

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17-3097

September Term, 2019

FILED ON: OCTOBER 25, 2019

UNITED STATES OF AMERICA,
APPELLEE

v.

CORNELL M. JONES,
APPELLANT

Appeal from the United States District Court
for the District of Columbia
(No. 1:15-cr-00049-1)

Before: GARLAND, *Chief Judge*, SRINIVASAN, *Circuit Judge*, and WILLIAMS, *Senior Circuit Judge*.

J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs of the parties. *See* FED. R. APP. P. 34(a)(2); D.C. CIR. R. 34(j). The Court has afforded the issues full consideration and has determined that they do not warrant a published opinion. *See* D.C. CIR. R. 36(d). It is

ORDERED AND ADJUDGED that the judgment of the District Court be **AFFIRMED**.

Cornell Jones pled guilty to one count of tax evasion. At Jones' first sentencing, the district court concluded that the applicable Sentencing Guidelines range was 51-63 months' imprisonment, notwithstanding that the government and defense had agreed that the applicable Guidelines range should be 37-46 months. The court sentenced Jones to 54 months, and Jones appealed. A panel of this court vacated the sentence after concluding that the district court had relied on "an erroneous factual conclusion" in "refus[ing] to give Jones credit for acceptance of responsibility under the Sentencing Guidelines." *United States v. Jones*, 697 F. App'x 2, 3 (D.C. Cir. 2017). The panel remanded "so that

Jones may receive credit for acceptance of responsibility.” *Id.* at 4. On remand, the district court again sentenced Jones to a now above-Guidelines sentence of 54 months’ imprisonment. Jones appeals this new sentence.

Jones’ challenges to his sentence fail. First, he argues that the district court exceeded the scope of this court’s remand order. *See United States v. Blackson*, 709 F.3d 36, 40 (D.C. Cir. 2013). On remand, the district court sought supplemental memoranda from both parties on what they “believe the facts clearly are on the issue of acceptance of responsibility,” and then ultimately found that “the appropriate [G]uideline[s] range is 37 to 46 months.” App. 65, 78. The remand order required nothing more.

Second, Jones argues that the district court insufficiently explained why it imposed an above-Guidelines sentence. “[A]n inadequately explained and insufficiently particularized upward variance constitutes plain error.” *United States v. Brown*, 892 F.3d 385, 404 (D.C. Cir. 2018). When imposing an above-Guidelines sentence, a district court “must undertake an individualized assessment of the defendant’s particular offense and characteristics, and then ‘must state the specific reason why the defendant’s conduct was more harmful or egregious than the typical case represented by th[e] [relevant Sentencing Guidelines] range.’” *Id.* (quoting *United States v. Brown*, 808 F.3d 865, 867, 872 (D.C. Cir. 2015)); accord *United States v. Akhigbe*, 642 F.3d 1078, 1087-88 (D.C. Cir. 2011). The district court adequately did so here.

The district court listed several characteristics of the defendant’s criminal history and offenses that, when read in context, express the district court’s belief that the “defendant’s conduct was more harmful or egregious” than the ordinary case. *Brown*, 892 F.3d at 404. The district court noted the defendant’s “history of contempt for our tax obligations, having filed only two personal income tax returns since 1986, and having failed to file tax returns for two businesses that are the subject of this case.” App. 84. As the district court observed, the defendant “evaded paying \$1.7-plus million in income taxes” over six years. *Id.* The court described the defendant’s conduct as “extensive and calculating,” “calculated and brazen,” and “designed to avoid a paper trail connecting [him] to any income or assets.” App. 84-85. The court also expressed indignation that the defendant “did all of this . . . notwithstanding having been found civilly liable for defrauding the District of Columbia’s HIV/AIDS program by unlawfully obtaining . . . \$329,000 in grant funds,” and then “turn[ing] around and us[ing] those ill-gotten gains to renovate” a property owned by a business on which the defendant did not pay taxes. App. 84. These statements are sufficient to express the district court’s “individualized reasoning” that the defendant’s case warranted a longer sentence than the typical tax evasion case. *See Akhigbe*, 642 F.3d at 1086.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing *en banc*. See FED. R. APP. P. 41(b); D.C. CIR. R. 41.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

BY: /s/

Daniel J. Reidy

Deputy Clerk