

NOT RECOMMENDED FOR PUBLICATION
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No. 26-5021

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Oct 02, 2026
KELLY L. STEPHENS, Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

BRANDON FARLEY,

Defendant-Appellant.

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ON APPEAL FROM THE
UNITED STATES DISTRICT
COURT FOR THE EASTERN
DISTRICT OF KENTUCKY

OPINION

Before: BOGGS, GILMAN, and BUSH, Circuit Judges.

BOGGS, Circuit Judge. A jury found Brandon Farley guilty on two counts of producing child pornography, in violation of 18 U.S.C. § 2251(a). The district court subsequently sentenced him to a total of 720 months of imprisonment. Farley now appeals his sentence. For the reasons that follow, we affirm.

I

In the summer of 2017, Brandon Farley, then thirty-four years old, began engaging in various sexual activities with the victim, a then-thirteen-year-old girl. Law-enforcement officials learned of Farley's criminal activities several months later, when the victim's uncle advised them that he had discovered a photograph on the victim's cell phone depicting the victim and Farley engaging in sexual activity.

A subsequent forensic analysis of Farley's phone revealed more than a dozen additional photographs of Farley and the victim engaged in sexual activity. Several of these photographs depicted the victim either partially or fully nude.

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At trial, the victim testified that she first turned to Farley, the father of her best friend, for support and guidance because her “mom was on drugs and [she] didn’t really feel comfortable being around her whenever she was” using drugs. She further stated that she considered Farley to be a “like a father,” “considering at that time [her] dad was in jail.” She clarified that her relationship with Farley initially did resemble that of a “father” and “daughter,” but it rapidly became a sexual relationship.

At sentencing, the district court determined that Farley’s final offense level was 43. It arrived at this figure by starting at a base offense level of 32 for each count of producing child pornography and applying four separate two-level enhancements: an enhancement for the age of the victim; an enhancement because Farley committed a “sex act” with the victim; an enhancement because Farley and the victim were in a custodial relationship; and, most relevant here, an enhancement because Farley knew or should have known that the victim, given her familial circumstances, was a “vulnerable victim.”

The district court then went through the multiple-count-adjustment process described in Chapter 3 of the Sentencing Guidelines. The district court explained that “[b]ecause of the nature of th[e] counts, they are grouped . . . in a way that reflects whether the number of counts should affect the ultimate offense level here.” Since each count carried the same adjusted offense level of 40, the district court applied a two-level increase under USSG § 3D1.4 to arrive at a combined adjusted offense level of 42.

Next, the district court applied a five-level enhancement because Farley had engaged in a “pattern” of sexual conduct with the victim and therefore qualified as a “repeat and dangerous sex offender,” resulting in an offense level of 47. Finally, the district court explained that because the

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Sentencing Guidelines did not contemplate an offense level greater than 43, Farley’s ultimate offense level would be reduced to that number.

The district court next stated that, based on the calculated offense level and Farley’s criminal-history category of I, the Sentencing Guidelines recommended that the district court sentence him to life in prison. But because 18 U.S.C. § 2251(a) provides for a thirty-year maximum sentence, the district court sentenced Farley to thirty years of imprisonment for each count, with the sentences to run consecutively. *See* USSG § 5G1.1(a) (“Where the statutorily authorized maximum sentence is less than the minimum of the applicable guideline range, the statutorily authorized maximum sentence shall be the guideline sentence.”).

On appeal, Farley argues that his sentence is both procedurally and substantively unreasonable. We review challenges to the reasonableness of a sentence under the abuse-of-discretion standard. *United States v. Brown*, 579 F.3d 672, 677 (6th Cir. 2009).

PROCEDURAL UNREASONABLENESS

“A sentence is procedurally unreasonable if, among other things, the district court fails to calculate or improperly calculates the [Sentencing] Guidelines range.” *United States v. Mack*, 808 F.3d 1074, 1084 (6th Cir. 2015) (citation modified). Nevertheless, our circuit “ha[s] held that even if a district court commits procedural error, the sentence will not be vacated if the error was harmless.” *United States v. Gates*, 48 F.4th 463, 470 (6th Cir. 2022). An error is harmless if “the record shows that the district court would have imposed its sentence regardless of” its procedural error. *United States v. Morrison*, 852 F.3d 488, 491 (6th Cir. 2017). Farley argues that the district

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court erroneously applied the two-level vulnerable-victim enhancement, resulting in an incorrectly-calculated Sentencing Guidelines range. *See* Appellant Br. at 8-10.

