

UNPUBLISHED**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 17-4742

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

KAMAL QAZAH, a/k/a Kamal Zaki Qazah,

Defendant - Appellant.

No. 17-4772

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

SALAH MOHAMED, a/k/a Salah Mansour Nagi Mohamed, a/k/a Saleh Mohaned,

Defendant - Appellant.

Appeals from the United States District Court for the Western District of Virginia, at Big Stone Gap. James P. Jones, District Judge. (2:17-cr-00014-JPJ-PMS-1; 2:17-cr-00014-JPJ-PMS-2)

Submitted: June 28, 2018

Decided: July 18, 2018

Before AGEE and FLOYD, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Larry W. Shelton, Federal Public Defender, Roanoke, Virginia, Nancy C. Dickenson, Assistant Federal Public Defender, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Abingdon, Virginia; Dennis E. Jones, Abingdon, Virginia, for Appellants. Rick A. Mountcastle, United States Attorney, Zachary T. Lee, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Abingdon, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Kamal Qazah and Salah Mohamed were implicated in the same criminal scheme, and their cases were consolidated in district court. Qazah and Mohamed each pled guilty, without a written plea agreement, to conspiracy to escape from a federal correctional institution, in violation of 18 U.S.C. § 371 (2012), and escape from federal custody, in violation of 18 U.S.C. § 751(a) (2012). For each Appellant, the district court calculated an advisory Sentencing Guidelines range of 12 to 18 months' imprisonment, but imposed an upward variance sentence of 60 months' imprisonment. The Appellants argue that their sentences are procedurally and substantively unreasonable. We affirm.

We review a criminal sentence, “whether inside, just outside, or significantly outside the Guidelines range,” for reasonableness “under a deferential abuse-of-discretion standard.” *Gall v. United States*, 552 U.S. 38, 41 (2007); *see United States v. King*, 673 F.3d 274, 283 (4th Cir. 2012). We “first ensure that the district court committed no significant procedural error,” such as improperly calculating the Guidelines range, failing to consider the 18 U.S.C. § 3553(a) (2012) sentencing factors, or inadequately explaining the sentence imposed. *Gall*, 552 U.S. at 51. To adequately explain the sentence imposed, the district court “should set forth enough to satisfy the appellate court that he has considered the parties’ arguments and has a reasoned basis for exercising his own legal decision-making authority.” *United States v. Blue*, 877 F.3d 513, 518 (4th Cir. 2017) (internal quotation marks omitted).

If a sentence is free of “significant procedural error,” then this Court reviews it for substantive reasonableness, “tak[ing] into account the totality of the circumstances.” *Gall*,

552 U.S. at 51. The sentence imposed must be “sufficient, but not greater than necessary,” to satisfy the goals of sentencing. 18 U.S.C. § 3553(a). In reviewing a sentence outside the Guidelines range, this Court “may 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*, 552 U.S. at 51.

We conclude that the Appellants’ sentences are procedurally and substantively reasonable. The district court explicitly discussed several of the § 3553(a) factors and applied them to the facts of the cases, did not analyze any impermissible factors, and responded to the Appellants’ mitigating arguments. The court also sufficiently explained the factors it considered in imposing the upward variance sentences, including the serious and complex nature of the Appellants’ escapes and prior crimes; the need to deter the Appellants and protect the public due to a high likelihood of recidivism; and the need to deter other inmates.

Accordingly, we affirm the district court’s judgments. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION

UNITED STATES OF AMERICA, * CRIMINAL NO. 2:17-CR-14
Plaintiff, * NOVEMBER 28, 2017 2:01 P.M.
vs. * SENTENCING OF SALAH MOHAMED
* SENTENCING OF KAMAL QAZAH
SALAH MOHAMED and KAMAL * Before:
QAZAH, * HONORABLE JAMES P. JONES
Defendants. * UNITED STATES DISTRICT JUDGE
* WESTERN DISTRICT OF VIRGINIA

11 APPEARANCES

12 For the Plaintiff: ZACHARY T. LEE, ESQUIRE
13 United States Attorney's Office
14 Western District of Virginia
180 West Main Street, Suite B19
Abingdon, VA 24210

15 | For Defendant Salah Mohamed:

NANCY COMBS DICKENSON, ESQUIRE
Federal Public Defenders Office
201 Abingdon Place
Abingdon, VA 24211

19 Court Reporter: Michele E. Becker, RMR, CRR
180 West Main Street
Abingdon, VA 24210
20 (276) 628-5116 Ext. 8119

Proceedings recorded by mechanical stenography,
transcript produced by computer.

1 P R O C E E D I N G S / M A I L

2 (Court convened at 2:01 p.m.)

3 THE COURT: Good afternoon, Ladies and Gentlemen.

4 The clerk will call the case.

5 THE CLERK: United States of America versus Salah
6 Mohamed and Kamal Qazah. Criminal Docket No. 2:17-CR-14.7 THE COURT: This is the day scheduled for the
8 sentencing of the defendants. And I would like to take up
9 sentencing for both defendants if there's no objection.

