

2022 WL 1593942

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United States Court of Appeals, Eighth Circuit.

UNITED STATES of America, Plaintiff - Appellee

v.

Maurice D. BELL, Defendant - Appellant

No. 20-3350

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Submitted: January 10, 2022

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Filed: May 20, 2022

Appeal from United States District Court for the Western District of Missouri - Kansas City

Attorneys and Law Firms

William M. (Marc) **Ermine**, Asst. Fed. Public Defender, Kansas City, MO (Laine Cardarella, Fed. Public Defender, on the brief), for defendant-appellant

Philip M. Koppe, Asst. U.S. Atty., Kansas City, MO (Timothy A. Garrison, U.S. Atty., on the brief), for plaintiff-appellee.

Before **SMITH**, Chief Judge, **WOLLMAN** and **GRASZ**, Circuit Judges.

[Unpublished]

PER CURIAM.

*1 **Maurice** Bell appeals from his 82-month sentence following his conviction for being a felon in possession of a firearm, in violation of **18 U.S.C. §§ 922(g)(1)** and **924(a)(2)**. He argues that the district court¹ procedurally erred in imposing an upward variance to 82 months' imprisonment because the court (1) failed to explain its application of the sentencing factors under **18 U.S.C. § 3553(a)**, and (2) based its sentence on clearly erroneous facts. He also maintains that his sentence is substantively unreasonable. We affirm.

I. Background

App A

Officers from the Kansas City, Missouri Police Department conducted a traffic stop on a car suspected of having an improperly displayed license plate. During the stop, the officers became suspicious of Bell, the front passenger, who appeared extremely nervous. An officer asked Bell for his name and date of birth. The occupants' evasiveness and the strong smell of marijuana emanating from the vehicle led officers to remove the occupants from the vehicle and place them in the patrol car. Bell admitted to officers that he had given a false name and that his real name was "**Maurice** D. Bell." A computer check revealed that Bell was a convicted felon and had nine outstanding Kansas City municipal arrest warrants.

The officers arrested Bell and the driver based on the active warrants. Officers did an inventory search before towing the vehicle. Police found a cloth bag containing a Smith & Wesson 9mm pistol with the Serial No. FYK0600 located under the front passenger seat where Bell had been seated. "The firearm was loaded with 15 live rounds of ammunition in the magazine that was capable of accepting 16 rounds of ammunition (extended magazine), one live round of ammunition in the chamber, and the firearm was inside of a black holster with a magazine pouch on the front." R. Doc. 55, at 4. The magazine pouch contained "a magazine loaded with 16 live rounds of ammunition (extended magazine)." *Id.* Police confirmed that the firearm was reported as stolen from Blue Springs, Missouri. The cloth bag also contained several plastic baggies with drug residue, a digital scale with drug residue, a baggie with ten unknown pills,² a baggie with 3.29 grams of powder cocaine, two baggies with a total of 34.37 grams of marijuana, and a silver spoon with residue.

Bell was charged with being a felon in possession of a firearm. He pleaded guilty without a plea agreement. The government advised the court that it had offered Bell a plea agreement in which both parties would be prohibited from arguing for a sentence outside the Guidelines range. In the proposed plea agreement, the government would also agree not to charge Bell with possession with intent to distribute ecstasy or possession of a firearm during or in furtherance of a drug-trafficking crime, which require a mandatory consecutive sentence of five years' imprisonment. Bell had tentatively accepted the plea agreement but ultimately rejected it the day before the change-of-plea hearing. He decided to plead guilty without a plea agreement. Bell admitted to the court that he knew the firearm was under the passenger's seat when he was arrested and that he was the one who put it there. He also admitted that he was a convicted felon who was prohibited by

federal law from possessing a firearm. He conceded that the government could prove that the firearm traveled in interstate commerce.

*2 The PSR calculated a base offense level of 20 because the offense involved a large-capacity magazine. *See* U.S.S.G. § 2K2.1(a)(4)(B). It increased Bell's offense level by two levels because the firearm was stolen. *Id.* § 2K2.1(b)(4)(A). It added another four levels because Bell possessed the firearm in connection with another felony offense—the possession of 3.29 grams of powder cocaine located in the cloth bag with the firearm. *See* *id.* § 2K2.1(b)(6)(B). Bell's adjusted offense level was 26. After deducting three levels for acceptance of responsibility, the PSR calculated a total offense level of 23.

As for Bell's criminal history, he had 18 state and municipal convictions over the course of 16 years. These convictions included the sale and possession of controlled substances, domestic abuse, violating a protective order, and resisting arrest. Bell received only two criminal history points as a result of these 18 convictions. The PSR calculated a criminal history category of II. A criminal history category of II, combined with a total offense level of 23, resulted in a Guidelines range of 51 to 63 months' imprisonment.

