UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
1100 East Main Street, Suite 501, Richmond, Virginia 23219

June 28, 2024

RULE 34 NOTICE

No. 23-4381, *US v. Cornell Slater*
1:19-cr-00205-RDB-1

This appeal has been referred to a panel of three judges so that they may review the case before scheduling oral argument for possible disposition pursuant to Rule 34 of the Federal Rules of Appellate Procedure and Fourth Circuit Local Rule 34(a). If the panel to whom this appeal has been submitted unanimously agrees that oral argument is unnecessary, the panel will issue its decision without further notice to counsel that oral argument will not be scheduled. Alternatively, if the panel determines that oral argument is warranted, counsel will receive notice that the appeal has been placed on the court's oral argument calendar.

M. Hawk
Deputy Clerk

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-4381

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CORNELL SLATER,

Defendant - Appellant.

Appeal from the United States District Court for the District of Maryland, at Baltimore. Richard D. Bennett, Senior District Judge. (1:19-cr-00205-RDB-1)

Submitted: June 28, 2024 Decided: July 30, 2024

Before DIAZ, Chief Judge, NIEMEYER, Circuit Judge, and MOTZ, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

ON BRIEF: Roland S. Harris IV, COHEN|HARRIS LLC, Towson, Maryland, for Appellant. Erek L. Barron, United States Attorney, Baltimore, Maryland, Elizabeth Wright, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Greenbelt, Maryland for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Cornell Slater pled guilty to possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g); attempted Hobbs Act robbery, in violation of 18 U.S.C. § 1951(a); and discharging a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. § 924(c). The district court sentenced Slater to 360 months' imprisonment. Slater appealed. On the Government's motion, we vacated Slater's § 924(c) conviction in light of *United States v. Taylor*, 596 U.S. 845 (2022) (holding that attempted Hobbs Act robbery is not categorically a crime of violence that can serve as a predicate offense for a § 924(c) conviction), and remanded for full resentencing as to the remaining counts to which Slater pled guilty.

On remand, the district court resentenced Slater to 288 months' imprisonment, within the 262- to 327-month Sentencing Guidelines range. On appeal, Slater contends that the district court erred in calculating his Guidelines range by applying a four-level enhancement under U.S. Sentencing Guidelines Manual § 2A2.1(b)(1)(A) (2023), based on the court's finding that the victim of Slater's § 922(g) offense sustained a permanent or life-threatening bodily injury. Because any error in the application of the enhancement was harmless, we affirm.

Generally, we review a criminal sentence for procedural and substantive reasonableness, applying "a deferential abuse-of-discretion standard." *United States v. Gall*, 552 U.S. 38, 41 (2007). In evaluating procedural reasonableness, we consider whether the district court properly calculated the Guidelines range. *Id.* However, rather than review the merits of Slater's challenge to the calculation of his Guidelines range, "we

may proceed directly to an assumed error harmlessness inquiry." *United States v. Gomez-Jimenez*, 750 F.3d 370, 382 (4th Cir. 2014) (internal quotation marks omitted). Harmless-error review requires "knowledge that the district court would have reached the same result even if it had decided the [G]uidelines issue the other way" and "a determination that the sentence would be [substantively] reasonable even if the [G]uidelines issue had been decided in the defendant's favor." *United States v. McDonald*, 850 F.3d 640, 643 (4th Cir. 2017) (internal quotation marks omitted). An error will be deemed harmless only when we are "certain" that these inquiries are met. *United States v. Gomez*, 690 F.3d 194, 203 (4th Cir. 2012).

Here, the district court's comments during the sentence hearing make clear that it would have imposed the same 288-month sentence even if it had not applied the four-level enhancement under USSG § 2A2.1(b)(1)(A). Therefore, the first requirement of the assumed error harmlessness has been met.

