Although Dr. Ostrov determined that Grzegorczyk was competent, Grzegorczyk argued that his personality disorder made him act out of character and behave irrationally.

criminal history and had received letters of support from many people, the court acknowledged his history of alcoholism and personality disorder. The court noted that they were both factors that it would weigh. However, the court found that Grzegorczyk was very serious about the murders he solicited the undercover agents to commit. Furthermore, Grzegorczyk committed the offense at age fifty-one—an age where, in the district court's opinion, individuals have more control over their emotions and are mature enough to think about the long-term consequences of their actions. Thus, even considering Grzegorczyk's lack of criminal history and the low rate of recidivism among his age group, the court found that his particular characteristics cut against his argument that his behavior would never manifest itself again. From the record before us, therefore, it is apparent that the court considered Grzegorczyk's arguments in mitigation, in light of the other § 3553(a) factors, and determined that any mitigating aspects of the defendant's mental health or conduct were outweighed by the seriousness of the offense and risk to the public.

C. Reasonableness of Grzegorczyk's Sentence

Grzegorczyk's final argument on appeal is that the district court imposed a substantively unreasonable sentence of 211 months' imprisonment in light of his age, risk of recidivism, and need for rehabilitation. Since Grzegorczyk received a within-Guidelines sentence, which carries a presumption of reasonableness, he must overcome a hefty burden to prove its unreasonableness. *See Castro-Alvarado*, 755 F.3d at 477; *United States v. Dachman*, 743 F.3d 254, 263 (7th Cir. 2014). To rebut this presumption he must demonstrate that his sentence is unreasonable when measured against the factors set forth in

§ 3553(a). *United States v. Nitch*, 477 F.3d 933, 937 (7th Cir. 2007); *United States v.* Mykytiuk, 415 F.3d 606, 608 (7th Cir. 2005). Because he has not offered a valid basis for rebutting the presumption of reasonableness that the within-Guidelines sentence enjoys, his final argument fails.

AFFIRMED