The PSR reported Bell's admission that he was a "social" user of marijuana. R. Doc. 55, at 22. Additionally, Bell "admitted to using ecstasy for a period of time" but "stated he has not used ecstasy since age 28." *Id.*

At sentencing, the government argued for an upward variance with a sentence between 108 to 120 months' imprisonment. In support, the government cited Bell's "history of domestic violence" and "history of lying to the police and being convicted of that." R. Doc. 66, at 5. The government also argued that Bell was not just a felon in possession in the present case but also a "drug dealer" based on the cloth bag's contents. *Id.*

The court sentenced Bell to 82 months' imprisonment, a sentence higher than the calculated Guidelines range but less than the increase the government sought. The court "considered all [of the] § 3553(a) factors" in reaching the sentence. *Id.* at 14. Analyzing Bell's "respect for the law," the court focused on Bell's "prior convictions which ... include domestic violence and ... not cooperating with law enforcement." *Id.* at 15. The court also found that Bell's

"relevant conduct.... has all the indicia of drug dealing." *Id.* In support, the court pointed out that the "gun with th[e] extended magazine and the other extended magazine" were found with the drugs. *Id.* The court commented, "It's rare we find people dealing drugs that don't have guns. They go together." *Id.*

The court did recognize certain mitigating factors. First, it acknowledged that Bell had "been cooperative since [he has] been incarcerated" and had "completed programs." *Id.* Second, the court acknowledged Bell's "great family support." *Id.* at 16. Ultimately, the court decided to sentence Bell "above the [G]uidelines." *Id.* It explained, "[I]t's where I come out after weighing all these factors, which include protecting the public, deterrence, the nature and circumstances of this offense, and respect for the law." *Id.*

After imposing Bell's sentence, the court inquired, "[I]s there anything else on behalf of the defendant?" *Id.* at 17. Bell's counsel responded, "No, Your Honor." *Id.*

II. Discussion

On appeal, Bell argues that (1) the district court procedurally erred in imposing an upward variance of 82 months' imprisonment, and (2) the 82-month sentence is substantively unreasonable.

"When we review the imposition of sentences, whether inside or outside the Guidelines range, we apply a deferential abuse-of-discretion standard. We review a district court's sentence in two steps, first reviewing for significant procedural error, and second, if there is no significant procedural error, we review for substantive reasonableness." *United States v. Isler*, 983 F.3d 335, 341 (8th Cir. 2020) (cleaned up).

*3 Bell maintains that the district court procedurally erred in two respects. First, he argues that the district court "[f]ail[ed] to explain the application of important § 3553(a) factors." Appellant's Br. at 8. Second, he argues that the district court erred in "select[ing] its 82-month sentence based on clearly erroneous facts, concluding Mr. Bell was involved in drug dealing activity in connection with the firearm possession." *Id.*

"Procedural errors include failing to calculate (or improperly calculating) the Guidelines range, treating the Guidelines

as mandatory, failing to consider the § 3553(a) factors, selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence—including an explanation for any deviation from the Guidelines range.” *Isler*, 983 F.3d at 341 (internal quotation marks omitted).

Generally, we review de novo the district court's application of the Guidelines and review for clear error its factual findings. *United States v. Brooks-Davis*, 984 F.3d 695, 700 (8th Cir. 2021). But in this case plain error review is appropriate. The record shows that after the district court imposed Bell's sentence, Bell “lodged no procedural objections to the district court's sentence.” *See United States v. Wohlman*, 651 F.3d 878, 883 (8th Cir. 2011). In fact, Bell declined to do so when the district court inquired whether there was “[a]nything else on behalf of the defendant.” R. Doc. 66, at 17; *see also Wohlman*, 651 F.3d at 883 (“Wohlman even declined to [procedurally object] when the district court inquired as to whether there was ‘anything else that we need to tend to on this case today.’”). “Because he ‘failed to object at sentencing to any alleged procedural sentencing error,’ ‘the error is forfeited and may only be reviewed for plain error.’” *Wohlman*, 651 F.3d at 883–84 (quoting *United States v. Townsend*, 618 F.3d 915, 918 (8th Cir. 2010)). Under plain-error review, Bell “must show: (1) an error; (2) that is plain; and (3) that affects substantial rights.” *Id.* at 884 (quoting *Townsend*, 618 F.3d at 918).³

Bell argues that the district court procedurally erred by not fully addressing his arguments. A district court, however, is not required to “specifically respond to every argument made by the defendant or mechanically recite each § 3553(a) factor.” *United States v. Ballard*, 872 F.3d 883, 885 (8th Cir. 2017) (per curiam) (internal quotation marks omitted). It “has wide latitude to weigh the § 3553(a) factors in each case and assign some factors greater weight than others in determining an appropriate sentence.” *Id.* (internal quotation marks omitted). “[W]here the district court heard argument from counsel about specific § 3553(a) factors, we may presume that the court considered those factors.” *United States v. Keating*, 579 F.3d 891, 893 (8th Cir. 2009). “In explaining the sentence, the district court need only set forth enough to satisfy the appellate court that it has considered the parties' arguments and has a reasoned basis for exercising its own legal decisionmaking authority.” *United States v. Clark*, 998 F.3d 363, 368 (8th Cir. 2021) (cleaned up).

*4 Here, the court explained that it varied upwards “after weighing all the[] § 3553(a) factors, which include protecting the public, deterrence, the nature and circumstances of this offense, and respect for the law.” R. Doc. 66, at 16. Based on this record, the district court did not commit error, plain or otherwise, in explaining why it imposed an 82-month sentence.

