

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Argued November 18, 2022

Decided December 6, 2022

*Before*MICHAEL B. BRENNAN, *Circuit Judge*THOMAS L. KIRSCH II, *Circuit Judge*JOHN Z. LEE, *Circuit Judge*

No. 22-1258

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

DEJON IRVING,
Defendant-Appellant.

Appeal from the United States District
Court for the Northern District of Illinois,
Eastern Division.

No. 1:20-CR-00532(1)

Ronald A. Guzmán,
Judge.

ORDER

Dejon Irving pleaded guilty to unlawful possession of a firearm, 18 U.S.C. § 922(g)(1), and was sentenced to 72 months in prison—24 months above the Sentencing Guidelines range. On appeal, he challenges the court’s basis for imposing an above-guidelines sentence and particularly its emphasis on gun-related violence in Chicago at large. But because the district court adequately justified its sentence, we affirm.

I.

The facts underlying this case arise out of Irving's arrest for unlawful firearm possession while on federal supervised release. (He had recently served two years for aggravated identity theft.) Irving, while walking in Chicago's Wicker Park neighborhood, spotted police and fled. He caught the attention of the police, who knew him to have several active warrants for his arrest for violating parole. While fleeing, he fell climbing over a fence and was taken into custody. In his waistband, police found a loaded handgun with an extended magazine. They also found items that he had dropped during his flight: car keys belonging to a stolen vehicle and bottles containing promethazine-codeine (a controlled substance). Police then searched the vehicle and found two fraudulent driver's licenses, four ecstasy pills, and checks and credit cards.

Because of his prior felony, Irving was charged with, and pleaded guilty to, one count of unlawfully possessing a firearm. *See* 18 U.S.C. 922(g)(1). At the sentencing hearing, the court calculated Irving's guidelines range at 37 to 46 months based on an offense level of 17 and criminal history category of IV. In determining Irving's offense level, the court assessed a base offense level of 20—because the gun had a large-capacity magazine, U.S.S.G. § 2K2.1(a)(4)(B)—but rejected the probation officer's recommendation that Irving receive a 4-level enhancement under U.S.S.G. § 2K2.1(b)(6)(B) for possessing the firearm “in connection with another felony offense.”

Irving requested a sentence at the low end of the guidelines range. He argued that his prior convictions (e.g., identity theft, bank fraud, and narcotics possession) were almost entirely non-violent and that he had no history of gang violence. Irving also stated that, shortly before his release from prison, his one-year-old child had been shot in the head; Irving said the shooting traumatized him and compelled him to carry a gun for personal protection. Finally, Irving asserted that his strong family support made him a good candidate for rehabilitation.

The district court concluded that the guidelines range in this case was inadequate to deter this type of crime today in Chicago, and sentenced Irving above the calculated range to 72 months. Addressing the sentencing factors under 18 U.S.C. § 3553(a), the court explained that Irving's extensive criminal history spoke to one “who is totally out of control”: Irving already had racked up felony convictions in seven different states—a situation the judge had seen “only once in my career on the bench ... it is extremely rare, extremely rare.” Irving had violated his supervision or probation “on every single one of these occasions” and “shown no desire or capacity of rehabilitation.” He was, the

court added, “a danger to whatever community he inhabits. He carries guns. He cares not [what] the law is—whether he is on supervision or probation. It is a sad history.” Turning to the danger that Irving posed to the city, the court emphasized the need to deter “this particular type of offense at this time in the city’s history.” After recounting examples of gun violence in Chicago, including highway shootings, carjackings, and injury to innocent bystanders and children, the court expressed “a need to send a message to others like this defendant who ... are causing a totally unacceptable level of gun violence.”

II.

The crux of Irving’s argument on appeal is that the court ignored the non-violent nature of his gun-possession offense and justified its sentence primarily on the city’s need to deter gun violence. This emphasis, he says, “placed too much blame for Chicago’s problems at [his] feet,” and sentencing requires that an assessment be individualized.

Our review of sentencing determinations, however, is deferential, and here the court’s sentence reflected an appropriate exercise of discretion. *Gall v. United States*, 552 U.S. 38, 51 (2007). The court adequately justified its sentence with reference to specific factors under § 3553(a). The court highlighted the circumstances of the offense (Irving’s flight from police), specific deterrence (Irving had an extensive criminal history at a young age, and his previous incarceration did not deter further criminal activity), and Irving’s personal history and characteristics (he committed repeated offenses while on probation). And while the court devoted considerable attention to locality-based factors, it is allowed to do so, as long as the court appropriately applied the § 3553(a) factors as it did here. *See United States v. Hatch*, 909 F.3d 872, 875 (7th Cir. 2018) (affirming an above-guidelines sentence where the court “situated [the defendant’s] offense against ... observations about widespread gun violence in Chicago”). Even if the court’s consideration of general deterrence were improper in this case (it wasn’t), the court provided ample other reasons to support Irving’s sentence. *See United States v. Bradley*, 675 F.3d 1021, 1026 (7th Cir. 2012).

Irving’s remaining arguments are meritless. First, he argues that the court’s explanation for its sentence did not satisfy the statutorily prescribed “parsimony principle”—i.e., that a sentence be sufficient, but not greater than necessary to achieve legitimate sentencing objectives. 18 U.S.C. § 3553(a). But we may presume that a sentence complies with the parsimony principle when the transcript reflects that the

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district court—as here—properly applies the § 3553(a) factors. *United States v. Swank*, 37 F. 4th 1331, 1334 (7th Cir. 2022).

Irving also argues that his sentence creates unwarranted sentencing disparities, which is prohibited by § 3553(a)(6). He asserts that the district judge repeatedly gives above-guidelines sentences for those convicted of illegal possession of a gun. Irving also points out that fewer than 5% of people in his guideline range (firearm conviction, final offense level of 17, and criminal history category of IV) receive above-guidelines sentences. But “[t]he key word [in § 3553(a)(6)] is unwarranted,” and so long as the court carefully considers the guidelines range before an upward departure, as it did here, it avoids unwarranted disparities. *United States v. Bridgewater*, 950 F.3d 928, 936 (7th Cir. 2020) (citations omitted).

Irving then argues that the district court failed to meaningfully consider his mitigation arguments, including his possible post-traumatic stress disorder after his child was shot, his concerns for self-defense, and his drug dependency. But he waived these arguments when he assured the court, in response to the court’s questioning, that it had not missed any mitigation arguments. *United States v. Brown*, 932 F.3d 1011, 1019–20 (7th Cir. 2019). Regardless, Irving’s argument seems to challenge the weight that the court gave the § 3553(a) factors—a challenge that we have repeatedly rejected. *See United States v. Dickerson*, 42 F. 4th 799, 807 (7th Cir. 2022).

Finally, Irving asserts that his sentence is substantively unreasonable because the court’s desire to “send a message” about the dangers of gun violence lacks empirical support. But § 3553(a)(2)(B) specifically permits judges to consider general deterrence, so the court’s focus on deterring others was reasonable. *See United States v. Sunmola*, 887 F.3d 830, 842 (7th Cir. 2018).

AFFIRMED