With or without the vulnerable-victim enhancement, Farley’s offense level would have been 43, the “maximum under the Sentencing Guidelines.” *United States v. Castro*, 960 F.3d 857, 867 (6th Cir. 2020). Before being reduced to the maximum offense level of 43, Farley’s offense level was 47. If the contested enhancement were removed, his offense level would have been 45, and thus still constrained to the maximum level of 43. The district court explained this when overruling Farley’s objection to applying the enhancement at sentencing by “not[ing] that [its] ruling doesn’t make any difference on the ultimate guideline calculation because of where Mr. Farley falls. Two [levels in] either direction don’t change the ultimate calculation.” Thus, had any error occurred in applying the vulnerable-victim enhancement, the error was harmless and does not require resentencing. *United States v. Faulkner*, 926 F.3d 266, 275 (6th Cir. 2019).

In any event, the district court did not err in applying the vulnerable-victim enhancement. “Section 3A1.1(b) of the Sentencing Guidelines provides for a two-level enhancement in instances where ‘the defendant knew or should have known that a victim of the offense was a vulnerable victim.’” *United States v. Volkman*, 797 F.3d 377, 398 (6th Cir. 2015). “A vulnerable victim is someone who ‘is unusually vulnerable due to age, physical or mental condition, or who is particularly susceptible to the criminal conduct.’” *United States v. Olive*, 804 F.3d 747, 759 (6th Cir. 2015) (quoting USSG § 3A1.1, cmt. n.2). Farley contends that the victim was not unusually vulnerable because she was neither physically nor mentally handicapped, “was no less capable of

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resisting the offense than a typical victim,” and was “free to leave [Farley’s] home” in the absence of a “court order that mandated that [she] remain with [him] in his home.” Appellant Br. at 8-9.

Farley cites no case law or Sentencing Guidelines provision that requires a victim to be either physically or mentally handicapped to qualify as unusually vulnerable. *See ibid.* His remaining arguments—that the victim was no less capable of resisting than a typical victim, and that she was free to leave his home—are contradicted by the district court’s factual findings, which are supported by the record and not clearly erroneous, *see United States v. O’Lear*, 90 F.4th 519, 536 (6th Cir. 2024). The district court concluded that the victim “had nowhere safe to turn” and was “particularly susceptible to exploitation” because her mother was engaged in “regular drug abuse” and “her dad [wa]s in prison.” Although the district court recognized that the victim “wasn’t technically homeless,” it emphasized that she “wasn’t comfortable being at home [where] her mother was using drugs,” and had, as a result, “essentially . . . quit going home.” We have found the vulnerable-victim enhancement applicable under similar circumstances. *See, e.g., United States v. Willoughby*, 742 F.3d 229, 241 (6th Cir. 2014) (vulnerable-victim enhancement properly applied where victim “was especially vulnerable for reasons other than her age—including that she was a homeless runaway with a history of abuse and neglect”); *United States v. Murphy*, No. 23-3817, 2025 WL 2658285, at *4 (6th Cir. Mar. 18, 2025) (vulnerable-victim enhancement properly applied where victim “was a minor, a runaway (due to conflicts with her mother), and a substance abuser”). We see no reason to depart from our past practice here.

SUBSTANTIVE UNREASONABLENESS

“For a sentence to be substantively reasonable, it must be proportionate to the seriousness of the circumstances of the offense and offender, and sufficient but not greater than necessary, to comply with the purposes of [18 U.S.C.] § 3553(a).” *United States v. Vowell*, 516 F.3d 503, 512

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(6th Cir. 2008) (quotation marks omitted). Where, as here, a sentence falls within the applicable Sentencing Guidelines range, we presume that sentence to be substantively reasonable unless the defendant can show otherwise. *United States v. Vonner*, 516 F.3d 382, 389-90 (6th Cir. 2008) (en banc). Farley argues that the district court’s alleged failure to give adequate weight to his employment history and prior lack of criminal history resulted in a sentence “that is vastly greater than necessary to achieve the goals of justice.” Appellant Br. at 12; *see* 18 U.S.C. § 3553(a).

We disagree. The district court sufficiently weighed both Farley’s employment history and previous lack of criminal history. Indeed, it “acknowledge[d]” that Farley had “been a good worker.” The district court next observed that Farley was “largely law abiding,” but that he was “certainly capable of the most dramatic detours in the wrong direction.” After considering Farley’s employment and criminal histories as well as the remainder of the sentencing factors listed in 18 U.S.C. § 3553(a), the district court imposed the statutory-maximum sentence of 720 months. In doing so, the district court twice emphasized the need to protect the public from Farley, given his “willing[ness] to do the worst” and the concomitant lack of a “setup that would keep him away from a situation of exploitation.”

The district court meticulously considered and appropriately weighed the statutory factors. *See* 18 U.S.C. § 3553(a); *Brown*, 579 F.3d at 687 (“It was within the court’s discretion to emphasize the need to protect young children” in a child-pornography case.). Accordingly, it did not abuse its discretion in concluding that a 720-month sentence was warranted.

CONCLUSION

We **AFFIRM** the district court’s sentence.