Bell also argues that the district court clearly erred in finding that his conduct indicated that he was a drug dealer. He notes that the case involves “a very small quantity of cocaine,” which “[s]tanding alone … is insufficient to support an inference of distribution.” Appellant's Br. at 12. According to Bell, no evidence exists to support an inference of distribution, such as “that the drugs were packaged for resale” or “other indicia of drug distribution, such as cash or multiple cell phones.” *Id.* at 12–13. Bell contends that “[t]he contemporaneous presence of drugs along with a firearm is not sufficient evidence to conclude that [he] was dealing drugs.” *Id.* at 13. Bell maintains that this factual finding “was a major factor in the court's decision to impose an upward variance and sentence [him] to 82 months in prison.” *Id.*

The district court concluded that the undisputed facts of the case indicated that Bell was dealing drugs based on the “gun with that extended magazine and the other extended magazine and the drugs found contemporaneous with” the drugs. R. Doc. 66, at 15. The court determined that “[t]he gun is part of drug dealing” because drugs and guns “go together.” *Id.*

Here, the record supports the district court's finding that Bell was dealing drugs, as opposed to merely possessing them. *See United States v. Flax*, 988 F.3d 1068, 1074–75 (8th Cir. 2021) (“Firearms are used in various aspects of drug trafficking schemes beyond merely facilitating drug transactions, such as protecting drugs and drug profits and intimidating drug customers, distributors and competitors.” (cleaned up)). The undisputed facts show that along with the firearm, law enforcement discovered ammunition, a digital scale, baggies with drug residue, and three different types of drugs, some of which Bell did not use personally. According to the PSR, Bell admitted only to currently using marijuana, not cocaine or ecstasy. This evidence, combined with Bell's prior convictions for selling drugs, supports the district court's conclusion that Bell was dealing drugs. The district court did not plainly error in its factual finding.

Lastly, Bell argues that the district court abused its discretion by sentencing him to 82 months' imprisonment because

it (1) “failed to consider relevant factors that should have received significant weight”; (2) “failed to consider the substantial mitigation arguments [he] presented,” such as his relationship with his son; and (3) “committed a clear error of judgment in weighing the sentencing factors,” such as “plac[ing] tremendous weight on its finding that [he] was involved with drug dealing.” Appellant’s Br. at 15–16.

This court reviews the substantive reasonableness of a district court’s sentence for abuse of discretion. *Isler*, 983 F.3d at 344. “We may not, however, consider a sentence outside the range presumptively unreasonable. In considering the extent of a variance, we give due deference to the district court’s decision that the  § 3553(a) factors, on a whole, justify the extent of the variance.” *United States v. Foy*, 617 F.3d 1029, 1036 (8th Cir. 2010) (internal quotation marks and citations omitted).

*5 Bell’s 82-month sentence is an upward variance from the Guidelines range of 51 to 63 months’ imprisonment. The upward variance imposed in this case is not substantively unreasonable in light of the record facts and the district court’s evaluation of the applicable sentencing factors.

III. Conclusion

Accordingly, we affirm the judgment of the district court.

All Citations

Not Reported in Fed. Rptr., 2022 WL 1593942

Footnotes

- 1 The Honorable David Gregory Kays, United States District Judge for the Western District of Missouri.
- 2 At sentencing, the government represented that the ten pills were ecstasy. R. Doc. 66, at 5–6. But Bell asserted that “a factual dispute [existed] about what those pills actually were” and that not *all* of the pills “test[ed] positive for ecstasy.” *Id.* at 8.
- 3 Bell “did not object to the district court’s alleged lack of explanation” and now claims procedural error. *United States v. Coto-Mendoza*, 986 F.3d 583, 585 (5th Cir. 2021). Bell argues that “[t]o the extent this [c]ourt requires a defendant to re-assert objections to procedural rulings after the imposition of sentence, the [c]ourt should re-consider that requirement in light of the Supreme Court’s decision in  *Holguin-Hernandez v. United States*, 140 S. Ct. 762 (2020).” Appellant’s Reply Br. at 1–2 (footnote omitted). *Holguin-Hernandez*, however, “never addressed the issue of improper procedure.” *Coto-Mendoza*, 986 F.3d at 586. The holding of *Holguin-Hernandez* is “limited”; in that case, “the Supreme Court explicitly stated that it was *not* deciding the issue of ‘what is sufficient to preserve a claim that a trial court used improper procedures in arriving at its chosen sentence.’” *Id.* (quoting  *Holguin-Hernandez*, 140 S. Ct. at 767).

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MAURICE D. BELL,

Defendant.

Case No. 18-cr-00215-DGK

**DEFENDANT'S SENTENCING MEMORANDUM
AND REQUEST FOR DOWNWARD VARIANCE**

Maurice Bell is the primary caregiver for his 12-year old son. At age 41, he lacks a lengthy incarceration history, having served a total of less than one year in custody during his lifetime. The uncontested advisory guideline range in this case is 51 to 63 months. But after considering the statutory sentencing factors, the sentence that is sufficient, but not greater than necessary, to address those factors is 36 months in custody followed by three years supervised release.

I. Two aspects of the guideline calculation suggest that the advisory guideline range overstates the seriousness of the present offense.

Maurice Bell was the passenger in a vehicle that was stopped by police for a traffic violation. One of the two officers who conducted the stop interacted with Mr. Bell. When asked his name, Mr. Bell initially provided a false name to the officer. But

seconds later and without prompting, he voluntarily recanted that false information and gave the officer his true name.

After Mr. Bell was taken into custody, the officers searched the vehicle and found a bag under the passenger seat. Inside the bag, officers found a small amount of cocaine (1.5684 grams) and marijuana, along with 10 pills and the firearm that Mr. Bell pled guilty to possessing in this case.

The sentencing guideline range contained in the presentence report is unchallenged by the parties. But two aspects of the guideline calculation merit closer examination. First, the report assessed a base offense level of 20 due to the 16-round magazines recovered with the firearm.¹ While Mr. Bell does not challenge the applicability of that offense level, it is important to note that the firearm Mr. Bell possessed – Smith & Wesson SD9 VE – is manufactured and sold with a 16-round magazine.²

Second, the report assessed a two-level enhancement because the firearm had been previously reported as stolen.³ Again, Mr. Bell does not challenge the applicability of that enhancement. But there is no evidence to suggest Mr. Bell knew or should have known the firearm was stolen.