10 Is the Government ready to proceed?

11 MR. LEE: Yes, Your Honor.

12 THE COURT: And Ms. Dickenson, is your client ready?

13 DEFENDANT MOHAMED: Yes, sir.

14 MS. DICKENSON: Yes, Your Honor. We are.

15 THE COURT: And Mr. Mohamed, have you and your lawyer
16 read and discussed the presentence report? You need to answer
17 out loud, sir.

18 DEFENDANT MOHAMED: Yes, sir.

19 THE COURT: Thank you. You may be seated.

20 And Mr. Qazah, have you and your lawyer read and
21 discussed the presentence report?

22 DEFENDANT QAZAH: Yes, Your Honor.

23 THE COURT: And Mr. Bradshaw, are you ready to
24 proceed?

25 MR. BRADSHAW: We are, Your Honor.

1 of walkaway escapes from USP Lee over the years, and a
2 majority of them are defendants who walk away and are
3 apprehended in Jonesville or Pennington Gap or maybe even in
4 Washington, DC where they have returned home to their
5 families, and they're usually arrested within 24 to 48 to 72
6 hours of their escape.

7 I think the most egregious that this Court has had in
8 front of it that I'm aware of is the case of Ed Porta where he
9 walked away from USP Lee and was a fugitive for a number of
10 years, but ultimately was arrested in the Eastern District --
11 or the Western District of Washington in Seattle where he had
12 been residing for a period time.

13 The case of Mr. Mohamed and Mr. Qazah is
14 significantly outside of that heartland of cases. What these
15 two individuals did is not only walked away from USP Lee, but
16 were able to travel thousands of miles through the United
17 States, cross an international border to another major
18 international city, Mexico City, in essence having succeeded.
19 They were gone. They had succeeded in their escape, and but
20 for diligent law enforcement were booked to board a plane to
21 another country, Canada. They had fake passports from another
22 country. And, again, but for law enforcement tracking them
23 down eventually after approximately 19 days, they would have
24 been in the wind and probably never to be found again.

25 So, we believe that those circumstances alone

1 demonstrate that this is outside of the heartland of the
2 escape cases that this Court has seen from a facility such as
3 USP Lee. And, again, those same circumstances demonstrate the
4 seriousness of this offense, the planning that went into it,
5 the amount of time and effort it took for Mr. Qazah and
6 Mr. Mohamed not only to plan their escape but also to be
7 successful in it. It's still unknown how they were able to
8 travel from Lee County, Virginia across -- down to the Mexican
9 border, across the Mexican border and another significant
10 amount of miles to Mexico City all in the course of 19 days.
11 And to have fake passports, currency in hand, and plane
12 tickets booked for another foreign country.

13 So, we think that demonstrates the seriousness of the
14 offense comparatively to somebody who simply walked away from
15 USP Lee and was caught on the highway trying to hitch a ride
16 or in a motel in Jonesville with their family or similar
17 circumstances. So, for that reason we believe a variance is
18 appropriate also. The nature and characteristics of the
19 defendants we believe factors into that too. Both defendants
20 were serving very long sentences for serious offenses.
21 Mr. Mohamed was serving 246 months. Mr. Qazah was serving
22 what originally should have been 216 months but was reduced to
23 172 months.

24 And finally, Your Honor, we believe that deterrence
25 is appropriate for an upward departure -- excuse me, for an

1 upward variance in this case. The punishment needs to fit the
2 crime in this case. And the crime is to deter others that are
3 considering what these two individuals did, in essence escape,
4 and almost succeeding in that but for the U.S. Marshals
5 Service, but reaching another foreign country.

6 To deter others that are sitting in camps here and
7 elsewhere from engaging in such conduct, a sentence of more
8 than 11 to 18 months is inappropriate. I think that's what
9 the guidelines -- 12 to 18 months, excuse me. If all somebody
10 serving 246 months is facing is 12 to 18 months imprisonment
11 for a successful escape and trip to Mexico, there's really no
12 deterrence at all in further punishing these individuals. So
13 for that reason, Your Honor, we believe that a sentence that
14 is a variance or an upward departure, a significant term of
15 imprisonment is appropriate.

16 THE COURT: Thank you, Mr. Lee. Ms. Dickenson?

17 MS. DICKENSON: Your Honor, on behalf of Mr. Mohamed,
18 I would refer the Court to the sentencing memorandum that we
19 filed explaining why Mr. Mohamed chose to walk away from the
20 prison camp in Virginia in his attempt to return to his native
21 country of Yemen to be with his wife and his children there.
22 The Court is familiar, I'm sure, with the crisis that is
23 occurring in Yemen. That explains but does not excuse
24 Mr. Mohamed's actions. Mr. Mohamed will be punished for his
25 behavior. He, no doubt, did not consider the consequences of

1 the punishment that he would receive within the Bureau of
2 Prisons after he is sentenced in this matter. It is very
3 likely that Mr. Mohamed will never ever be allowed to serve
4 his time in a camp because of this conviction. He most likely
5 will be housed in a high-security facility. So the punishment
6 for this offense will be great in terms of the housing that he
7 will have in the prison.

