

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-15729
Non-Argument Calendar

D.C. Docket No. 1:17-cr-00015-WS-MU-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MYRON GERALD STEVENS,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Alabama

(July 17, 2018)

Before WILSON, HULL, and JULIE CARNES, Circuit Judges.

PER CURIAM:

Myron Stevens appeals his life sentence, imposed after pleading guilty to two counts of producing child pornography, in violation of 18 U.S.C. § 2251, one

count of transportation with intent to engage in criminal sexual activity, in violation of 18 U.S.C. § 2423, and two counts of knowingly receiving and distributing images of child pornography, in violation of 18 U.S.C. § 2252A. On appeal, Stevens argues that his sentence is both procedurally and substantively unreasonable. After a careful review of the record and the parties' briefs, we affirm.

We typically review the reasonableness of a sentence under an abuse-of-discretion standard. *Gall v. United States*, 552 U.S. 38, 51, 128 S. Ct. 586, 597 (2007). However, when the appealing party does not clearly state the grounds for an objection before the district court, we review for plain error. *United States v. Massey*, 443 F.3d 814, 818 (11th Cir. 2006). On plain error review, the party must establish an error, that is plain, and that affected his substantial rights. *United States v. Olano*, 507 U.S. 725, 732, 113 S. Ct. 1770, 1777 (1993).

When reviewing reasonableness, the court first ensures that the district court made no significant procedural error, then examines whether the sentence was substantively reasonable in light of the totality of the circumstances. *Gall*, 552 U.S. at 51, 128 S. Ct. at 597. The court must consider the nature and circumstances of the offense and the history and characteristics of the defendant. 18 U.S.C. § 3553(a)(1). And in doing so, the district court must impose a sentence sufficient, but not greater than necessary to comply with the purposes listed in 18

U.S.C. § 3553(a)(2). *United States v. Irey*, 612 F.3d 1160, 1189–91 (11th Cir. 2010) (en banc). Although the court need not presume that a sentence within the guideline range is reasonable, we ordinarily expect a sentence within the Guideline range to be reasonable. *United States v. Hunt*, 526 F.3d 739, 746 (11th Cir. 2008). Lastly, we will only remand for resentencing when left with the definite and firm conviction that the district court committed a clear error of judgment in weighing the § 3553(a) factors by arriving at a sentence that lies outside the range of reasonable sentences dictated by the facts of the case. *United States v. Pugh*, 515 F.3d 1179, 1191 (11th Cir. 2008).

The district court did not abuse its discretion in imposing Stevens's sentence. Under plain error review, Stevens's sentence was not procedurally unreasonable. The court's statement that there were no "significant factors" warranting a downward variance, in context, was an accurate description of the law and a proper exercise of the court's discretion—and not an indicator that it applied an erroneous legal standard, as is argued by Stevens. *See United States v. Langston*, 590 F.3d 1226, 1237 (11th Cir. 2009) (explaining that the weight given to any § 3553(a) factor is within the sound discretion of the court). Likewise, the district court did not plainly err in failing to announce or recognize its discretion to vary downward based on a policy disagreement with the Guidelines. The record suggests that the court understood that it had discretion to disagree with the

Guidelines' policies, but determined that the range was appropriate in this instance.

See Dell v. United States, 710 F.3d 1267, 1279 (11th Cir. 2013) (explaining that a district court has discretion to vary downward but is not required to do so).

Nor was Stevens's sentence substantively unreasonable. As an initial matter, Stevens's life sentence was within the applicable Guideline range. *See Hunt*, 526 F.3d at 746. Imposing a life sentence was not an abuse of the court's discretion, as the court did not give "undue weight" to the applicable Guideline range, but instead, properly based the sentence on appropriate factors under 18 U.S.C. § 3553(a) that it deemed important, including the serious and ongoing nature of Stevens's offense—acting on pedophilic impulses dozens of times over a number of years—and the potentially life-long trauma and impact on his victims. *See United States v. Kuhlman*, 711 F.3d 1321, 1327 (11th Cir. 2013) (explaining that significant reliance on a single factor does not render a sentence unreasonable).

AFFIRMED.

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

July 17, 2018

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 17-15729-CC
Case Style: USA v. Myron Stevens
District Court Docket No: 1:17-cr-00015-WS-MU-1

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to FRAP 36. The court's mandate will issue at a later date in accordance with FRAP 41(b).

The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or for rehearing en banc is timely only if received in the clerk's office within the time specified in the rules. Costs are governed by FRAP 39 and 11th Cir.R. 39-1. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3.

Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. See 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. See 11th Cir. R. 35-5(k) and 40-1 .

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation for time spent on the appeal no later than 60 days after either issuance of mandate or filing with the U.S. Supreme Court of a petition for writ of certiorari (whichever is later) via the eVoucher system. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

For questions concerning the issuance of the decision of this court, please call the number referenced in the signature block below. For all other questions, please call Julie F. Cohen, CC at (404) 335-6170.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Djuanna Clark
Phone #: 404-335-6161

OPIN-1 Ntc of Issuance of Opinion