

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 17-3249

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Mar 26, 2018

DEBORAH S. HUNT, Clerk

ORDER

Before: SILER, COOK, and WHITE, Circuit Judges.

Norman L. Hunter, a federal prisoner represented by counsel, appeals the district court's sentencing judgment in his criminal case. The parties have waived oral argument, and this panel unanimously agrees that oral argument is not needed. *See Fed. R. App. P. 34(a).*

Hunter pleaded guilty to conspiracy to possess with intent to distribute fentanyl and to being a felon in possession of a firearm. The district court sentenced him to 200 months of imprisonment on the drug-conspiracy charge and a concurrent term of 120 months on the gun charge, plus twenty years of supervised release. On appeal, Hunter argues that his sentence, which represented an upward variance above his advisory sentencing range under the United States Sentencing Guidelines, was substantively unreasonable.

We review a sentence for substantive reasonableness under an abuse of discretion standard. *United States v. Adams*, 873 F.3d 512, 516–17 (6th Cir. 2017). To be substantively reasonable, a sentence “must be proportionate to the seriousness of the circumstances of the offense and offender, and ‘sufficient, but not greater than necessary, to comply with the purposes

No. 17-3249

- 2 -

set forth by [§ 3553(a)(2)].”” *United States v. Smith*, 505 F.3d 463, 470 (6th Cir. 2007) (quoting 18 U.S.C. § 3553(a)). A sentence may be substantively unreasonable if the district court selects a sentence arbitrarily, references impermissible factors, does not consider relevant § 3553(a) factors, or gives an unreasonable amount of weight to any one relevant factor. *United States v. Solano-Rosales*, 781 F.3d 345, 356 (6th Cir. 2015). For sentences outside of the guidelines range, such as Hunter’s, we may not apply a presumption that it is reasonable. *Id.* Additionally, we “consider the extent of the deviation, but must give due deference to the district court’s decision that the § 3553(a) factors, on a whole, justify the extent of the variance.” *Gall v. United States*, 552 U.S. 38, 51 (2007).

The applicable guidelines range in Hunter’s case was 140 to 175 months. Hunter sought a downward departure, while the government had no objection to a sentence at the bottom of the range. Instead, the district court varied upward to impose a 200-month sentence.

On appeal, Hunter argues that his sentence was substantively unreasonable. He cites several factors to support a shorter sentence: none of his prior convictions involved violence or large amounts of drugs; he believed that the drugs in this case were cocaine, not fentanyl; he was remorseful and accepted responsibility and was supported by his family and his community; and he had a difficult childhood and family life. Hunter argues that the district court did not properly take these factors into account and imposed an upward variance from the guidelines range because it gave an unreasonable amount of weight to the type and amount of drugs in his case.

But the district court cited several other reasons for fashioning its sentence. The district court discussed Hunter’s personal history and criminal history, *see* 18 U.S.C. § 3553(a)(1), which the court said was “replete with not only convictions,” but also showed “his inability to comply with conditions of supervision.” The court emphasized a 1997 federal conviction for distributing cocaine. There, the government gave notice that it would seek an enhanced penalty under 21 U.S.C. § 851, which would have required a prison sentence between ten years and life. Hunter ultimately received a sixty-five-month sentence. The district court stated that “one would hope and one would think” that the conviction and sentence “would serve to deter [Hunter] and

No. 17-3249

- 3 -

make [him] aware that if [he were] going to continue in the drug trafficking trade, that [he would] go back to prison for a lengthy period of time.” But, the court concluded, “[i]t certainly did not deter the defendant.” *See 18 U.S.C. § 3553(a)(2)(B)* (directing that the court consider “the need for the sentence imposed . . . to afford adequate deterrence to criminal conduct”). In addition, the district court cited a state conviction for drug trafficking with a firearm specification, noting that Hunter was on community control for that conviction when he was committing the offenses for which he was convicted in this case. *See 18 U.S.C. § 3553(a)(2)(A)* (directing that the court consider “the need for the sentence imposed . . . to reflect the seriousness of the offense [and] to promote respect for the law”); *see also United States v. Cabrera*, 811 F.3d 801, 815 (6th Cir. 2016) (“We often equate § 3553(a)(2)(A) with specific deterrence: a defendant demonstrates *disrespect* for the law by repeatedly violating it.”). The district court believed Hunter’s sentence should be long enough to deter him and others from dealing drugs.

The district court also considered the nature of Hunter’s offense, *see 18 U.S.C. § 3553(a)(1)*, stating that he was “a large-scale drug trafficker” and remarking about the harm that drugs bring on the public. The court cited the high number of reported deaths from heroin and fentanyl in the local community and stated that “there is a crying need to send a message that if you’re going to be a major drug trafficker . . . [in] our community, you will go to prison for a very, very long time.” *See 18 U.S.C. § 3553(a)(2)(C)* (directing that the court consider “the need for the sentence imposed . . . to protect the public from further crimes of the defendant”). The court noted, too, that Hunter had several firearms and discussed the dangerousness of drug dealers having guns. In light of these factors, the district court determined that the guidelines range was insufficient and that a higher sentence was necessary to satisfy the factors in § 3553(a).

The upward variance that the district court imposed was twenty-five months above the top of the guidelines range, or slightly less than a fifteen-percent increase. In light of the district court’s stated rationale, that determination was neither unreasonable nor an abuse of its discretion. *See, e.g., United States v. Zobel*, 696 F.3d 558, 569 (6th Cir. 2012). Hunter’s

No. 17-3249

- 4 -

argument that the district court gave undue weight to one factor is belied by the record, which shows that the court weighed each of the pertinent factors in crafting his sentence. Because “the manner in which a district court chooses to balance the applicable sentencing factors is beyond the scope of the Court’s review,” *United States v. Adkins*, 729 F.3d 559, 571 (6th Cir. 2013), it cannot be said that the district court’s sentence was substantively unreasonable.

Accordingly, we **AFFIRM** the district court’s judgment.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk