

Attachments 2

NOT RECOMMENDED FOR PUBLICATION

File Name: 19a0517n.06

No. 18-2229

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Oct 11, 2019

DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,)	
)	
Plaintiff-Appellee,)	
)	ON APPEAL FROM THE
v.)	UNITED STATES DISTRICT
)	COURT FOR THE WESTERN
JODY STAMP,)	DISTRICT OF MICHIGAN
)	
Defendant-Appellant.)	
)	

BEFORE: ROGERS, WHITE, and READLER, Circuit Judges.

HELENE N. WHITE, Circuit Judge. Defendant Jody Stamp pleaded guilty to one count of Possession of an Unregistered Firearm, in violation of 26 U.S.C. § 5861(d), and was sentenced to 60 months' imprisonment. Stamp appeals, arguing that his sentence is procedurally and substantively unreasonable. Stamp also raises an ineffective assistance of counsel claim, which we decline to reach on direct appeal. Because Stamp's sentence is reasonable, we **AFFIRM**.

BACKGROUND

In the early morning of November 30, 2017, Stamp and his mother, Maryland Stamp, were asleep at their home in Portage, Michigan, when someone knocked loudly on their front door. Maryland looked out her bedroom window and was shot three times by an unknown perpetrator from outside the home. When law enforcement arrived at the Stamp house, they found Stamp holding his mother, who was on the floor and bleeding. Law enforcement described Stamp as distraught and "reluctant to move" away from his mother. R. 33, PID 83. When Stamp moved,

No. 18-2229, *United States v. Stamp*

law enforcement provided first aid to Maryland, who was then transported to a hospital for further treatment. Fortunately, Maryland survived.

At the time of the shooting, Stamp was on parole for state offenses and was wearing a tether, so he could not go in the ambulance with his mother. While Maryland was at the hospital receiving treatment, a family friend called Stamp and told him that he knew “who killed grandma.” R. 44, PID 209. At that point, Stamp believed his mother had died. Stamp then cut off his tether and joined the friend in a borrowed vehicle, hoping to “catch up to” the people who shot his mother. *Id.* at PID 210.

Around 5:00 a.m., law enforcement learned that Stamp had cut off his tether. When law enforcement called Stamp, he told them that he planned to “take care of this problem himself.” R. 33, PID 84. Later that morning, law enforcement located Stamp and the family friend in the borrowed vehicle at a gas station. Stamp was in the driver’s seat. After arresting Stamp and the friend, law enforcement found two shotguns, ammunition, and a nearly empty bottle of whiskey in the car. They also found ammunition in Stamp’s pocket. Stamp later reported that he drank nearly a full bottle of whiskey that morning and was heavily intoxicated at the time of his arrest.

A federal grand jury issued a two-count indictment charging Stamp with one count of being a Felon in Possession of a Firearm and Ammunition and one count of Possession of an Unregistered Firearm. Stamp pleaded guilty to the latter charge.

Based on a criminal history category of V and an adjusted offense level of 19, the probation officer recommended a sentence at the top of the 57-71 months Guidelines range. In the presentence investigation report, the probation officer reported that Stamp had a long criminal history that included twenty-three prior convictions. However, only three were assigned criminal history points. The probation officer identified USSG § 4A1.3, Criminal History Adequacy, as a

No. 18-2229, *United States v. Stamp*

potential ground for an upward departure because Stamp “has been continuously involved in the criminal justice system” and “has numerous violations while being supervised on probation and parole.” R. 33, PID 112. The probation officer also described Stamp’s mental-health and substance-abuse histories, including his diagnoses of Bipolar Disorder, Intermittent Explosive Disorder, and Attention Deficit Hyperactive Disorder. Although Stamp was prescribed medications for these disorders, he stopped using them. When interviewed, Stamp stated that his diagnosis of Intermittent Explosive Disorder “makes sense to him . . . looking back on his life history” and that to combat his disorder, he tries to “think about his actions[] before reacting.” *Id.* at PID 108. He also acknowledged a history of anger-management issues. Stamp self-reported a history of alcohol abuse, but stated he had been sober from 2002 until the day of his arrest in November 2017.

Stamp’s attorney moved for a downward variance based on the nature and circumstances of the offense pursuant to 18 U.S.C. § 3553 (a)(1), arguing that the shooting of Maryland Stamp was a catalyst for Stamp’s crime and a mitigating circumstance. At the sentencing hearing, the court asked Stamp’s attorney to describe Intermittent Explosive Disorder, noting that “it’s sort of self-descriptive, probably.” R. 43, PID 170. Stamp’s attorney explained that Stamp “has difficulty coping when under a lot of stress” and reiterated that “but for the fact that shots rang out and his mother was injured he would not be here.” *Id.* at PID 170, 174. The sentencing court also reviewed Stamp’s prior convictions and parole violations and stated that the total criminal history score “hardly reflects his criminal history.” *Id.* at PID 165.

When given an opportunity to speak, Stamp expressed regret and took responsibility for his actions, stating, “I don’t blame [my friend] for why I’m here because I seen them guns in the back of that car. I didn’t have to get in there. I did not.” *Id.* at PID 178. The court responded:

No. 18-2229, *United States v. Stamp*

recidivism, and Stamp's purpose in possessing the unregistered firearm. Accordingly, we cannot say that Stamp's sentence is substantively unreasonable.

II. Ineffective Assistance of Counsel

Stamp argues that his trial counsel's "failure to present psychological reports, records, or testimony for mitigation purposes" constituted ineffective assistance of counsel. Appellant's Br. at 17. Stamp asserts that presentation of evidence concerning how his mental disorders influenced his actions would have "create[d] a reasonable possibility that the outcome of his sentencing would [have] be[en] different." *Id.* at 18.

We ordinarily do not review ineffective assistance of counsel claims on direct appeal because the record is usually insufficient to permit adequate review. *United States v. Gardner*, 417 F.3d 541, 545 (6th Cir. 2005); *see also United States v. Ross*, 206 F.3d 896, 900 (6th Cir. 2000) ("Such claims normally should be raised in habeas corpus proceedings, which permit counsel to develop a record as to what counsel did, why it was done, and what, if any, prejudice resulted." (internal quotation marks and citation omitted)). However, when the record is adequately developed to allow us to assess the merits of the issue, we will do so. *United States v. Hall*, 200 F.3d 962, 965 (6th Cir. 2000). Here, the record does not permit an adequate review of Stamp's claim. It is not clear whether or to what extent Stamp's trial counsel considered presenting psychological reports, records, or expert testimony on Stamp's mental disorders. Nor is it apparent that presentation of such evidence would have been helpful to Stamp. We therefore decline to address the issue of ineffective assistance of counsel on direct appeal.

CONCLUSION

For the foregoing reasons, we AFFIRM the judgment of the district court.