¹ See U.S.S.G. § 2K2.1(a)(4)(B)(i)(I).

² See Smith & Wesson SD9 VE Std Capacity, Specifications, available at <https://www.smith-wesson.com/firearms/sw-sd9-ve-std-capacity> (last accessed Oct. 21, 2020).

³ See U.S.S.G. § 2K2.1(b)(4)(A).

Both of those enhancements apply because they only require objective status and not scienter.⁴ But for purposes of imposing the sentence, the Court should consider Mr. Bell's lack of intent in possessing the large capacity magazine and lack of knowledge of the firearm's stolen status. When those things are considered, the guidelines overstate the seriousness of the offense conduct. In the absence of these enhancements, the base offense level would be reduced by eight points, yielding a total guideline range of 21 to 27 months in custody.⁵ So, along with the other sentencing factors discussed below, these factors support the reasonableness of a 36-month sentence.

II. Mr. Bell's prior convictions involve relatively minor offense conduct. As a result, his longest prior sentence of incarceration was 120 days. His criminal history is also dated.

The offense just discussed took place on June 4, 2017. But Mr. Bell was not arrested until over two years later on August 16, 2019. Between this offense and his arrest, Mr. Bell sustained no additional convictions.⁶ In fact, prior to this incident in June 2017, Mr. Bell's most recent conviction was in 2013 for driving while suspended.

⁴ See U.S.S.G. § 2K2.1, Application Note 8(B) ("[This section] applies regardless of whether the defendant knew or had reason to believe that the firearm was stolen....").

⁵ The total offense level, after the reduction for acceptance of responsibility, would be 15. Mr. Bell's criminal history category is II.

⁶ The presentence report lists three instances of law enforcement contact during this time period; however, Mr. Bell denies those allegations.

His criminal history includes three prior felony convictions, all for controlled substance-related offenses. The first incident took place in 1999 and involved possession of 0.49 grams of crack cocaine. Mr. Bell ultimately served 30 days in jail for that offense.

The second incident took place in 2004 and involved the sale of 0.34 grams of crack cocaine and 2.33 grams of marijuana to an undercover officer, along with possession of an additional 4.42 grams of crack cocaine.

The third and most recent prior felony case took place in 2006 and involved the possession of 0.3 grams of crack cocaine. For both this offense of the preceding offense, Mr. Bell served a concurrent sentence of 120 days in custody initially and later served an additional concurrent sentence of 120 days as a result of a probation revocation in 2011.

Each of these offenses involved a small quantity of controlled substances, typically crack cocaine. As a result, the sentences imposed were relatively minor. In his history, then, Mr. Bell has not served more than 120 days in prison at any one time. And his most recent release from custody was in June 2011.

Mr. Bell's two most recent convictions (both misdemeanors) were for resisting an officer in 2011 and driving while suspended in 2013. Those cases were sentenced on the same day, October 30, 2013. He was sentenced to two years' probation, which he successfully completed.

Close review of Mr. Bell's history is important for several reasons. First, Mr. Bell does not have a lengthy incarceration history. He has been twice sentenced to serve 120 days in custody and once sentenced to serve 30 days in custody. So a lengthy sentence of imprisonment here is not necessary to address the need for deterrence and protection of the public.

Second, the lack of lengthy prior sentences indicates that Mr. Bell's prior offenses were relatively lacking in seriousness. So a lengthy sentence of imprisonment here is not necessary to address the seriousness of this offense relative to those sentences or to provide just punishment for this offense.

Third, the age of Mr. Bell's prior convictions and his completion of the most recent probated sentences without incident demonstrates his ability to comply with court orders and the law. So a lengthy sentence of imprisonment here is not necessary to promote respect for the law.

Finally, Mr. Bell's criminal history category is adequately addressed in the guideline calculation. Only Mr. Bell's two most recent convictions received criminal history points, and the remainder of his criminal history falls outside the look-back period provided within the guidelines.⁷ That occurred because the relatively minor nature of those prior offenses resulted in commensurately minor sentences. And as

⁷ See U.S.S.G. § 4A1.2(e).

dictated by the guidelines, those cases did not receive criminal history points. So Mr. Bell's criminal history category is correct and appropriate.

In sum, Mr. Bell has three prior felony convictions for controlled substance offenses involving small quantities of drugs. For those convictions, he served a total of less than a year in custody. A sentence of 36 months in this case, then, is appropriately proportional to his prior convictions, accounts for the nuances of his criminal history, and addresses the seriousness of the present offense, as well as the other statutory sentencing factors.

III. Mr. Bell is the caregiver for his 12-year old son, M.B., as a result of his mother's passing away in August 2018.

Mr. Bell's primary concern is his son, M.B., who is 12 years old. M.B. was living with his mother in New York when, in summer 2018, she passed away due to a heart attack. Mr. Bell traveled to New York to collect his son, who came to live with Mr. Bell in Kansas City. With Mr. Bell as his primary caregiver, M.B. enrolled in school and thrived, excelling in school and making good grades.

Before his arrest for this case in August 2019, M.B. and Mr. Bell spent time together working on M.B.'s homework, playing ball, and watching superhero movies. But since Mr. Bell's arrest, M.B. is living with Mr. Bell's 65-year old father. The passing of his mother and the forced abandonment by his father have taken their toll on M.B., who is undergoing counseling to help him with the situation.

