FILED
United States Court of Appeals
Tenth Circuit

April 12, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

FELICIANO VILLA-SARINANA,

Defendant - Appellant.

No. 22-2093
(D.C. No. 2:22-CR-00469-MIS-1)
(D.N.M.)

ORDER AND JUDGMENT*

Before **MORITZ**, **BRISCOE**, and **CARSON**, Circuit Judges.

Feliciano Villa-Sarinana appeals his 71-month prison sentence for an immigration offense, arguing that the district court improperly rejected a fast-track plea agreement and imposed a substantively unreasonable sentence. Because the district court gave a sound reason for rejecting the agreement and imposed a reasonable prison term in light of the statutory sentencing factors, we affirm.

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* 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. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. But it may be cited for its persuasive value. *See* Fed. R. App. P. 32.1(a); 10th Cir. R. 32.1(A).

Background

In December 2021, border-patrol agents arrested Villa-Sarinana, a Mexican citizen, for entering the United States without legal authorization. Because Villa-Sarinana had already been removed from the United States on several occasions—four times since 1999—the government charged him with unlawful reentry following removal. *See* 8 U.S.C. § 1326(a), (b)(2). Villa-Sarinana pleaded guilty to that offense without entering a plea agreement.

Based on Villa-Sarinana's criminal history and the offense level for his crime, the presentence investigation report (PSR) calculated a sentencing range under the United States Sentencing Guidelines (U.S.S.G. or the Guidelines) of 57–71 months in prison. Despite this calculation, however, the parties anticipated that a lower Guidelines range would apply because Villa-Sarinana qualified for the District of New Mexico's "fast-track" program. Under that program, eligible immigration offenders can "plead guilty early in the process and waive their rights to file certain motions and to appeal, in exchange for a shorter sentence." *United States v. Morales-Chaires*, 430 F.3d 1124, 1127 (10th Cir. 2005); *see also* U.S.S.G. § 5K3.1 (authorizing district court to "depart downward not more than [four] levels" under fast-track program). If the district court were to accept a fast-track plea agreement here, it would lower Villa-Sarinana's offense level by two, reducing the Guidelines range from 57–71 months to 46–57 months.

Before sentencing, both sides filed briefs arguing for a sentence within this reduced Guidelines range. Villa-Sarinana urged the district court to impose a low-end

sentence of 46 months given his difficult childhood and various medical conditions. On the other hand, the government emphasized Villa-Sarinana's extensive criminal history and requested a high-end sentence of 57 months.[1]

At sentencing, the district court declined to impose either party's suggested sentence. It explained that it was "not inclined to accept a fast-track deal" because Villa-Sarinana's criminal history—in particular his 2016 unlawful-reentry conviction and 2001 arrest for child molestation—suggests that he is dangerous. R. vol. 3, 3. For that reason, the district court rejected the fast-track agreement, adopted the PSR's recommended Guidelines range of 57–71 months, and imposed a 71-month prison term.

Analysis

Villa-Sarinana appeals his sentence on two grounds, arguing that the district court (1) improperly rejected the fast-track plea agreement and (2) imposed a substantively unreasonable sentence. We review both arguments for abuse of discretion. *See United States v. Sandoval-Enrique*, 870 F.3d 1207, 1215 (10th Cir. 2017) (rejection of fast-track plea agreement); *United States v. Maldonado-Passage*, 56 F.4th 830, 842 (10th Cir. 2022) (substantive reasonableness). To succeed on either one, Villa-Sarinana must show that the district court's decision was "arbitrary,

[1] Curiously, although both parties requested sentences under the reduced Guidelines range because they expected to "enter[] into a fast-track plea agreement," no such agreement appears in the record. R. vol. 1, 10. But because the district court proceeded as if some kind of fast-track plea agreement existed and because the parties do the same in this appeal, we will assume that they entered into one, as anticipated in the sentencing memoranda.

capricious, whimsical[,] or manifestly unreasonable." *Maldonado-Passage*, 56 F.4th at 837 (quoting *Mid-Continent Cas. Co. v. Vill. at Deer Creek Homeowners Ass'n*, 685 F.3d 977, 981 (10th Cir. 2012)). We address each argument in turn.

On the first argument, Villa-Sarinana offers assorted reasons that the district court should have accepted the fast-track plea agreement. In deciding whether to accept or reject that agreement, "the district court's discretion [was] very broad" because the agreement "involve[d] a bargain regarding sentencing, rather than a charging decision." *Sandoval-Enrique*, 870 F.3d at 1215; *see also United States v. Vanderwerff*, 788 F.3d 1266, 1271–72 (10th Cir. 2015) (comparing "considerable discretion" afforded to district courts in assessing sentencing bargains with their "more limited" discretion as to charge bargains, which implicate prosecutors' "'nearly absolute'" authority to decide what charges to bring (emphasis omitted) (quoting *United States v. Robertson*, 45 F.3d 1423, 1438 (10th Cir. 1995))). Villa-Sarinana does not show that the district court abused this vast discretion when rejecting the fast-track agreement here.

