FILED
United States Court of Appeals
Tenth Circuit

August 30, 2019

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JEREMY SHAWN PARKE,

Defendant - Appellant.

No. 19-6024
(D.C. No. 5:18-CR-00150-D-1)
(W.D. Okla.)

ORDER AND JUDGMENT*

Before **MATHESON**, **McKAY**, and **BACHARACH**, Circuit Judges.

Jeremy Parke appeals the sentence imposed following his entry of a guilty plea to possession of a firearm by a prohibited person. After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument.

In June 2018, Mr. Parke signed a petition to enter a guilty plea to being a prohibited person in possession of a firearm in violation of 18 U.S.C. § 922(g)(8) because he possessed a firearm while subject to a restraining order. The district court

---

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

sentenced him to 36 months' imprisonment, to be followed by 3 years of supervised release. He was additionally ordered to pay a $100 assessment and $1,885 in restitution.

The presentence investigation report (PSR) had calculated a base offense level of 20 pursuant to U.S.S.G. § 2K2.1(a)(4)(B)(i)(I), (ii)(I). The PSR had also given Mr. Parke a 3-level reduction for acceptance of responsibility, resulting in a total offense level of 17. Mr. Parke's criminal history and commission of the present offense while under a deferred state sentence gave him a criminal history category of III. These calculations resulted in an advisory sentencing guidelines range of 30 to 37 months' imprisonment. *See* U.S.S.G. Sentencing Table, Zone D. The PSR concluded that an upward variance might be warranted because Mr. Parke's "reckless use of a firearm resulted in a round from a high-powered rifle penetrating a house and striking a cradle in a child's room." (R. Vol. II at 16.) Mr. Parke's objection to the PSR only addressed the suggestion of an upward variance.

At the sentencing hearing, the district court adopted the PSR to the extent that Mr. Parke had not objected to it. Defense counsel then emphasized Mr. Parke's military service and work as a teacher in the local public schools, and stated that Mr. Parke's PTSD and alcoholism had led to the current incident. She asked the court to consider a downward variance, or even probation, given that Mr. Parke had already been in custody for eight months at that point and was ready and "fully willing to comply with conditions and to comply with treatment and to become the person that he is capable of being." (R. Vol. III at 9.) Mr. Parke also spoke on his

own behalf, apologizing for "put[ting] others in danger" and stating, "I thank God every day that nobody was hurt. I can't make excuses for what I did. There is and never was a place for it. It was wrong." (*Id.* at 10.)

The couple whose house Mr. Parke had accidentally shot also spoke at the hearing. They spoke of the fear and distress they felt upon discovering a bullet in their son's crib and told the court the incident had even compelled them to move away from the house where they had gotten engaged and begun to raise their son. The victims asked the court to impose the maximum sentence and not accept Mr. Parke's military service, PTSD, or teaching job as an excuse for his actions.

Prior to announcing the sentence, the district court judge told Mr. Parke that there was "this other person who comes out when you drink" and "your number one mission . . . during this period of incarceration and during supervised release when you get out is to deal with your substance abuse problem." (*Id.* at 19–20.) The judge also pointed out that there were numerous shell casings on Mr. Parke's patio and stated, "So we weren't talking about one bullet. We're talking about a lot of bullets. And so this is a serious offense." (*Id.* at 21.) The judge additionally expressed his belief that Mr. Parke would be able to get more effective treatment outside prison and that this militated in favor of a sentence below the maximum. However, the judge ultimately concluded that the guidelines range was "a reasonable range for punishment in connection with all the facts and circumstances of this case" and imposed the 36-month sentence. (*Id.* at 21.)

On appeal, "Mr. Parke challenges the length of the sentence imposed by the district court." (Appellant's Br. at 8.) We review sentencing decisions for reasonableness under an abuse-of-discretion standard. *United States v. Huckins*, 529 F.3d 1312, 1317 (10th Cir. 2008). The reasonableness of a sentence includes both a procedural and a substantive component. *Id.* Mr. Parke does not challenge the procedural reasonableness of his sentence, nor do we find the sentence to be procedurally unreasonable. "[S]ubstantive reasonableness addresses whether the length of the sentence is reasonable given all the circumstances of the case in light of the factors set forth in 18 U.S.C. § 3553(a)." *Id.* (internal quotation marks omitted).

"A sentence imposed within the properly calculated advisory guideline range is entitled to a rebuttable presumption of reasonableness." *United States v. Alvarez-Bernabe*, 626 F.3d 1161, 1165 (10th Cir. 2010). On appeal, "we must give due deference to the district court's decision that the § 3553(a) factors, on a whole, justify the sentence imposed." *Id.* (internal quotation marks and brackets omitted). Moreover, "absent a contrary indication in the record, this court will assume that a district court weighed each of the sentencing factors set forth in § 3553(a) . . . , even where the district court does not explicitly so state at the sentencing hearing or in its order." *United States v. Rose*, 185 F.3d 1108, 1111 (10th Cir. 1999). "That we might reasonably have concluded a different sentence was appropriate is insufficient to justify reversal of the district court." *United States v. Friedman*, 554 F.3d 1301, 1307–08 (10th Cir. 2009) (internal quotation marks and brackets omitted).

Mr. Parke's argument on appeal focuses on the purposes of sentencing and the provision that the sentence imposed shall be "sufficient, but not greater than necessary," 18 U.S.C. § 3553(a), to promote those purposes. As at the sentencing hearing below, Mr. Parke points to his military service, work as a teacher, genuine remorse, and PTSD and alcohol problems to argue for a lower sentence. Ultimately, he contends that the sentence imposed was greater than necessary to achieve the goals of the criminal justice system, particularly in light of the district court's determination that treatment outside prison would most help to address Mr. Parke's alcoholism.

In response, the government points out that the base offense level was 20 for possessing a firearm even though Mr. Parke not only possessed the rifle but also recklessly fired it, resulting in a bullet hitting a baby's crib. The government's brief also shows how the district court considered and addressed the circumstances of the case in reaching the sentencing determination. Finally, the government maintains that Mr. Parke has not rebutted the presumption that the within-guidelines sentence was reasonable, despite Mr. Parke's contention that his personal circumstances warranted greater leniency.

We are compelled to agree with the government in this case. The district court imposed a sentence within the advisory guidelines range, and thus that sentence is entitled to a presumption of reasonableness. Mr. Parke has not rebutted that presumption here. Even if we would have imposed a different sentence in the first instance, it is not our role to second-guess the district court's findings as to the

weight and effect to give the § 3553(a) factors. Additionally, the only suggestion in the record is that the district court *did* consider and weigh those factors in reaching its decision. *See Rose*, 185 F.3d at 1111. Ultimately, we cannot say that the within-guidelines sentence imposed was "arbitrary, capricious, whimsical, or manifestly unreasonable." *Friedman*, 554 F.3d at 1307 (internal quotation marks omitted).

Therefore, we **AFFIRM** the district court's judgment and sentence.

Entered for the Court

Monroe G. McKay
Circuit Judge