While responsibility for this situation lies partially with Mr. Bell, the passing of M.B.'s mother and Mr. Bell's role as primary caregiver for M.B. arose *after* the present offense occurred, but a year *before* he was arrested for it. In short, Mr. Bell's circumstances materially changed during this intervening period. He now has the challenge of caring for M.B. under very difficult circumstances. And he hopes to return to M.B. and the rest of his family as quickly as possible. So in addition to all of the arguments above regarding the statutory sentencing factors, Mr. Bell is asking the Court for leniency based on these peculiar circumstances.

IV. The reasonable sentence is 36 months in custody followed by three years supervised release.

A below-guideline sentence is appropriate here. And statistics from the United States Sentencing Commission suggest a downward variance would not be an aberration. In fiscal year 2019, courts varied downward in 25% of all felon in possession of a firearm cases nationally. In the Western District of Missouri in 2019, 18% of such cases involved a downward variance from the guideline range.⁸ So approximately one-quarter of felon in possession cases, both nationally and locally, are sentenced below the guideline range pursuant to a downward variance. And the Court should do the same here.

⁸ Statistics in this section were obtained using the United States Sentencing Commission's Interactive Data Analyzer, available at <https://ida.ussc.gov/>. References to downward variances here are to non-government sponsored downward variances.

Mr. Bell respectfully requests that the Court sentence him to 36 months in custody followed by three years supervised release.

Respectfully submitted,

/s/ MARC ERMINE
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CERTIFICATE OF SERVICE

It is hereby CERTIFIED that the foregoing notice was electronically filed on this 23rd day of October 2020, and that a copy was sent to all parties pursuant to the Electronic Case Filing system.

/s/ MARC ERMINE

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF MISSOURI

TRANSCRIPT OF SENTENCING HEARING
BEFORE THE HONORABLE GREG KAYS
UNITED STATES DISTRICT JUDGE
NOVEMBER 6, 2020
KANSAS CITY, MISSOURI

APPEARANCES

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NOVEMBER 6, 2020

THE COURT: Good morning again. Welcome. Please be seated.

I apologize to everyone. Sometimes it's hard to gauge the enthusiasm of attorneys in cases and these cases go a little longer sometimes. We mean to do this more on time. I apologize to you, Mr. Bell.

This is 18-215-01, United States of America versus Mr. Maurice Bell. Mr. Bell appears with his attorney in this case, Mr. Marc Ermine. The government appears by their Assistant United States Attorney, Mr. Stefan Hughes. Also appearing today is United States probation officer, Mr. Dickson Noelle.

This case is called today for a sentencing hearing. I note that Mr. Bell appeared in this court earlier on January -- excuse me -- July 17th, 2020. At that time he entered a plea of guilty to the charge in Count 1 of the indictment being a felon in possession of a firearm. Upon his plea of guilty, this Court ordered a presentence investigation to be completed, and that has been accomplished.

My first responsibility today, Mr. Bell, sir, is to accurately calculate the applicable guidelines, and I do so with the help and the assistance of Mr. Ermine, Mr. Hughes, and the United States Probation Office.

I note there is an objection, but it's not one that

1 affects the guideline calculation.

2 Do you agree with that, Mr. Ermine?

3 MR. ERMINE: I agree, Judge.

4 THE COURT: Very good. So I'll proceed to the
5 guideline calculations then. The total offense level in this
6 case is 23. The criminal history category is II. The
7 guideline range is 51 to 63 months. The fine range is 20,000
8 to \$200,000. There is no restitution, and there was a
9 mandatory special assessment of \$100.

10 Mr. Hughes, sir, do you agree with those
11 calculations?

12 MR. HUGHES: I do, Your Honor.

13 THE COURT: Thank you, sir.

14 Mr. Ermine, sir?

15 MR. ERMINE: Yes, sir.

16 THE COURT: So, Mr. Bell, that's our starting point
17 in these cases is to calculate the guidelines.

18 Next let me say that I have received some very nice
19 letters, Mr. Bell, from you and your family and friends, and I
20 have reviewed those. Also I've received a sentencing
21 memorandum filed on behalf of Mr. Ermine, and I have reviewed
22 all the associated filings in this case.

23 Is there any evidence to be presented before we go
24 to argument?

25 Mr. Hughes, sir?

1 MR. HUGHES: No evidence, Your Honor.

2 THE COURT: Mr. Ermine, sir?

3 MR. ERMINE: Your Honor, I'll just show the Court
4 that we have a certificate of appreciation issued by CoreCivic
5 where Mr. Bell is being held on pretrial custody in recognition
6 of his contribution as an inmate worker. I'll ask the Court to
7 consider that. I can pass that up or I can just show it to
8 you.

9 THE COURT: You know what? Your credibility is very
10 good with me, Mr. Ermine. Just tell me what's it for again.

11 MR. ERMINE: Judge, it's awarded to Mr. Bell in
12 recognition of his contributions as an inmate worker in the
13 volunteer work program.

14 THE COURT: Mr. Bell, good for you. Thank you for
15 doing that. People approach this part of our system
16 differently. Some people approach this by creating a lot of
17 problems where they're at, and there's other people like you
18 who are trying to make lemonade out of lemons, if you will. So
19 thank you for doing that.