At the outset, Villa-Sarinana asserts that the district court inadequately explained its decision, failing to "articulate a sound reason for rejecting [the fast-track plea agreement] on the record." *Robertson*, 45 F.3d at 1438. But the district court supplied such a reason at the sentencing hearing, explaining that it declined to accept a fast-track deal because (in its view) Villa-Sarinana's criminal history suggests that he is dangerous. Our precedents confirm that the district court's concern was a valid reason to reject the agreement, and Villa-Sarinana does not argue

otherwise. *Cf. United States v. Carrigan*, 778 F.2d 1454, 1462 (10th Cir. 1985) (explaining that Federal Rule of Criminal Procedure governing plea agreements "contemplates the rejection of a negotiated plea when the district court believes that bargain is too lenient[] or otherwise not in the public interest" (quoting *United States v. Miller*, 722 F.2d 562, 563 (9th Cir. 1983))).

Villa-Sarinana fares no better with his contention that the district court "disregard[ed] compelling executive and legislative interests" furthered by fast-track agreements.[2] Aplt. Br. 15. As to the former interests, he simply cites cases emphasizing courts' general deference to prosecutorial *charging* decisions, not *sentencing* recommendations like the one here. *See, e.g.*, *Robertson*, 45 F.3d at 1438 (explaining that courts should "hesita[te] before second-guessing prosecutorial [charging] choices" because such decisions "implicate executive power"). And contrary to Villa-Sarinana's view, those distinguishable cases nowhere require that the district court expressly "mention" or "discuss" such deference before rejecting the fast-track agreement. Aplt. Br. 15. Nor do they or any other case Villa-Sarinana cites impose a similar requirement for the "legislative interests" the district court purportedly ignored. *Id.* The district court needed only to "articulate a sound reason"

[2] The government asserts that we should review this argument for plain error because Villa-Sarinana did not raise it below. Given our rejection of Villa-Sarinana's argument on the merits (for the reasons set out above), we need not address whether plain error applies. *See Sandoval-Enrique*, 870 F.3d at 1215 n.8 (declining to decide whether plain error applied because, even if it did, panel "would conclude[], at step one of that analysis, that the district court did not err, so our conclusion would be the same").

for its decision, and as explained above, it did so here. *Robertson*, 45 F.3d at 1438. Thus, the district court did not abuse its discretion in rejecting the fast-track agreement.

Villa-Sarinana's second and final argument is that the district court imposed a substantively unreasonable sentence. For that argument to succeed, Villa-Sarinana must show that his 71-month prison term is unreasonably long considering the statutory sentencing factors set out in 18 U.S.C. § 3553(a). *United States v. McCrary*, 43 F.4th 1239, 1249 (10th Cir. 2022). And to do so, he must overcome a presumption that his sentence is reasonable because it falls within the Guidelines range for his offense. *See Maldonado-Passage*, 56 F.4th at 842.

Villa-Sarinana fails to carry this burden. On appeal, he reiterates mitigating circumstances that, in his view, would make a shorter sentence reasonable, such as his difficult childhood, history of substance abuse, and mental-health issues. But the purported reasonableness of a hypothetical sentence the district court did not impose says nothing about the reasonableness of the one it did impose. *See United States v. McBride*, 633 F.3d 1229, 1232 (10th Cir. 2011) (clarifying that defendants "must do more than show that [their] preferred sentence was a reasonable one"; they must "show that the actual sentence imposed was outside th[e] range of reasonableness"). The district court considered the factors Villa-Sarinana emphasizes and found that others—particularly his criminal history and potential dangerousness—outweighed them, thereby supporting a high-end prison term of 71 months. *See* § 3553(a)(1), (a)(2)(C). Perhaps a different judge would have weighed the sentencing factors

differently. But it is not our "job [as] an appellate court to review de novo the balance struck by [the] district court." *McCrary*, 43 F.4th at 1249 (quoting *United States v. Sells*, 541 F.3d 1227, 1239 (10th Cir. 2008)). Villa-Sarinana has not shown that the district court imposed a sentence outside "the range of 'rationally available choices,'" so we must defer to its decision. *Id.* (quoting *United States v. Blair*, 933 F.3d 1271, 1274 (10th Cir. 2019)).

Conclusion

Because the district court did not abuse its discretion in rejecting the fast-track agreement or in imposing the 71-month prison term, we affirm Villa-Sarinana's sentence.

Entered for the Court

Nancy L. Moritz
Circuit Judge