8 His current release date on the Bureau of Prisons
9 website as of today is October 11th, 2025. He still has a
10 significant sentence that must be served. Mr. Mohamed very
11 much wants to be able to care for his family and provide for
12 them in a way that would ensure their safety. He understands
13 that he has this sentence that will be added to his current
14 sentence. He asks the Court to sentence him within the
15 guideline range, and he asks the Court to take into account
16 the reasons for his departure from the prison. Thank you.

17 THE COURT: All right. Thank you, Ms. Dickenson.

18 Mr. Bradshaw?

19 MR. BRADSHAW: May it please the Court. My client,
20 Mr. Qazah, is much the same situation, Your Honor. He is a
21 naturalized United States citizen. His wife however is from
22 the Middle East and he is facing a very lengthy sentence on
23 his original conviction in the first place, as is the case
24 with Ms. Dickenson's client. He will probably never see a
25 prison camp again. He will undoubtedly be housed in a much

1 more secure facility because of the fact that he is an escapee
2 and has confessed to doing that.

3 However, I must differ with the prosecution. I think
4 that the circumstances of this particular case do not indicate
5 any sufficient reason to vary from the guidelines which the
6 U.S. Sentencing Commission has crafted so very carefully.
7 There was no violence involved, no threats, no nothing really
8 except the fact that he walked away from the prison camp. It
9 is regrettably understandable, but facing what he was facing
10 in terms of time away from his family and the many years that
11 he has left to serve, that he took the opportunity when it
12 presented itself to make an escape.

13 I think that the sentencing guidelines don't really
14 differentiate what happens after the escape is made. The
15 crime is the escape. And certainly he did that. He has
16 confessed to that, Your Honor. He will have another felony on
17 his record, no matter what. He's got a very lengthy sentence,
18 no matter what. And we would ask the Court to sentence him
19 within the guideline range. And frankly, Your Honor, I think
20 given the understandably mistaken but nevertheless
21 understandable circumstances of escape, I would ask that the
22 Court sentence him to the low end of the guideline range of 12
23 months.

24 THE COURT: All right. Thank you.

25 If there's nothing further I'll ask the defendants to

1 area. When they were captured they had forged passports and
2 money and were thus likely assisted in a well-planned effort
3 to escape.

4 In light of the complex nature of their escape and
5 their prior crimes, it is clear to me that the defendants are
6 skilled and highly motivated to violate the law for their own
7 purposes. I find that they are very likely to reoffend, and
8 that the protection of the public as well as the need for
9 deterrence, not only deterrence to them but deterrence to
10 other inmates, justifies a sentence above the guideline range.

11 Let me say, I appreciate that they contend that they
12 wanted to be with their families, particularly in a
13 violence-torn and impoverished region of the world. But there
14 are few inmates who do not have somewhat similar motivations
15 if not as extreme. Many inmates believe with good reason that
16 they are needed by their families at home, but they bear the
17 consequences of their criminal conduct, and of course their
18 families suffer because of their criminality. And I do not
19 believe that their argument lessens the need for a sentence
20 above the guideline range for these defendants. I also
21 recognize that they likely will now be housed in a
22 high-security facility where the penal conditions are likely
23 more severe than a camp. But, again, I believe that that is a
24 natural consequence of their well-planned escape, and I do not
25 believe, again, that that lessens the need for a sentence

1 above the guideline range.

2 Accordingly, for the reasons indicated, it is the
3 judgment of the Court that the defendant, Salah Mohamed, is
4 hereby committed to the custody of the Bureau of Prisons to be
5 imprisoned for a total term of 60 months, consisting of 60
6 months on each count to run concurrently.

7 It is the judgment of the Court that the Defendant,
8 Kamal Qazah, is hereby committed to the custody of the Bureau
9 of Prisons to be imprisoned for a total term of 60 months on
10 each count to be served concurrently.

11 And these terms of imprisonment shall run
12 consecutively with the defendants' imprisonment under any
13 previous sentence. Upon release from imprisonment the
14 defendants both shall be placed on supervised release for a
15 term of three years, consisting of three years on each count
16 to run concurrently. While on supervision they must comply
17 with the following mandatory conditions: They must not commit
18 another federal, state or local crime. They must not
19 unlawfully possess a controlled substance.

20 Mr. Qazah must refrain from any unlawful use of
21 controlled substance and must submit to drug tests within 15
22 days of release from imprisonment, and at least two periodic
23 drug tests thereafter.

24 As to Mr. Mohamed, the drug testing condition is
25 suspended based on my determination that he poses a low risk

1 resolve in this case? If not, we will be in recess.

2 (Court recessed at 2:26 p.m.)

3

4 **CERTIFICATE**

5 I, Michele E. Becker, RMR, CRR certify that the
6 foregoing is a correct transcript from the record of
7 proceedings in the above-entitled matter.

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9 /s/ Michele E. Becker Date: January 12, 2018

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