20 Anything else, Mr. Ermine?

21 MR. ERMINE: No other evidence, Judge.

22 THE COURT: All right. Thank you.

23 Mr. Hughes, what do you recommend we do in this
24 matter, sir?

25 MR. HUGHES: Judge, very briefly. I want to point

1 out a few things about this defendant that I think kind of jump
2 off the page with me. First is that he has a history of
3 domestic violence. He has a history of lying to the police and
4 being convicted of that. There were repeated lies at the base
5 of this case.

6 Most notably, I think, Judge, the facts and
7 circumstances of this case support one very clear conclusion
8 about this defendant that goes beyond the felon in possession
9 of a firearm and that is he's a drug dealer.

10 And what is the evidence of his being a drug dealer?
11 The red drawstring bag that was found inside of the car under
12 the passenger seat where he was seated had a drawstring on it.
13 When the officers recovered that, the only thing that was
14 visible on that red drawstring bag was the butt of a gun.

15 In addition, the gun was inside the holster, and I'm
16 going to try to describe it as a heavy nylon-type holster, but
17 the unique characteristic about that holster was it had a pouch
18 affixed to the top of the holster such that it would contain a
19 second extended magazine. That's important because in Mr.
20 Ermine's sentencing memo he goes to great lengths to say the
21 firearm in question comes with a standard extended magazine
22 when it's sold by Smith & Wesson, but he makes no accounting
23 for the second extended magazine.

24 There were two bags of marijuana. There was one bag
25 of cocaine. There was another bag that contained ten pills of

1 ecstasy. There was a digital scale and a small scoop inside
2 that red drawstring bag. It's a pretty straightforward case,
3 if you're asking me, of circumstantial evidence to show that he
4 is, in fact, a drug dealer.

5 For these reasons -- plus the fact that he's asking
6 the Court to consider giving him mercy because of his kids. I
7 mean, look at the PSR. He's \$46,000 in arrears on child
8 support, and yet he has the unmitigated gall to come into court
9 and ask the Court to give him a break today so he can take care
10 of kids that he's already not taking care of.

11 I think based upon the totality of the facts and
12 circumstances before the Court, the fact that I did not charge
13 him with possession with the intent to distribute and
14 accompanying 924(c), that I would ask the Court to consider
15 sentencing the defendant above the guideline range and consider
16 imposing a sentence from between 108 to 120 months.

17 Thank you, Your Honor.

18 THE COURT: Thank you.

19 Mr. Ermine, sir.

20 MR. ERMINE: Judge, we obviously view this case
21 radically different from the way the government views it. I
22 think the dispute comes down to whether you're going to look
23 at, I guess, a lot of assumptions and inferences or whether you
24 are going to look at specific details. And so what we're
25 suggesting to the Court is to look at the specific details

1 because they're exceptionally important as the Court assesses
2 not only the seriousness of the offense but Mr. Bell's
3 background. So taking a few examples in response to what
4 government's counsel just said.

5 Government's counsel mentioned that Mr. Bell has a
6 history of domestic violence and lying to the police. He does
7 have prior convictions for those things, but his prior
8 conviction for domestic violence is from 2004. That's 16 years
9 ago. His prior conviction for lying to police is from 2006.
10 That's 14 years ago. Those were both misdemeanor convictions.
11 There's no disposition or no sentence listed with regard to the
12 false information to police. That's paragraph 40 of the
13 presentence report. He ended up doing a fairly short amount of
14 time for the 2004 domestic abuse situation. That was also a
15 misdemeanor.

16 So when you get into the details -- I think that
17 we've tried to do the best we could of sorting this out in our
18 sentencing memorandum, really contextualizing his criminal
19 history and pointing out while he does have prior felony
20 convictions, he does have prior misdemeanor convictions, all of
21 these things have quite a bit of age to them; and for each of
22 these things, and I think this is particularly relevant with
23 regard to his prior felony convictions, they all involve
24 relatively minor sentences; and as we pointed out in our
25 sentencing memo, the relatively minor sentences were -- or

1 appear to be appropriate given the relatively minor offense
2 conduct.

3 So I think that that's really significant, not only
4 independently, but as the Court is assessing the nature of this
5 case. And I disagree with my colleague here regarding how the
6 facts should be viewed.

7 So what we're dealing with here is possession of a
8 firearm, yes. There is associated possession of a small
9 quantity of cocaine, small quantity of pills. I think there
10 will be a factual dispute about what those pills actually were.
11 My recollection from the lab reports is that they didn't all
12 test positive for ecstasy. I don't think that's particularly
13 relevant.

14 So we're dealing, once again, with a small amount of
15 drugs beyond the possession of a firearm. There are not other
16 markers of drug dealing. Not a large quantity of money or
17 really any money. There's a presence of a scale. I'm sure the
18 Court has heard much testimony about people possessing drugs
19 also possessing scales, but we'll submit to the Court that
20 there's simply not enough to go on here to suggest that he's a
21 drug dealer. Frankly, even if there were enough to suggest
22 that he was a drug dealer, from our perspective it doesn't
23 change things in terms of the sentence that we would request.

24 So I think that one thing the government counsel
25 mentioned is the attempt to make a connection between the

1 present offense and Mr. Bell's giving a false name to police
2 and his 2006 conviction for giving false information to police;
3 but, again, one thing that is really important here is to look
4 at the details. He did give a false name to the police in this
5 case, and we have the dash cam video where you can see that
6 less than 30 seconds, perhaps less than 20 seconds later
7 without anything else happening, he calls the officer over and
8 gives the right name. Ultimately he's found to have warrants
9 and that's how he goes into custody. So, you know, not a great
10 decision there at the outset to give a false name, but it says
11 something about Mr. Bell that he without being prompted,
12 without being confronted, he called the officer over and
13 recanted that false information. That's a long way apart from
14 the conviction in 2006.

