

NO. _____

IN THE SUPREME COURT OF
THE UNITED STATES

OCTOBER TERM, 2022

MANGWIRO SADIKI-YISRAEL,)
)
Petitioner,)
)
v.)
)
UNITED STATES OF AMERICA,)
)
Respondent.)

APPENDIX

APPENDIX A: Opinion of the United States Court of Appeals for the Eleventh Circuit United States v. Sadiki-Yisrael, USCA11 Case: 21-13001, 2022 U.S. App. LEXIS 19443, 2022 WL 2751571 (Unpublished), issued July 14, 2022.

APPENDIX B: Order from the Eleventh Circuit denying Defendant's petitions for rehearing and rehearing en banc, issued September 8, 2022.

APPENDIX C: Statutory Excerpts from Title 18 §§ 1962 and 1963, And Official Code of Georgia Annotated §16-5-1.

Appendix A.

United States v. Sadiki-Yisrael,
2022 U.S. App. LEXIS 19443, 2022
WL 2751571 (Unpublished);
USCA11 Case: 21-13001

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 21-13001

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MANGWIRO SADIKI-YISRAEL,

a.k.a. Iz,

a.k.a. Izzy,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:16-cr-00145-TWT-JKL-3

Before NEWSOM, BRANCH, and BRASHER, Circuit Judges.

PER CURIAM:

Mangwiro Sadiki-Yisrael appeals his conviction and 240-month sentence for racketeering conspiracy in violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1962(d) and 1963(a). He argues that the district court abused its discretion in rejecting his initial attempt to plead guilty without subjecting himself to an enhanced penalty provision in the indictment, which increased the statutory maximum sentence from 20 years to life in prison. He also argues that his sentence was procedurally and substantively unreasonable. After careful review, we affirm.

I.

Sadiki-Yisrael and several co-conspirators were indicted for racketeering conspiracy, in violation of the RICO Act, 18 U.S.C. §§ 1962(d) and 1963(a) (Count One), based on their involvement in a gang known as the Gangster Disciples. Sadiki-Yisrael held various leadership positions in the gang, which was involved in drug trafficking, complex fraud schemes, robbery, and extortion. In a notice of enhanced sentencing on Count One, Sadiki-Yisrael was charged with joining the conspiracy knowing and agreeing that members of the enterprise engaged in “acts involving murder, in violation of Official Code of Georgia 16-5-1.”

Sadiki-Yisrael filed a motion asking the court to allow him to plead guilty to Count One without requiring that he admit to

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the enhanced sentence provision that subjected him to a statutory maximum sentence of life imprisonment. The government opposed the motion, arguing that Sadiki-Yisrael was attempting to plead guilty to a lesser included offense without the government's consent. The district court agreed and denied the motion. Sadiki-Yisrael did not object to this ruling.

Sadiki-Yisrael then entered a non-negotiated guilty plea to Count One, admitting to all the elements of the offense, including the enhanced penalty provision. At his plea colloquy, the district court ensured he entered his plea knowingly and voluntarily and Sadiki-Yisrael confirmed he was pleading guilty to the full indictment as charged. The district court stated directly, "Mr. Sadiki-Yisrael, do you understand you're charged in Count One with participating in a RICO conspiracy involving murder?" to which he answered, "Yes."

At sentencing, the district court used both fraud and murder as the underlying racketeering activity to calculate his base offense level. Using fraud under Section 2B1.1, the base offense level was seven. Because the offense involved ten or more victims and the loss exceeded \$1.5 million but was less than \$3.5 million, the total adjusted offense level was 27. Using murder as the underlying racketeering activity under Section 2A1.1(a), the base offense level was 43. Because Sadiki-Yisrael held leadership positions in the conspiracy the adjusted offense level was 46. Using the higher offense level of 46, as Section 3D1.4 directs, and with a three-level reduction under Sections 3E1.1(a) and (b) for accepting responsibility, Sadiki-

Yisrael's total recommended offense level was 43. Applying criminal history category III, the recommended Guidelines custody range was life imprisonment. The statutory maximum penalty was also life imprisonment.

Sadiki-Yisrael objected to using murder to calculate his base offense level. He argued that his guidelines range should be driven by his fraud offense level because he was not personally involved in any acts involving murder. He also objected to the loss amount and the number of victims stipulated in the Presentencing Report.

At his sentencing hearing, the district court overruled his objection to the calculation of his base offense level, explaining that the government included the enhanced sentence provision as an element of the offense during the plea colloquy. The district court also overruled Sadiki-Yisrael's objection to the government's presentation of evidence, explaining that it was offered to perfect the record on the guideline objections and base offense level, as well as for purposes of establishing Section 3553(a) factors.

The district court sentenced Sadiki-Yisrael to 240 months' imprisonment. The court explained that this sentence was fair and reasonable considering the 18 U.S.C. § 3553(a) factors, specifically noting the nature and circumstances of the offense, Sadiki-Yisrael's personal history and characteristics, and the need to avoid unwarranted sentencing disparities. Sadiki-Yisrael timely appealed, renewing his objections to the presentencing report and challenging the substantive and procedural reasonableness of his sentence.

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II.

We review a district court's rejection of a guilty plea for an abuse of discretion. *United States v. Gomez-Gomez*, 822 F.2d 1008, 1010 (11th Cir. 1987).

We also review the reasonableness of a sentence for abuse of discretion. *United States v. Thompson*, 702 F.3d 604, 606–07 (11th Cir. 2012).

With respect to guidelines issues, we consider legal issues *de novo* and review factual findings for clear error. *United States v. Rothenberg*, 610 F.3d 621, 624 (11th Cir. 2010).

III.

A. Initial Plea Attempt

Sadiki-Yisrael argues that the district court erred in rejecting his initial offer to plead guilty. Criminal defendants have no absolute right for a court to accept a valid guilty plea. Instead, a district court may use its discretion in rejecting a plea. *See Santobello v. New York*, 404 U.S. 257, 262 (1971). Once a guilty plea is entered, “only an attack on the voluntary and knowing nature of the plea can be sustained.” *Wilson v. United States*, 962 F.2d 996, 997 (11th Cir. 1992). “A defendant who wishes to preserve appellate review of a non-jurisdictional defect while at the same time pleading guilty can do so only by entering a ‘conditional plea’ in accordance with [Federal Rule of Criminal Procedure] 11(a)(2).” *United States v. Pierre*, 120 F.3d 1153, 1155 (11th Cir. 1997). A defendant’s knowing,

voluntary, and unconditional plea of guilty, made with the benefit of counsel, however, waives all non-jurisdictional defects in the proceedings. *Id.*

Here, Sadiki-Yisrael does not challenge the voluntary and knowing nature of his plea. Nor did he preserve his right to appellate review of this claim via a conditional plea. Accordingly, Sadiki-Yisrael has waived any challenge to the district court's refusal to accept his initial attempt to plead guilty without subjecting himself to the enhanced penalty provision.

B. Procedural Reasonableness

Sadiki-Yisrael argues that his sentence was procedurally unreasonable because the district court erred in admitting evidence at sentencing and improperly calculated his base offense level.

First, he argues that the district court should not have admitted evidence that the government introduced at sentencing describing acts of violence and drug activity because the government failed to object to those factual findings in the presentence report. But because Sadiki-Yisrael objected to his base offense level, it became the government's burden to establish those facts by presenting reliable and specific evidence. *See United States v. Little*, 864 F.3d 1283, 1290 (11th Cir. 2017); *United States v. Martinez*, 584 F.3d 1022, 1027 (11th Cir. 2009). Sadiki-Yisrael's contention that this evidence was untimely under Federal Rule of Criminal Procedure 32(f)(1) is also meritless because that rule applies to "any *objections*" to the presentence report. Fed. R. Crim. P. 32(f)(1) (emphasis

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added). Here, the government introduced evidence to *support* findings in the presentence report in response to Sadiki-Yisrael's objection.

Next, Sadiki-Yisrael argues that the district court incorrectly calculated his base offense level using first degree murder instead of fraud because "[h]e did not personally commit any acts of murder" and "[t]he majority of his criminal activities related to fraud schemes." But this argument ignores the fact that Sadiki-Yisrael admitted that he joined and remained in the RICO conspiracy knowing that it involved murder. Thus, the district court correctly calculated his base offense level using "the offense level applicable to the underlying racketeering activity" under the guidelines. *See* U.S.S.G. § 2E1.1(a)(2).

