

NONPRECEDENTIAL DISPOSITION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, 2025

Decided December 11, 2025

*Before*DAVID F. HAMILTON, *Circuit Judge*AMY J. ST. EVE, *Circuit Judge*THOMAS L. KIRSCH II, *Circuit Judge*

No. 24-3172

UNITED STATES OF AMERICA,
*Plaintiff-Appellee,**v.*DAVID N. BARNES,
*Defendant-Appellant.*Appeal from the United States District
Court for the Southern District of
Illinois.

No. 4:24-CR-40022-JPG-2

J. Phil Gilbert,
*Judge.***ORDER**

David Barnes pleaded guilty to one count of distributing cocaine and was sentenced above his guideline range to 72 months in prison. Barnes now argues that his sentence was (1) procedurally defective on the theory that the district court relied on supposedly improper considerations such as his juvenile convictions and pending revocation of supervised release, and (2) substantively unreasonable because the court did not adequately justify its above-guideline sentence. We affirm because Barnes has not shown that the district court erred in any way.

As part of an investigation by the Federal Bureau of Investigation and the Drug Enforcement Administration, confidential sources made several controlled purchases of cocaine from Barnes and his co-defendants. In one purchase, in February 2024, Barnes provided the confidential source with half an ounce of cocaine in exchange for \$700, adding that he could also obtain methamphetamine. Barnes partially funded the purchase of cocaine for this exchange, contributing \$16,000 of the \$36,000 worth of cocaine purchased and later sold.

In May 2024, Barnes and three co-defendants were arrested and charged for their parts in the drug-trafficking conspiracy. Barnes was charged with only one count (distributing cocaine), to which he pleaded guilty. At the time of the offense, he was on federal supervised release for a prior cocaine distribution conviction.

A probation officer prepared a presentence investigation report that initially calculated a guideline range of 51 to 63 months. The range was lowered to 41 to 51 months after the court sustained Barnes' objection to the total drug quantity involved.

The district court sentenced Barnes to 72 months in prison to run concurrently with his prison term in his then-pending revocation of supervised release. The court discussed several of the sentencing factors in 18 U.S.C. § 3553(a), including Barnes' history and characteristics (noting that he was "no stranger to the criminal justice system" and had been under a criminal sentence of some form "pretty much [his] whole life"); the seriousness of the offense (emphasizing that this was his second conviction for distributing cocaine); and the need to protect the public from further crimes (stating that he was likely to "go back to the same environment" and "get involved with the same people" upon release). The court concluded that the guideline range did not adequately account for Barnes' criminal history, given his commission of crimes while on supervised release and "the likelihood that you're gonna commit other crimes because you have."

On appeal, Barnes argues that the court erred by basing its sentencing on two improper considerations. He argues, first, that the judge wrongly relied on his juvenile convictions rather than § 3553(a) factors. He notes the court's comments at the sentencing hearing that it could not "totally ignore" Barnes's juvenile record, and that his juvenile offenses were violent. Barnes contends any consideration of his juvenile offenses was impermissible because they were already accounted for by the PSR, and he had not been assigned criminal history points for them.

There was no error. It is not improper at sentencing for the court to take a defendant's juvenile conduct into account. Juvenile conduct may be considered as part of the bigger picture of defendant's history and characteristics—as evidence, for

instance, of a pattern of recidivism or criminal violence. See *United States v. Johnson*, 612 F.3d 889, 896 (7th Cir. 2010). Barnes' juvenile offenses were both serious: aggravated discharge of a firearm and armed robbery.¹ From the time they were first promulgated, the Sentencing Guidelines have actually encouraged both upward and downward departures where the judge determines that the criminal history score under- or overstates the seriousness of the defendant's record and the risk that he will commit future crimes. U.S.S.G. § 4A1.3 (1987) (repealed effective Nov. 1, 2025); *United States v. Jones*, 56 F.4th 455, 511 (7th Cir. 2022); *United States v. Campbell*, 37 F.4th 1345, 1353 (7th Cir. 2022). The judge here was not required to disregard Barnes' juvenile record even though those offenses did not add points to his guideline calculation.

Barnes' second, related sentencing argument is that the court should not have considered his supervised release in a case before a different district judge. He quotes Judge Gilbert's comment at his plea hearing: "In all the years I've been doing this, usually the same judge does both [the immediate and supervised release sentencing]." Barnes also says it was "no coincidence" that his 72-month sentence falls within the guideline range if both his immediate and revocation sentences were combined (71 to 88 months).

There was nothing erroneous about the judge's approach. He explained that Barnes' criminal history justified an above-guideline sentence. A sentencing judge may consider the fact of a supervised release violation as part of the defendant's history and characteristics. See *United States v. Hayden*, 775 F.3d 847, 849 (7th Cir. 2014); 18 U.S.C. § 3553(a)(1). Barnes was on supervised release for distributing cocaine—the same offense as in this case. As Judge Gilbert reasoned, violations of supervised release indicate a higher chance of recidivism, posing a risk to public safety. See *United States v. Bloch*, 825 F.3d 862, 870 (7th Cir. 2016); 18 U.S.C. § 3553(a)(2).

At oral argument, Barnes asserted that he was challenging only the substantive reasonableness of the sentence and that the court gave too much weight to his commission of the offense while he was on supervised release. But the court grounded its reasoning in several § 3553(a) factors, including Barnes' lengthy criminal history and the threat his potential recidivism posed to the public.

The judgment of the district court is AFFIRMED.

¹ The charge was later reduced, under a plea agreement, to robbery, but the judge was entitled to consider the actual underlying conduct.