15 And I've got to take issue with this idea that
16 somebody can't care for their kids simply because they owe back
17 child support. There's a lot of reasons why somebody might owe
18 back child support. Many of those reasons are -- well, I would
19 suggest that almost all of those reasons are associated with
20 somebody's financial inability to pay rather than how much they
21 care or love their children. I think we have specific
22 information about how much Mr. Bell cares and loves his
23 children that is completely separate and completely negates the
24 idea that you can tell that by virtue of how much child support
25 he owes. We presented evidence in our letters to the Court

1 about how much he loves and cares for his children. Letters
2 from his father describing how he went and collected his son
3 from New York instantaneously, like that, to bring him back to
4 Kansas City. His father and that son are here in the courtroom
5 today to support him.

6 THE COURT: Thank you all for being here today.

7 MR. ERMIN: We have evidence that Mr. Bell spends a
8 tremendous amount of time with his son when he's not in
9 custody. That's what it means to love and care for your
10 children, not necessarily failing to meet financial obligations
11 because, again, there's a myriad of reasons why somebody might
12 not be able to meet their financial obligations.

13 So this is not a case where we're looking at a large
14 quantity of narcotics. We're not looking at somebody who has
15 apparently been under investigation for being a drug dealer.
16 We're looking at somebody who is being charged and convicted,
17 pled guilty to possessing a firearm. That's why we're here.

18 We have not contested the enhancement for the
19 possession of the drugs associated with that firearm. So we
20 would ask the Court to limit how it views that essentially and
21 take into account all of the other information we presented to
22 the Court.

23 Again, as I was looking at the case, a couple of
24 things really stuck out to me. The first is Mr. Bell has a
25 really limited history of incarceration. He's now been in

1 custody for over a year. So that's important.

2 The other thing is that this case happened in 2017.
3 He wasn't arrested until a year later, and he's been in custody
4 since that point. So I appreciate the government being maybe
5 concerned about the community or what have you, but they
6 weren't concerned from June to August of 2018 -- June of '17 to
7 August of '18 when he was arrested. They didn't do further
8 investigation to try to prove he's a drug dealer. They didn't
9 send people to try to buy drugs from him. They didn't buy
10 informants. They didn't find any of that stuff. All we're
11 dealing with here is a gun and a small quantity of drugs.

12 We're asking the Court to sentence him on that basis
13 and to take into account his prior criminal history, which is
14 limited. It's limited and it's dated, and that's why we think
15 a downward variance is appropriate here. If it weren't
16 limited, if it weren't dated, we wouldn't be asking for a
17 downward variance.

18 THE COURT: Let me ask you what you think about
19 this.

20 MR. ERMINE: Yes, sir.

21 THE COURT: In other arrests there's a robbery
22 second, domestic assault in paragraph 64, another domestic
23 battery in paragraph 68, another domestic assault in
24 paragraph 70, another domestic assault in paragraph 74,
25 paragraph 73 is an assault, sounds like a female assault.

1 Paragraph 75 is another assault against the same female.
2 Paragraph 76 is another domestic assault. These were all
3 dismissed, which unfortunately happens a lot in domestic
4 assault cases, but there's a lot of domestic assaults that were
5 dismissed, and I think that was part of maybe what counsel's
6 referencing here. How should I look at all those domestic
7 assaults? Some of them happened in -- allegedly, they're not
8 proven, happened in 2016. How should I look at all of those
9 assaults against women?

10 MR. ERMINE: I have two responses to that, Judge.

11 THE COURT: Yes, sir.

12 MR. ERMINE: First is that we've objected to those.
13 We have denied those. The government has presented no evidence
14 of those. So our position is the Court cannot consider those
15 because there's no reliable information about those offenses.
16 If the government had come forward with evidence, we would have
17 rebutted it. I can proffer to the Court that I've spoken to
18 the victim -- alleged victim referenced in paragraphs 75, 76,
19 whatever -- yes, paragraph 73, and she provided a statement to
20 us recanting those. So we were prepared -- if the government
21 had come to court today to offer evidence of these other
22 allegations, we would have been prepared to rebut those with
23 fact witnesses. So our position is as a legal proposition
24 since we have objected to it, that the Court cannot consider
25 those for purposes of sentencing. Even if you could, under his

1 due process rights, we would have brought forward evidence to
2 confront those allegations.

3 THE COURT: Okay. Anything else?

4 MR. ERMINE: Judge, that's all we have. I know that
5 a downward variance is always a bit of a difficult thing, but
6 that's why I wanted to present the Court with all the
7 information about Mr. Bell's family and give detailed analysis
8 of his criminal history because, again, from our perspective
9 those things are exceedingly important here, so we're asking
10 the Court to consider a sentence of 36 months in this case.

11 THE COURT: Thank you.

12 Mr. Bell, sir, you don't have to say anything. Your
13 attorney's done a good job, I think, of stating your case; but
14 if you wish to speak, now is your opportunity, sir.

15 THE DEFENDANT: You want me to stand?

16 THE COURT: You can sit there, sir.

17 THE DEFENDANT: I'd like to say thank you for giving
18 me a chance to speak on my behalf. It's been awhile since I've
19 seen my family due to COVID-19, like seven months.

