

NONPRECEDENTIAL DISPOSITION

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

Argued July 10, 2024

Decided July 30, 2024

BeforeMICHAEL Y. SCUDDER, *Circuit Judge*DORIS L. PRYOR, *Circuit Judge*JOSHUA P. KOLAR, *Circuit Judge*

No. 23-2856

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

DEVIN J. WEAVER,
Defendant-Appellant.

Appeal from the United States District
Court for the Northern District of
Indiana, Fort Wayne Division.

No. 1:23-cr-00007

Holly A. Brady,
Judge.

ORDER

Devin Weaver pleaded guilty to possessing a firearm as a felon in violation of 18 U.S.C. § 922(g)(1) and received an above-guidelines sentence of 144 months' incarceration. On appeal he argues that the district court erred by providing an inadequate explanation of its sentencing rationale and by imposing a substantively unreasonable sentence. We disagree on both fronts and affirm.

I

On January 18, 2023, Devin Weaver broadcasted a live video of himself on social media. The video depicted Weaver driving a car through Fort Wayne, Indiana while waving a handgun out the window, boasting that he had just taken several drugs, and firing the handgun indiscriminately out the window three times. Weaver stopped outside a local CVS store, left the car, and entered the store—still filming and carrying the firearm. Inside, he continued to display the gun and its extended magazine.

Law enforcement officers had been watching the live video. From it they were able to identify Weaver, ascertain that he was a convicted felon, and discover his location. Arriving at the scene, the officers encountered Weaver exiting the CVS. Weaver handed the firearm to another person, but the officers arrested him and recovered the weapon.

In time Weaver was charged with knowingly possessing a firearm after previously being convicted of a felony in violation of 18 U.S.C. § 922(g)(1). He pleaded guilty without an agreement with the government.

The Probation Office prepared a Presentence Investigation Report. The PSR determined that Weaver's base offense level was 20 under U.S.S.G. § 2K2.1(a)(4)(B) because he had unlawfully possessed a semiautomatic firearm as a felon. Probation recommended a four-level increase under § 2K2.1(b)(6)(B) for Weaver's use of a gun in connection with criminal recklessness. With a three-level reduction for acceptance of responsibility, the total offense level became 21.

Probation then calculated a criminal-history category of V. Weaver's criminal history began with burglary and theft at age 12. Two years later, he accidentally shot and killed his friend while handling a gun, leading to convictions of criminal recklessness, reckless homicide, and dangerous possession of a firearm. Other offenses included resisting law enforcement, drug possession, underage consumption of alcohol, and domestic battery. Several of those offenses—including burglary, theft, disorderly conduct, underage consumption, and unlawful possession—did not yield criminal-history points. Even so, Weaver amassed 11 points—nine based on prior convictions and two because he committed the instant offense while serving a different sentence. Based on a total offense level of 21 and a criminal history category of V, the advisory guidelines range was 70 to 87 months' imprisonment.

Under "offender characteristics," the PSR described Weaver's loving relationship with his family, his PTSD diagnosis after causing the death of his best friend, and his goal of participating in vocational training. The PSR also indicated that Weaver was

affiliated with a gang and that a gang-related shooting aimed at Weaver had killed his grandmother.

The government requested a sentence of 87 months, emphasizing Weaver's aggravating offense conduct and criminal history. Weaver countered that a 70-month sentence would be appropriate given his struggles with PTSD, strong family relationships, acceptance of responsibility, and vocational goals. He also argued that 70 months was consistent with the median length provided by the Sentencing Commission's JSIN database.

At the sentencing hearing, the district court confirmed receipt of the PSR and accepted its undisputed findings and calculations. It then turned to the § 3553(a) factors. The district court began by emphasizing the "extraordinarily aggravating" and "absolutely outrageous" offense conduct, highlighting how Weaver had boasted about taking drugs while driving, thoughtlessly "fir[ed] shots into the air, right out into our community," and brandished a handgun—all while filming and broadcasting a social-media video.

Turning to criminal history, the district court characterized Weaver's past offenses as "beyond disturbing." It highlighted that Weaver's juvenile offenses began at age 12 and included six offenses within 15 months of his 18th birthday. The district court also explained that it had "some real concerns" about Weaver posing a threat to community safety, especially given his offense conduct and gang affiliation.

"[O]n the mitigating side of the balance sheet," the district court considered Weaver's age (19 at the time of the offense and 20 at the time of sentencing). It also took into account the love and support of his family.

After this preliminary discussion, the district court invited the parties to present argument. The government reiterated Weaver's aggravating offense conduct (not just possessing a firearm but using it dangerously) and significant criminal history. Weaver's counsel requested lenience in light of Weaver's future plans and acceptance of responsibility. Weaver then took the opportunity to speak, apologizing to the court and to his family and taking responsibility for his actions.

After taking a break from the hearing, the court sentenced Weaver to 144 months. Before announcing this decision, the district court stated:

First, in mitigation, the Court considered the defendant's prompt acceptance of responsibility, his employment history, his age, the support

system available to him, and the lack of any significant prior term of imprisonment.

In aggravation, the Court considered the defendant's criminal history, which includes violent encounters involving firearms. The Court also considered, which as I've discussed, the offense conduct as an aggravating factor. The Court considered the significant risk to the public by firing rounds into the air from a moving vehicle by the defendant.

The Court also considered the history and characteristics of the defendant, which as the PSR note indicates, includes the defendant's gang affiliation.

After a prior review of the Presentence Investigation Report, and in consideration of the parties' arguments, in consideration of the nature and circumstances of the offense, the history and characteristics of the defendant, the defendant's responsibility, the defendant's criminal history, the sentencing memoranda of the parties, the parties' arguments today, and the aggravating and mitigating circumstances identified by the report, the Court concludes that a sentence of 144 months of imprisonment is sufficient but not greater than necessary to comply with the purposes of sentencing.

In reaching its decision regarding the sentence to impose, the Court first notes that the sentence imposed is outside the guideline range but finds that the sentence nonetheless provides just punishment for the offense, affords adequate deterrence to the further criminal conduct and, most importantly, is necessary to protect the public from further crimes by the defendant.

The judgment form specified that the 144 months was to run consecutively to any sentence imposed by the state courts in two pending prosecutions.

II

On appeal, Weaver challenges both the procedural soundness and substantive reasonableness of his sentence.

A

When reviewing a sentence, we take an independent look at whether the district court committed a procedural error, including whether the judge failed to adequately explain the chosen sentence. See *United States v. Faulkner*, 885 F.3d 488, 498 (7th Cir. 2018). Weaver argues that the district court procedurally erred because it did not consider unwarranted sentencing disparities and did not explain why he deserved such a disparate sentence. He highlights the fact that his sentence departs from the national

median sentence (70 months) and insists that the district court should have addressed his argument that 70 months was sufficient.

To the extent that Weaver claims that the law required the district court to explicitly consider unwarranted sentencing disparities because it is a § 3553(a) sentencing factor, he is mistaken. See *United States v. Dickerson*, 42 F.4th 799, 805 (7th Cir. 2022) (affirming an above-guidelines sentence, rejecting a disparity argument, and explaining that judges need not discuss factors “in checklist fashion” (quoting *United States v. Shannon*, 518 F.3d 494, 496 (7th Cir. 2008))). But Weaver is right that the district court must address substantial arguments advanced in mitigation, see *United States v. Hendrix*, 74 F.4th 859, 868 (7th Cir. 2023), and must make clear why a disparate sentence is warranted even if it does not reference disparities outright. See *Faulkner*, 885 F.3d at 499. To allow “meaningful appellate review” and “promote the perception of fair sentencing,” the district court must show that it considered the § 3553(a) factors. See *United States v. Brooks*, 100 F.4th 825, 839 (7th Cir. 2024) (quoting *Gall v. United States*, 552 U.S. 38, 50 (2007)).

Here, the district court adequately explained its upward variance from the advisory guidelines range. The district court emphasized the gravity of Weaver’s offense conduct, as well as the threat he posed to public safety and his extensive criminal history, which included several offenses that had not been accounted for when determining his criminal-history category. The district court acknowledged mitigation factors but found that they were overwhelmed by the aggravating factors it had already described in detail. Because that justification for Weaver’s above-guideline sentence is both adequate and fully consistent with the § 3553(a) factors, we conclude that there was no procedural error. See *United States v. Ballard*, 1 F.4th 734, 741 (7th Cir. 2021).

Weaver insists that the district court’s initial discussion of the § 3553(a) factors cannot be considered, and so the briefer discussion given by the court when imposing his sentence was inadequate. We cannot agree. When reviewing a sentence on appeal, we look at the entire proceeding. See *Brooks*, 100 F.4th at 841; *Dickerson*, 42 F.4th at 806; *United States v. Swank*, 37 F.4th 1331, 1334 (7th Cir. 2022). When we read the transcript as a whole, we find that the district court accepted the guidelines calculation, recognized the upward variance, and adequately explained the sentence using the § 3553(a) factors. See *Brooks*, 100 F.4th at 841.

B

Finding no procedural error, we turn to Weaver’s substantive-unreasonableness argument. When considering whether the district court imposed a substantively unreasonable sentence, we review only for an abuse of discretion. See *Faulkner*, 885 F.3d

at 498. A district court abuses its discretion if, among other things, it does not provide an adequate statement to justify an above-guidelines sentence. *Id.*

The court did not abuse its discretion because it weighed legitimate factors in fashioning the sentence and emphasized facts “sufficiently particularized” to Weaver. See *United States v. Ingram*, 40 F.4th 791, 796 (7th Cir. 2022), *cert. denied*, 143 S. Ct. 341 (2022); see also *Dickerson*, 42 F.4th at 807. The court balanced Weaver’s mitigation arguments against his aggravating offense conduct, criminal history, and personal characteristics—highlighting Weaver’s use and display of the firearm in very dangerous and reckless circumstances, prior negligent gun use, gang affiliation, juvenile and adult criminal record. Instead of discussing the § 3553(a) factors “in some stock sense,” the district court discussed the facts of Weaver’s case and explained why it was imposing an above-guidelines sentence. See *Ingram*, 40 F.4th at 796.

The transcript also leaves us with the unmistakable impression that the district court chose to impose a substantial sentence of 144 months to send a strong deterrent message to Weaver—to tell him that his outrageous offense conduct warranted meaningful punishment and that he was running out of chances to turn his life around. Weaver remains a young man, and we can only hope that he takes the district court’s message to heart.

AFFIRMED