

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

Nos. 19-5387/5419

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jan 10, 2020
DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,)	
)	
Plaintiff-Appellee,)	
)	
v.)	ON APPEAL FROM THE UNITED
)	STATES DISTRICT COURT FOR
STELLA RAE JAMES and CHARLES WILLIAM)	THE EASTERN DISTRICT OF
STURGILL,)	KENTUCKY
)	
Defendants-Appellants.)	
)	

ORDER

Before: GUY, GRIFFIN, and KETHLEDGE, Circuit Judges.

Stella Rae James and Charles William Sturgill, federal prisoners represented by counsel, appeal their convictions and sentences. The parties have waived oral argument, and this panel unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

In a 2018 joint trial, a jury found James guilty of providing a prohibited object to an inmate, in violation of 18 U.S.C. § 1791(a)(1), and found Sturgill guilty of being an inmate in possession of contraband, in violation of 18 U.S.C. § 1791(a)(2). The convictions stemmed from the exchange of Suboxone, a controlled substance, between James and her son Sturgill during a prison visitation. The district court sentenced James to 12 months and one day of imprisonment, to be followed by two years of supervised release, and sentenced Sturgill to 37 months of imprisonment, to be followed by three years of supervised release.

On appeal, James challenges the sufficiency of the evidence against her, arguing that no evidence existed that she had possessed the drugs prior to the transfer to Sturgill. Sturgill does not

Nos. 19-5387/5419

- 2 -

challenge his guilt, but argues that the district court incorrectly calculated his guidelines range by applying a two-level enhancement for obstruction of justice and by not applying a two-level reduction for acceptance of responsibility.

James's Appeal

We review the sufficiency of the evidence de novo, asking “whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *United States v. Collins*, 799 F.3d 554, 589 (6th Cir. 2015) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). Section 1791(a)(1) prohibits an individual from, “in violation of a statute or a rule or order issued under a statute, provid[ing] to an inmate of a prison a prohibited object, or attempt[ing] to do so.”

James asserts that insufficient evidence was presented to prove that she “provided, or attempted to provide” the Suboxone to Sturgill and that a theory that Sturgill obtained the drugs that he ingested from a “drop” at a garbage can arranged by a fellow inmate was equally likely. She argues that no evidence was presented that supports that she possessed the Suboxone and that the surveillance video shows that James merely handed Sturgill a napkin, which Sturgill appeared to then use to conceal the Suboxone before he ingested it.

The surveillance video that was submitted to the court by James shows that she pressed a napkin into Sturgill’s hand, shortly after which Sturgill appeared to be looking around to locate prison staff and then to take an object out of the napkin and swallow it. Lieutenant Thomas Van Gundy testified that he believed that he had observed Sturgill swallow an item on the surveillance camera. Van Gundy therefore had Sturgill placed in a dry cell for the later collection of stool samples. The Suboxone was ultimately found in Sturgill’s stool a day and a half after the visit inside two balloons. Although the surveillance video does not clearly show that the contraband was concealed beneath the napkin, a rational juror could have concluded from the evidence presented, beyond a reasonable doubt, that James had transferred to Sturgill the Suboxone, which he swallowed shortly thereafter. Accordingly, James’s sufficiency-of-the-evidence claim fails.

Nos. 19-5387/5419

- 3 -

Sturgill's Appeal

“A district court’s sentencing determination is reviewed ‘under a deferential abuse-of-discretion standard’ for reasonableness, which has both a procedural and a substantive component.” *United States v. O’Georgia*, 569 F.3d 281, 287 (6th Cir. 2009) (quoting *Gall v. United States*, 552 U.S. 38, 41 (2007)). Procedural reasonableness requires the court to “properly calculate the guidelines range, treat that range as advisory, consider the sentencing factors in 18 U.S.C. § 3553(a), refrain from considering impermissible factors, select the sentence based on facts that are not clearly erroneous, and adequately explain why it chose the sentence.” *United States v. Rayyan*, 885 F.3d 436, 440 (6th Cir. 2018) (citing *Gall*, 552 U.S. at 51).

(a) *Obstruction of Justice*. Sturgill first argues that his sentence should not have been enhanced for obstruction of justice pursuant to USSG § 3C1.1. Section 3C1.1 provides:

If (1) the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice with respect to the investigation, prosecution, or sentencing of the instant offense of conviction, and (2) the obstructive conduct related to (A) the defendant’s offense of conviction and any relevant conduct; or (B) a closely related offense, increase the offense level by 2 levels.

“A district court’s factual findings underlying a § 3C1.1 enhancement are reviewed for clear error, and the legal application of the sentencing enhancement to the facts is reviewed—somewhat confusingly—*de novo* but deferentially.” *United States v. Robinson*, 813 F.3d 251, 263 (6th Cir. 2016). The commentary to § 3C1.1 provides that the adjustment applies to “committing, suborning, or attempting to suborn perjury, . . . if such perjury pertains to conduct that forms the basis of the offense of conviction.” USSG § 3C1.1, comment. (n.4(B)).

The district court found that application of the enhancement was proper because Sturgill had testified falsely in order to exculpate James. The district court found that Sturgill’s testimony that he had not received the Suboxone from his mother and instead that another inmate had arranged to have the Suboxone dropped next to a nearby trash can was “perjurious and fabricated to hopefully assist his mother in getting acquitted.” The district court noted that the jury would have acquitted James if it had believed Sturgill’s testimony, and that Sturgill’s refusal to give the name of the inmate who allegedly arranged to have the Suboxone placed in the trash can further

Nos. 19-5387/5419

- 4 -

demonstrated the testimony's falsity. The district court thus correctly identified the portion of Sturgill's testimony that it found to be perjurious and determined that the perjury was material, willful, and not the result of confusion, mistake, or faulty memory. *See United States v. Bazazpour*, 690 F.3d 796, 808 (6th Cir. 2012). The district court's factual findings that Sturgill engaged in the obstructive conduct were not clearly erroneous, and the district court did not err when it applied the enhancement.

(b) *Acceptance of Responsibility*. We review the district court's decision not to reduce Sturgill's offense level under USSG § 3E1.1 deferentially. *See United States v. Webb*, 335 F.3d 534, 537-38 (6th Cir. 2003) (citing *Buford v. United States*, 532 U.S. 59, 64-65 (2001)). Section 3E1.1 provides for a two-level reduction of the guidelines offense level if "the defendant clearly demonstrates acceptance of responsibility for his offense." USSG § 3E1.1(a). "This language's ordinary meaning generally bars a defendant from obtaining the reduction if the defendant lies about the nature of the offense." *United States v. Thomas*, 933 F.3d 605, 612 (6th Cir. 2019). "Only in an 'extraordinary' case may a defendant receive both an offense-level increase for obstruction and an offense-level decrease for acceptance of responsibility." *Id.* "A defendant who falsely denies . . . relevant conduct . . . has acted in a manner inconsistent with acceptance of responsibility." USSG § 3E1.1, comment. (n.1(A)).

The district court found that, although Sturgill had admitted to possessing the Suboxone, "he lied and committed perjury regarding the source of his Suboxone" in order to exculpate James. The district court did not err by concluding that such false testimony regarding relevant conduct that the district court found to be true precluded Sturgill from obtaining a two-level reduction for acceptance of responsibility.

Accordingly, we **AFFIRM** the district court's judgments.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk