

APPENDIX A

Judgment

United States v. Wairi

No. 15-2166

United States Court of Appeals for the First Circuit

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No. 15-2166

UNITED STATES,

Appellee,

v.

JOSH A. WAIRI,

Defendant, Appellant.

Before

Howard, Chief Judge,
Kayatta and Barron, Circuit Judges.

JUDGMENT

Entered: May 30, 2018

After carefully reviewing the briefs and record on appeal, we grant the government's motion for summary disposition and affirm.

Appellant argues that his sentence was procedurally unreasonable because the sentencing court failed to adequately consider his personal history and characteristics, including a proffered sex-offender evaluation, and because the court failed to adequately explain the specific sentence imposed. Since Appellant did not object below, he must show plain error. See United States v. Ruiz-Huertas, 792 F.3d 223, 226 (1st Cir. 2015).

A sentencing court must consider the factors under 18 U.S.C. § 3553, but it need not address them separately or explicitly balance them. See United States v. Lozada-Aponte, 689 F.3d 791, 792-93 (1st Cir. 2012). In evaluating the sentencing court's reasoning, we may draw inferences by comparing what the court did with what was argued by the parties or presented in the PSR. See United States v. Angulo-Hernandez, 565 F.3d 2, 13 (1st Cir. 2009). The district court may have a duty explain its choice of a particular sentence, but it has no duty to explain why it rejected other proposed sentences. See Ruiz-Huertas, 792 F.3d at 228.

Here, the record and sentencing transcript show that the government addressed arguments concerning Appellant's personal history and characteristics that were made in his sentencing memo

and in the proffered evaluation, as well as other arguments. The court stated that it agreed with the government. The court also stated that it had read the sentencing memo and the PSR, and the court discussed aspects of them in imposing a term. Finally, the court acknowledged the range of sentences imposed for such crimes as a general matter, but it explained that Appellant's offense was "extraordinarily troubling." Appellant fails to show that the court plainly erred by failing to impose an individualized sentence or to adequately explain the result.

Appellant also argues that his sentence was substantively unreasonable because it was driven by the nature of his offense and a perceived need for deterrence. He argues that his sentence was not commensurate with the goals of sentencing and that it was not supported by a plausible rationale.

Assuming arguendo that review is not for plain error, see Ruiz-Huertas, 792 F.3d at 228 & n.4, Appellant does not show that the court abused its discretion. A sentence's substantive reasonableness depends upon the totality of circumstances, and a range of reasonable sentences exists for any given offense. See United States v. Bermudez-Melendez, 827 F.3d 160, 163 (1st Cir. 2016). A sentence is substantively reasonable if it rests on a plausible rationale and embodies a defensible result in light of the purposes of sentencing. See United States v. Madsen, 809 F.3d 712, 720 (1st Cir. 2016); Ruiz-Huertas, 792 F.3d at 228-29.

The court considered the depravity of the crime, as well as the factors mentioned above, and found Appellant's offense to be particularly egregious. Appellant does not show that the within-Guideline term imposed was outside the range of reasonable sentences. See Bermudez-Melendez, 827 F.3d at 163; United States v. Clogston, 662 F.3d 588, 593 (1st Cir. 2011).

Affirmed. 1st Cir. Loc. R. 27.0(c)

By the Court:

/s/ Margaret Carter, Clerk

cc:

Raymond Elwood Gillespie

Josh A. Wairi

Cynthia A. Young

Suzanne Maureen Sullivan Jacobus

Randall Ernest Kromm

Christopher Richard Donato

Seth B. Orkand

APPENDIX B
Psychosexual Evaluation
(to be filed Under Seal)