

781 Fed.Appx. 367 (Mem)

This case was not selected for publication in West's Federal Reporter. See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S.Ct. of App. 5th Cir. Rules 28.7 and 47.5. United States Court of Appeals, Fifth Circuit.

UNITED STATES of America, Plaintiff-Appellee

v.

Desmond BOWEN, Defendant-Appellant

No. 19-60218

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Summary Calendar

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FILED October 21, 2019

Appeal from the United States District Court for the Northern District of Mississippi, USDC No. 3:18-CR-96-1

Attorneys and Law Firms

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Before SMITH, DENNIS, and DUNCAN, Circuit Judges.

Opinion

PER CURIAM: *

Footnotes

- * Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

Desmond Bowen appeals the sentence imposed following his guilty plea for possession of ammunition by a felon. He argues that the 120-month, above-guidelines sentence is substantively unreasonable because the district court placed undue weight on his criminal history. We affirm.

The record reflects that the district court made an informed, individualized assessment after considering the 18 U.S.C. § 3553(a) factors, the statutory sentencing provisions, the guidelines range, the facts in the presentence report, and the arguments of the parties. We owe deference to the district court's determination, *see Gall v. United States*, 552 U.S. 38, 50-53, 128 S.Ct. 586, 169 L.Ed.2d 445 (2007), and discern no abuse of the court's discretion. Bowen has a history of offenses involving firearms and reckless behavior; it was proper for the district court to consider this, and reasonable for the court to conclude that he presented a risk to others. *Cf. United States v. Key*, 599 F.3d 469, 475-76 (5th Cir. 2010); *United States v. Smith*, 440 F.3d 704, 708-10 (5th Cir. 2006). Although the 120-month sentence is 63 months greater than the top of the guidelines range, we have upheld similar or greater variances in the past. *E.g., Key*, 599 F.3d at 475-76; *Smith*, 440 F.3d at 708-10. That Bowen disagrees with how the court balanced the factors before it is not a sufficient ground for reversal. *See United States v. Malone*, 828 F.3d 331, 342 (5th Cir. 2016). We note as well that Bowen asks us to reconsider binding precedent in this area of law, an invitation we decline. The judgment of the district court is AFFIRMED.

All Citations

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