Had the district court sustained Slater's objection to this enhancement, his Guidelines range would have been 188 to 235 months' imprisonment, and his sentence would represent an upward variance of 53 months from that range. In reviewing an upward variant sentence for substantive reasonableness, "we consider whether the sentencing court acted reasonably both with respect to its decision to impose such a sentence and with respect to the extent of the divergence from the sentencing range." *United States v. Washington*, 743 F.3d 938, 944 (4th Cir. 2014). In doing so, we afford "due deference to the district court's decision that the [18 U.S.C.] § 3553(a) factors, on a whole, justify the extent of the variance, and the fact that we might reasonably have concluded that a different

sentence was appropriate is insufficient to justify reversal of the district court." *United States v. Morace*, 594 F.3d 340, 346 (4th Cir. 2010) (internal quotation marks omitted). Our ultimate inquiry is whether, considering the totality of the circumstances, the district court "abused its discretion in concluding that the sentence it chose satisfied the standards set forth in § 3553(a)." *United States v. Mendoza-Mendoza*, 597 F.3d 212, 216 (4th Cir. 2010).

We are satisfied that the 288-month sentence imposed by the district court is substantively reasonable even under an assumed Guidelines range of 188 to 235 months. Indeed, the district court adequately explained why a 288-month sentence was necessary based on the § 3553(a) factors. In particular, the district court emphasized that Slater had a significant criminal history—with the present offenses constituting his sixth adult conviction. The district court was appropriately concerned that Slater's conduct was extremely serious and involved the shooting of two victims during two separate incidents. Because Slater's 288-month sentence is supported by the district court's consideration of the § 3553(a) factors, we conclude that the sentence is substantively reasonable. For those reasons, we are satisfied that any error in calculating the Guidelines range 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

FILED: July 30, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-4381, US v. Cornell Slater
1:19-cr-00205-RDB-1

NOTICE OF JUDGMENT

Judgment was entered on this date in accordance with Fed. R. App. P. 36. Please be advised of the following time periods:

PETITION FOR WRIT OF CERTIORARI: The time to file a petition for writ of certiorari runs from the date of entry of the judgment sought to be reviewed, and not from the date of issuance of the mandate. If a petition for rehearing is timely filed in the court of appeals, the time to file the petition for writ of certiorari for all parties runs from the date of the denial of the petition for rehearing or, if the petition for rehearing is granted, the subsequent entry of judgment. See Rule 13 of the Rules of the Supreme Court of the United States; www.supremecourt.gov.

VOUCHERS FOR PAYMENT OF APPOINTED OR ASSIGNED COUNSEL: Vouchers must be submitted within 60 days of entry of judgment or denial of rehearing, whichever is later. If counsel files a petition for certiorari, the 60-day period runs from filing the certiorari petition. (Loc. R. 46(d)). If payment is being made from CJA funds, counsel should submit the CJA 20 or CJA 30 Voucher through the CJA eVoucher system. In cases not covered by the Criminal Justice Act, counsel should submit the Assigned Counsel Voucher to the clerk's office for payment from the Attorney Admission Fund. An Assigned Counsel Voucher will be sent to counsel shortly after entry of judgment. Forms and instructions are also available on the court's web site, www.ca4.uscourts.gov, or from the clerk's office.

BILL OF COSTS: A party to whom costs are allowable, who desires taxation of costs, shall file a Bill of Costs within 14 calendar days of entry of judgment. (FRAP 39, Loc. R. 39(b)).

AFFIDAVIT OF RONALD MYERS

I, Ronald Myers, do hereby affirm, under the penalty of perjury, that the following is true:

1. That I am at least 18 years of age.

2. That I am an inmate, currently incarcerated in the Federal Correctional Institution ("FCI") at Leavenworth, KS.

3. That on ~~September~~ December 10, 2024, I went to mail call, in Cell-Block B-Lower, at FCI Leavenworth.

4. While at mail call I witnessed inmate Cornell Slater get mail, a letter from the U.S. Supreme Court, through regular mail.

5. I witnessed inmate Cornell Slater attempt to have C/O Cain ~~SKID~~ sign the letter, and date the ~~the~~ letter with the September 10, 2024 date, Slater received it.

6. C/O Gum refused to sign the letter or date it.

7. Further the affiant sayeth naught.

Signed and sworn, under the penalty of perjury, pursuant to 28 U.S.C § 1746, this 10th day of ~~December~~ December (RN), 2024

Ronald Myers
#20041-013
FCI Leavenworth
P.O. Box 1000
Leavenworth, KS 66048