

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 06-1458

United States of America,

Appellee,

v.

Michael Joseph McDonnell,

Appellant,

United States of America,

Appellee,

v.

Michael Joseph McDonnell,

Appellant.

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Appeal from the United States
District Court for the
Northern District of Iowa.

[UNPUBLISHED]

Submitted: February 7, 2007
Filed: February 13, 2007

Before RILEY, MAGILL, and MELLOY, Circuit Judges.

PER CURIAM.

Michael McDonnell appeals the concurrent 235-month prison terms imposed by the district court¹ after he pleaded guilty to two separate indictments charging him with drug crimes. We affirm.

We reject McDonnell's argument that the district court took an impermissible view of its ability to sentence McDonnell outside the advisory range calculated under the Sentencing Guidelines. Rather, the district court carefully followed this court's jurisprudence in calculating the advisory Guidelines range and then determining whether a sentence outside the range was warranted by the factors in 18 U.S.C. § 3553(a). See United States v. Maurstad, 454 F.3d 787, 789 (8th Cir. 2006) (district court should calculate Guidelines range, determine if departure is warranted under Guidelines, then consider sentencing factors in § 3553(a) and impose reasonable sentence).

We also conclude McDonnell has not succeeded in rebutting the presumption of reasonableness that attaches to a sentence imposed within the advisory Guidelines range; the court took into account all of McDonnell's personal circumstances in arriving at the sentence imposed, and we see no basis for concluding that it failed to give appropriate weight to these factors. See United States v. Lincoln, 413 F.3d 716, 717-18 (8th Cir.) (when sentence is within Guidelines range, defendant bears burden to rebut presumption of reasonableness; burden is satisfied by showing, with reference to § 3553(a), that district court based sentence on improper or irrelevant factor or failed to consider relevant factor), cert. denied, 126 S. Ct. 840 (2005). Further, even if McDonnell's within Guidelines sentence was not presumed to be reasonable under our precedents, we would still find that the district court acted reasonably in imposing the sentence of 235 months in prison.

¹The Honorable Linda R. Reade, Chief Judge, United States District Court for the Northern District of Iowa.

Accordingly, we affirm.
