

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

May 31, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JORI NICHOLAS FRANKLIN,

Defendant - Appellant.

No. 22-6034
(D.C. No. 5:21-CR-00100-PRW-1)
(W.D. Okla.)

ORDER AND JUDGMENT*

Before **BACHARACH, KELLY, and MORITZ**, Circuit Judges.

After Jori Franklin pleaded guilty to two counts of being a felon in possession of a firearm, the district court sentenced him to 240 months in prison—the top of the recommended sentencing range under the United States Sentencing Guidelines (U.S.S.G. or Guidelines). Franklin appeals, arguing that the district court imposed a substantively unreasonable sentence. Finding no abuse of discretion in how the district court weighed the 18 U.S.C. § 3553(a) sentencing factors, we affirm.

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel. But it may be cited for its persuasive value. *See* Fed. R. App. P. 32.1(a); 10th Cir. R. 32.1(A).

Background

Franklin pleaded guilty to two counts of being a felon in possession of a firearm. According to the facts set out in Franklin's presentence investigation report (PSR), his first offense occurred in January 2021, when officers responded to a call that Franklin had pulled a gun from his waistband and pointed it at a pedestrian and his dog. The officers found Franklin and his girlfriend at a nearby liquor store and arrested Franklin after he disclosed that he was a felon and was carrying a firearm.

The PSR reported that Franklin's second offense occurred about five weeks later. Officers responded to a possible domestic-violence assault and kidnapping and spoke with Franklin's girlfriend, who reported that Franklin had prevented her from leaving his residence and had violently assaulted her at least twice over the past three days. She told the officers that Franklin had hit, kicked, bitten, and choked her, and had also shaved her head. Consistent with her account, she had lacerations on her forehead and neck, as well as severe bruising on her head, face, hands, arms, legs, and feet. Following this report, officers went to Franklin's residence, where they discovered him in his bedroom with a gun nearby.

Based on these events, a federal grand jury charged Franklin with two counts of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1), and Franklin pleaded guilty to both offenses without a plea agreement. The PSR determined Franklin's offense level for his offenses by cross-referencing to the kidnapping guideline. *See* U.S.S.G. §§ 2A4.1(a), 2K2.1(c)(1)(A). It also detailed Franklin's extensive criminal history, which consisted of several juvenile drug and

burglary offenses and adult criminal convictions for drug possession, domestic-violence assault, and child neglect, among others. This resulted in an offense level of 33, a criminal-history category of VI, and a corresponding sentencing range of 235 to 293 months in prison. But because the maximum term of imprisonment for violating § 922(g)(1) at the time was ten years for each count, the PSR adjusted the recommended sentencing range to 235 to 240 months.¹ *See id.* § 5G1.1(c). At the sentencing hearing, the district court denied Franklin’s request for a variance and rejected his challenges to the Guidelines calculation, including his argument that the PSR improperly cross-referenced to the kidnapping guideline. The district court ultimately sentenced Franklin to 240 months in prison and three years of supervised release.

Franklin now appeals.

Analysis

Franklin argues that the district court imposed a substantively unreasonable sentence. “In deciding whether a sentence is substantively unreasonable, we review the length of the sentence for an abuse of discretion.” *United States v. McCrary*, 43 F.4th 1239, 1249 (10th Cir. 2022). To prevail, Franklin must show that his sentence is unreasonable in light of the statutory sentencing factors set out in § 3553(a). *See id.* And because the district court imposed a sentence within the Guidelines range,

¹ The penalty for violating § 922(g) now carries a 15-year maximum term of imprisonment. *See* Bipartisan Safer Communities Act, Pub. L. No. 117–159, § 934, 136 Stat. 1313, 1329 (2022) (codified at 18 U.S.C. § 924(a)(8)).

Franklin must also overcome a presumption that his sentence is reasonable. *See United States v. Maldonado-Passage*, 56 F.4th 830, 842 (10th Cir. 2022).

We begin by reviewing the district court’s explanation for sentencing Franklin to 240 months in prison. In considering the § 3553(a) factors, the district court focused on the nature and circumstances of Franklin’s offenses, his history and characteristics, and the need to protect the public. *See* § 3553(a)(1), (2)(c). It found that Franklin had engaged in “extraordinarily egregious” offense-related conduct and emphasized his criminal-history pattern of “making victims of some of the most vulnerable people, including children and women.” R. vol. 3, 56. The district court explained that a lengthy custodial sentence was reasonable because “there’s a big difference between just bare possession of a firearm when you’re not supposed to possess it and then possessing it in circumstances like these.” *Id.* at 55. It also noted that Franklin was “still young” and had not “figure[d] out how to be a better man.” *Id.* at 56. After doing so, the district court determined that Franklin’s offense-related conduct, criminal history, and repeated possession of firearms warranted a 240-month prison term.

Arguing that the length of this sentence was unreasonably long, Franklin first contends that the district court abused its discretion by failing to give sufficient mitigating weight to his youth when assessing his criminal history. Specifically, he argues that the district court failed to consider that his prior offenses were primarily drug-related and occurred during his youth. But as the government observes, the district court did not rely on Franklin’s juvenile offenses in imposing a lengthy

custodial sentence. Instead, the district court cited Franklin’s adult criminal convictions for domestic-violence assault and child neglect, noting that the similarity between the conduct underlying those convictions and the alleged domestic-violence assault and kidnapping underlying one of Franklin’s felon-in-possession convictions in this case supported imposing a significant custodial sentence. Recognizing as much, Franklin asserts that the district court should not have placed such heavy weight on his adult criminal convictions. But in doing so, he improperly asks us to “review de novo the balance struck by a district court among the factors set out in § 3553(a).” *McCrary*, 43 F.4th at 1249 (quoting *United States v. Sells*, 541 F.3d 1227, 1239 (10th Cir. 2008)).

Franklin next argues that the district court abused its discretion by failing to give sufficient mitigating weight to his bipolar disorder when evaluating his offense conduct. Yet as the government responds, there is no suggestion in the record that Franklin’s bipolar disorder had anything to do with his offense conduct. To be sure, Franklin’s PSR and sentencing memorandum note that Franklin was diagnosed with bipolar disorder in 2019. But at no point did Franklin tell the district court that his bipolar disorder contributed to his offense conduct. Indeed, he merely speculates on appeal that his bipolar disorder could have motivated his offense conduct. Such speculation fails to establish that the district court abused its discretion by failing to independently consider whether Franklin’s bipolar disorder could have contributed to his offense conduct.

Finally, to the extent that Franklin generally faults the district court for failing to adequately consider his difficult childhood, drug addiction, various mental-health diagnoses, and youth, he merely asks us to reweigh the sentencing factors, which we cannot do. “[A]s long as the balance struck by the district court among the factors set out in § 3553(a) is not arbitrary, capricious, or manifestly unreasonable, we must defer to that decision even if we would not have struck the same balance in the first instance.” *Sells*, 541 F.3d at 1239. In short, none of Franklin’s arguments overcome the presumption that his within-the-Guidelines sentence is reasonable; nor do they persuade us that the sentence the district court imposed fell outside “the range of ‘rationally available choices.’” *United States v. Blair*, 933 F.3d 1271, 1274 (10th Cir. 2019) (quoting *United States v. Martinez*, 610 F.3d 1216, 1227 (10th Cir. 2010)). We therefore defer to the district court’s decision. *See Sells*, 541 F.3d at 1239.

Conclusion

Because the district court did not abuse its discretion in sentencing Franklin to 240 months in prison, we affirm.

Entered for the Court

Nancy L. Moritz
Circuit Judge