

United States Court of Appeals For the First Circuit

No. 19-2166

UNITED STATES,

Appellee,

v.

MICHAEL LEE,

Defendant - Appellant.

Before

Howard, Chief Judge,
Thompson and Kayatta, Circuit Judges.

JUDGMENT

Entered: May 12, 2020

Defendant-appellant Michael Lee pleaded guilty to federal charges related to child pornography in the United States District Court for the District of Massachusetts. He faced a mandatory-minimum prison sentence of fifteen years. 18 U.S.C. § 2251(e). The government argued for a prison sentence at the bottom of the range calculated in Lee's presentence report under the United States Sentencing Guidelines: twenty-seven years. Lee argued for the statutory mandatory-minimum prison sentence of fifteen years. The district court imposed a prison term of twenty years.

On appeal, Lee focuses on the substantive reasonableness of the sentence imposed. Lee submits that a prison term of this length is likely to function as a "life sentence" because of the chance that a man his age will die before release. Lee argues such a result is not justified in light of his personal characteristics and lack of a criminal history, and that the district court effectively "double-counted" victim-related guideline-sentencing enhancements by citing the main victim's age and vulnerability as reasons for a sentence above the mandatory minimum. The government has moved for summary affirmance under this court's Local Rule 27.0(c)(summary disposition available "if it shall clearly appear that no substantial question is presented").

Lee's contentions do not raise a "substantial question" about the district court reaching a "defensible overall result" supported by a "plausible sentencing rationale" in this case. United States v. Santiago-Rivera, 744 F.3d 229, 234 (1st Cir. 2014). Lee offered a thorough and developed case at sentencing, but it could not compel the district court to choose a prison term commensurate with those for the least-culpable offenders sentenced under § 2251(e). The increment above the statutory mandatory-minimum chosen by the sentencing judge was substantively reasonable in light of the actual harm inflicted on a child, eight years of age, known by Lee to be impaired and non-verbal, especially when considered alongside cases resulting in prison sentences at or near the statutory minimum prison term Lee sought. See United States v. Hart, 635 F.3d 850 (6th Cir. 2011)(180-month sentence for soliciting of fictive teenager); United States v. Polk, 546 F.3d 74 (1st Cir. 2008)(188-month sentence for same).

The motion for summary disposition is **GRANTED**, and the judgment of the district court is summarily **AFFIRMED**.

By the Court:

Maria R. Hamilton, Clerk

cc:

Donald Campbell Lockhart
Anne Paruti
Steven Alan Feldman
Michael Lee