Finally, because the district court did not err in calculating Sadiki-Yisrael's base offense level using the underlying racketeering activity of murder, and that number produces the greatest offense level, we do not address whether the district court erred in calculating his base offense level using fraud as the underlying offense. *See* U.S.S.G. § 1B1.1, cmt. n.5 ("Where two or more guideline provisions appear equally applicable, but the guidelines authorize the application of only one such provision, use the provision that results in the greater offense level.").

For these reasons, we conclude that Sadiki-Yisrael's sentence was not procedurally unreasonable. Accordingly, we affirm as to this issue.

C. Substantive Reasonableness

Sadiki-Yisrael argues that his sentence was substantively unreasonable because it was not supported by the sentencing factors under 18 U.S.C. § 3553(a). The party challenging the sentence bears the burden of establishing that it is unreasonable based on the facts of the case and the Section 3553(a) factors. *United States v. Tome*, 611 F.3d 1371, 1378 (11th Cir. 2010). The sentence must be “sufficient, but not greater than necessary” to comply with the purposes of Section 3553(a)(2). In reviewing substantive reasonableness, we may vacate the sentence only if we are left with the definite and firm conviction that the district court committed a clear error of judgment. *United States v. Irey*, 612 F.3d 1160, 1190 (11th Cir. 2010) (en banc).

The court need not specifically discuss each Section 3553(a) factor so long as the record reflects that the court considered those factors. *United States v. Ghertler*, 605 F.3d 1256, 1262 (11th Cir. 2010). The weight given to any Section 3553(a) factor is a matter committed to the discretion of the district court. *United States v. Williams*, 526 F.3d 1312, 1322 (11th Cir. 2008). A sentence within the guidelines range is presumptively reasonable. *Irey*, 612 F.3d at 1185.

Here, Sadiki-Yisrael’s 240-month sentence was substantively reasonable. His sentence was below the guidelines range and below the statutory maximum of life imprisonment. And the record reflects that the district court specifically “consider[ed] the

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sentencing factors set forth in [Section 3553].” It concluded that this sentence was appropriate particularly considering Sadiki-Yisrael’s leadership position in the gang. Sadiki-Yisrael also argues that his sentence was unreasonable because it created unwarranted disparities among co-defendants, but he failed to show that they were similarly situated to justify relief on that basis. *See United States v. Pugh*, 515 F.3d 1179, 1202-03 (11th Cir. 2008).

IV.

Accordingly, the district court is **AFFIRMED**.

APPENDIX B.

Order from the Eleventh Circuit
denying Defendant's
petitions for rehearing and
rehearing en banc,

issued September 8, 2022.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 21-13001-AA

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

MANGWIRO SADIKI-YISRAEL,
a.k.a. Iz,
a.k.a. Izzy,

Defendant - Appellant.

Appeal from the United States District Court
for the Northern District of Georgia

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: NEWSOM, BRANCH, and BRASHER, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Panel Rehearing is also denied. (FRAP 40)

APPENDIX C - STATUTES

18 USC § 1962. Prohibited activities

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code [18 USCS § 2], to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

18 USC § 1963. Criminal penalties

(a) Whoever violates any provision of section 1962 of this chapter [18 USCS § 1962] shall be fined under this title or imprisoned not more than 20 years (or for life if the violation is based on a racketeering activity for which the maximum penalty includes life imprisonment), or both, and shall forfeit to the United States, irrespective of any provision of State law—

. . . .

OCGA § 16-5-1. Murder; malice murder; felony murder; murder in the second degree.

(a) A person commits the offense of murder when he unlawfully and with malice aforethought, either express or implied, causes the death of another human being.

(b) Express malice is that deliberate intention unlawfully to take the life of another human being which is manifested by external circumstances capable of proof. Malice shall be implied where no considerable provocation appears and where all the circumstances of the killing show an abandoned and malignant heart.

(c) A person commits the offense of murder when, in the commission of a felony, he or she causes the death of another human being irrespective of malice.

(d) A person commits the offense of murder in the second degree when, in the commission of cruelty to children in the second degree, he or she causes the death of another human being irrespective of malice.

(e)

(1) A person convicted of the offense of murder shall be punished by death, by imprisonment for life without parole, or by imprisonment for life.

(2) A person convicted of the offense of murder in the second degree shall be punished by imprisonment for not less than ten nor more than 30 years.