

UNPUBLISHED

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

No. 19-4579

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JAMAR KE-SHAWN PARKER,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at
Wilmington. James C. Dever III, District Judge. (7:18-cr-00117-D-1)

Submitted: May 5, 2020

Decided: May 27, 2020

Before AGEE, FLOYD, and RICHARDSON, Circuit Judges.

Affirmed by unpublished per curiam opinion.

G. Alan DuBois, Federal Public Defender, Jennifer C. Leisten, Assistant Federal Public
Defender, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Raleigh, North Carolina,
for Appellant. Robert J. Higdon, Jr., United States Attorney, Jennifer P. May-Parker,
Assistant United States Attorney, Phillip A. Rubin, Assistant United States Attorney,
OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jamar Ke-Shawn Parker pled guilty to two counts of distributing and possessing with intent to distribute heroin, in violation of 21 U.S.C. § 841(a)(1) (2018). The district court sentenced him, as a career offender, to concurrent sentences of 168 months' imprisonment, terms in the middle of the 151-to-188-month advisory Sentencing Guidelines range. Parker appeals, maintaining that his sentence is both procedurally and substantively unreasonable. Finding no error, we affirm.

We review a defendant's sentence, "whether inside, just outside, or significantly outside the Guidelines range," for reasonableness "under a deferential abuse-of-discretion standard." *Gall v. United States*, 552 U.S. 38, 41 (2007); see *United States v. Provance*, 944 F.3d 213, 217 (4th Cir. 2019). We first determine whether the district court committed procedural error, such as improperly calculating the Guidelines range, failing to consider the 18 U.S.C. § 3553(a) (2018) sentencing factors, relying on clearly erroneous facts, or inadequately explaining the sentence. *United States v. Lymas*, 781 F.3d 106, 111-12 (4th Cir. 2015). Only if we find no significant procedural error do we then assess the substantive reasonableness of the sentence. *United States v. Nance*, __ F.3d __, __, 2020 WL 1918705, at *5 (4th Cir. Apr. 21, 2020). "Any sentence that is within or below a properly calculated Guidelines range is presumptively [substantively] reasonable. Such a presumption can only be rebutted by showing that the sentence is unreasonable when measured against the 18 U.S.C. § 3553(a) factors." *United States v. Louthian*, 756 F.3d 295, 306 (4th Cir. 2014) (citation omitted).

Parker first argues that his sentence is procedurally unreasonable because the court failed to address his nonfrivolous arguments concerning his mental health and drug addiction. “[A] district court must address or consider all non-frivolous reasons presented for imposing a different sentence and explain why he has rejected those arguments.” *United States v. Ross*, 912 F.3d 740, 744 (4th Cir.), *cert. denied*, 140 S. Ct. 206 (2019). When reviewing a district court’s sentencing explanation, “we look at the full context, including the give-and-take of a sentencing hearing,” rather than just the statements the district court made at the moment the sentence was imposed. *Nance*, 2020 WL 1918705, at *5. “Where a sentencing court hears a defendant’s arguments and engages with them at a hearing, we infer from that discussion that specific attention has been given to those arguments.” *Id.*

At the sentencing hearing, defense counsel argued that a 151-month sentence would adequately address various concerns about Parker’s mental health and drug addiction. Although the district court declined to impose the low-end Guidelines sentence that counsel requested, the court specifically recommended a mental health assessment and treatment for Parker’s mental health and substance abuse problems. Furthermore, the court included as special conditions of supervised release that Parker participate in mental health and narcotic addiction treatment programs. By making these recommendations and imposing the special conditions of supervised release, the district court made clear that it considered Parker’s arguments regarding his mental health and drug addiction. *Nance*, 2020 WL 1918705, at *6.

Next, Parker maintains that the district court relied on erroneous facts in imposing the sentence. Specifically, Parker argues that the district court imposed the sentence based on its mistaken belief that heroin kills 70,000 Americans every year. Parker contends that the number of fatalities caused by heroin, while still in the thousands, is actually much lower than the number cited by the district court. However, based on the context of the court's statement, it is clear that the court meant to emphasize what Parker himself does not dispute—that heroin is a deadly drug. Because we can say with fair assurance that the district court's explicit consideration of the precise number of annual heroin deaths would not have affected the sentence imposed, we conclude that any inaccuracy in the court's estimate was harmless. *See United States v. Boulware*, 604 F.3d 832, 838 (4th Cir. 2010) (discussing harmless error in context of sentencing). In addition, in light of evidence in the record showing that heroin that Parker sold likely caused a customer's illness, we reject Parker's related claim that the court erroneously described the drugs he sold as poison.

In his final argument, Parker claims that his sentence is substantively unreasonable because the district court focused exclusively on his criminal history without regard to other relevant considerations. This argument simply is not supported by the record.

First, the district court discussed the nature and circumstances of the offense, acknowledging defense counsel's assertion that the crime involved the distribution of only 1.8 grams of heroin but emphasizing that heroin was deadly and plagued the community. Next, the court addressed Parker's history and characteristics, recognizing his difficult childhood while noting his academic success. In considering Parker's character, the court remarked on the irony that Parker's own mother was a drug addict and yet he chose to

distribute heroin, ensuring that others would endure the same difficulties he had encountered as a child. The court then went through Parker's criminal record, observing that the penalties he had faced for earlier drug convictions did not deter him from continuing to deal in heroin. Finally, the court took note of defense counsel's point that Parker did not have a firearm, was lawfully employed, and suffered a gunshot wound that prompted him to start a foundation that taught children about music. But the court once again observed the irony of Parker's efforts to both serve his community and harm it by dealing in heroin, which the court found showed Parker's lack of respect for the law. Given the court's thorough and balanced sentencing explanation, we disagree with Parker's claim that the court placed too much weight on his criminal history. Accordingly, we conclude that Parker has failed to rebut the presumption of reasonableness accorded his within-Guidelines sentence. *Louthian*, 756 F.3d at 306.

Because we conclude that Parker's sentence is both procedurally and substantively reasonable, we affirm. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED