UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-4116

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARTIN ELLIOTT BROOKS,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Wilmington. James C. Dever III, District Judge. (7:19-cr-00084-D-1)

Submitted: June 30, 2022 Decided: July 7, 2022

Before AGEE, THACKER, and RUSHING, Circuit Judges.

Affirmed by unpublished per curiam opinion.

ON BRIEF: G. Alan DeBois, Federal Public Defender, Jennifer C. Leisten, Assistant Federal Public Defender, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Raleigh, North Carolina, for Appellant. G. Norman Acker, III, Acting United States Attorney, Jennifer P. May-Parker, David A. Bragdon, Assistant United States Attorneys, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Martin Elliott Brooks appeals the 288-month sentence imposed after he pleaded guilty to possession of a firearm by a felon, in violation of 18 U.S.C. §§ 922(g)(1), 924, and possession of stolen firearms, in violation of 18 U.S.C. §§ 922(j)(1), 924. On appeal, Brooks argues that the district court erred in finding that he assaulted law enforcement officers and applying a six-level enhancement under U.S. Sentencing Guidelines Manual § 3A1.2(c)(1) (2021). We affirm.

In evaluating a district court's calculation of the advisory Sentencing Guidelines range, we review the court's factual findings for clear error and its legal conclusions de novo. *United States v. White*, 850 F.3d 667, 674 (4th Cir. 2017). "[A] sentencing court may consider uncharged and acquitted conduct in determining a sentence, as long as that conduct is proven by a preponderance of the evidence," *United States v. Grubbs*, 585 F.3d 793, 799 (4th Cir. 2009), and may also draw inferences from the evidence, so long as those inferences are not clearly erroneous, *see United States v. Kiulin*, 360 F.3d 456, 460 (4th Cir. 2004).

A Guidelines error is harmless—and, thus, does not warrant reversal—if "the record shows that (1) the district court would have reached the same result even if it had decided the Guidelines issue the other way, and (2) the sentence would be reasonable even if the Guidelines issue had been decided in the defendant's favor." *United States v. Mills*, 917 F.3d 324, 330 (4th Cir. 2019) (alterations and internal quotation marks omitted). Here, the court announced that it would impose the same sentence as an alternative variant sentence

even if it had miscalculated the Guidelines range. *See United States v. Gomez-Jimenez*, 750 F.3d 370, 382-83 (4th Cir. 2014).

As for the second prong of the harmless error inquiry, we review the substantive reasonableness of a sentence by considering "the totality of the circumstances." *Gall v. United States*, 552 U.S. 38, 51 (2007). We apply "a presumption of reasonableness to a sentence within or below a properly calculated [G]uidelines range." *United States v. Vinson*, 852 F.3d 333, 357 (4th Cir. 2017) (internal quotation marks omitted). This "presumption can only be rebutted by showing that the sentence is unreasonable when measured against the 18 U.S.C. § 3553(a) factors." *Id.* at 357-58 (internal quotation marks omitted).

Considering the applicable advisory sentencing range without the six-level enhancement, Brooks has not overcome the presumption of reasonableness accorded his within-Guidelines sentence. The district court considered Brooks' arguments and credited all of the points he made, but reasonably found that the § 3553(a) factors called for a sentence of 288-months' imprisonment regardless of how it resolved the disputed Guidelines issue. Based on the factors identified by the district court, the sentence is substantially reasonable. Thus, even if the district court erred in applying the enhancement, we conclude that such error was harmless.

Accordingly, we affirm the district court's judgment. 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