20 I just want to apologize to my children for the
21 actions that got me here. I want to say sorry to my son for
22 the consequences of my actions that got me to the point I am.
23 I apologize to my family and for the distress and embarrassment
24 I've caused and also to the community.

25 For the last 14 months I've been working in jail six

1 to seven days a week, and I stay out of trouble with so much
2 trouble around me. I want, can, and will be a better father,
3 brother, person, son; and I want to help people that's
4 following down the wrong road and see what I can do to help
5 people stay out of trouble.

6 My past has not always been what it seems. The
7 accusations against me, I'm innocent until proven guilty. I've
8 been committed to change and the first step to change is
9 knowing my wrongs; and, again, I'm apologetic and remorseful
10 and totally responsible for my actions.

11 Thank you.

12 THE COURT: Thank you, sir.

13 Thank you all for being here and supporting Mr.
14 Bell. We understand this is a difficult day for Mr. Bell.
15 It's also difficult for those who care about him, so we
16 appreciate you being here.

17 So, Mr. Bell, let me go through this with you. The
18 Court's required to consider a statute as I always say in these
19 cases, 18 U.S.C. 3553(a). Please know I've considered all
20 those factors under that statute, and let me talk about the
21 ones that are especially important to us.

22 This issue about all these domestic violence cases
23 that you keep getting charged with and they're dismissed, I
24 will not consider those for purposes of this sentence because
25 you are still cloaked in the presumption of innocence. There's

1 a lot of them, though, more than I've seen, but those will not
2 be considered by this Court.

3 What will be considered are your prior convictions
4 which do include domestic violence and do include not
5 cooperating with law enforcement. That goes to a factor called
6 respect for the law. We want -- our goals in sentencing is for
7 people to have respect for the law and through these sentences
8 that they will, but you've kind of done some work on that in
9 fairness to Mr. Bell. You've been cooperative since you've
10 been incarcerated. You have completed programs. That goes a
11 long way. As I said, I appreciate that and I respect that. I
12 know -- I imagine these are very difficult -- it's a difficult
13 place to be living in CoreCivic. I understand that. So thank
14 you for doing that. That's going to help you today. It's
15 probably not going to help you as much as you want it to help
16 you, but it's going to help you.

17 We do look at what was going on, the relevant
18 conduct. I have to agree with Mr. Hughes. This has all the
19 indicia of drug dealing, every bit of this. It's no question
20 in my mind that gun with that extended magazine and the other
21 extended magazine and the drugs found contemporaneous with
22 this. The gun is part of drug dealing. It's rare we find
23 people dealing drugs that don't have guns. They go together.
24 So I know what was going on there. I believe -- I have a good
25 idea based on the evidence that we've seen.

1 And so I've considered all those factors. Some of
2 those factors include the protection of the public. They
3 included the nature and circumstances of this offense, the need
4 for deterrence. And you've got a lot of great family support,
5 Mr. Bell. You have some blessings here. You're going to get
6 out of prison one day. I hope you are the son, the father, and
7 the friend that your family deserves because this is not it,
8 what we're seeing here, this conduct we're addressing is not
9 being part of a good son or father or anything. So I hope you
10 get that straightened out, Mr. Bell.

11 But I am going to sentence you above the guidelines.
12 It's a variance above the guidelines because it's where I come
13 out after weighing all these factors, which include protecting
14 the public, deterrence, the nature and circumstances of this
15 offense, and respect for the law.

16 It is the judgment of this Court pursuant to the
17 Sentencing Reform Act of 1984 that this defendant, Maurice D.
18 Bell, is hereby committed to the custody of the Bureau of
19 Prisons for 82 months on this one-count superseding indictment.

20 Upon release from imprisonment, the defendant shall
21 be placed on supervised release for three years.

22 Since the Court finds the defendant does not have
23 the ability to pay a fine, the fine is waived. It's further
24 ordered the defendant shall pay to the United States a special
25 assessment of \$100, which shall be due immediately.

1 While on supervised release, the defendant shall
2 comply with the mandatory and standard conditions that have
3 been adopted by this Court. Shall also comply with special
4 conditions listed in Part D of the presentence investigation
5 report.

6 You've got to do better on our supervision than you
7 have in the past. I note that your supervision's been revoked
8 by different courts in the past. You've got to do better by
9 us.

10 To the extent you've not already waived your right
11 to appeal, you have a right to appeal 14 days -- no, you
12 haven't waived your right to appeal. I'm sorry. This was
13 without a plea agreement. So you do have 14 days to file your
14 right to an appeal in this case.

15 Mr. Hughes, sir, is there anything else on behalf of
16 the defendant?

17 MR. HUGHES: Nothing on behalf of the United States,
18 Your Honor.

19 THE COURT: On behalf of the government.

20 Anything else on behalf of the defendant, Mr.
21 Ermine?

22 MR. ERMINE: No, Your Honor.

23 THE COURT: Good luck to you, Mr. Bell. Thank you.

24 (Court adjourned at 12:03 p.m.)

CERTIFICATE OF OFFICIAL REPORTER

I, Katherine A. Calvert, Federal Official Court Reporter, in and for the United States District Court for the Western District of Missouri, do hereby certify that the foregoing is a true and correct transcript of the stenographically reported proceedings in UNITED STATES OF AMERICA, Plaintiff, vs. MAURICE D. BELL, Defendant, No. 18-00215-01-CR-W-DGK.

Dated this 17th day of November, 2020.

KATHERINE A. CALVERT, RMR, CRR
FEDERAL OFFICIAL COURT REPORTER