

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

June 27, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

PABLO IGNACIO ORTIZ-SORROZA,

Defendant - Appellant.

No. 23-2002
(D.C. No. 2:22-CR-01553-MIS-1)
(D.N.M.)

ORDER AND JUDGMENT*

Before **McHUGH, MURPHY, and CARSON**, Circuit Judges.

Pablo Ignacio Ortiz-Sorroza pleaded guilty to one count of reentry of a removed alien, in violation of 8 U.S.C. § 1326(a) and (b). The district court adopted a U.S. Sentencing Commission Guidelines range of 15 to 21 months' imprisonment and imposed a sentence of 18 months' imprisonment. Mr. Ortiz-Sorroza appeals, arguing his sentence is substantively unreasonable. We affirm the sentence, concluding the district court did not abuse its discretion in weighing the 18 U.S.C.

* 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 This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Federal Rule of Appellate Procedure 32.1 and Tenth Circuit Rule 32.1.

§ 3553(a) factors given Mr. Ortiz-Sorroza’s criminal history and the other evidence before the court.

I. BACKGROUND

In June 2022, United States Border Patrol agents found Mr. Ortiz-Sorroza, a citizen of Mexico, hiding in the brush near the United States-Mexico border. Prior to this encounter, authorities had removed Mr. Ortiz-Sorroza from the United States on three occasions. Based on his presence in the United States, the Government charged Mr. Ortiz-Sorroza with one count of reentry of a removed alien, in violation of 8 U.S.C. § 1326(a) and (b). Mr. Ortiz-Sorroza pleaded guilty to the charge.

A presentence investigation report (“PSR”) calculated a total offense level of 13. The PSR also detailed Mr. Ortiz-Sorroza’s criminal history, that featured eleven incidents resulting in criminal convictions, many of which were committed while Mr. Ortiz-Sorroza was on probation. Among the convictions was one for reentry of a removed alien, on which Mr. Ortiz-Sorroza was sentenced to 4 months’ imprisonment, followed by deportation. Based on Mr. Ortiz-Sorroza’s total offense level and criminal history category of II, the PSR calculated a Guidelines range of 15 to 21 months’ imprisonment.

At sentencing, Mr. Ortiz-Sorroza did not lodge any objections to the PSR, and the district court indicated it was “considering a high-end sentence . . . based on [Mr. Ortiz-Sorroza’s] history and his prior convictions.” ROA Vol. 3 at 13. The Government advocated for a bottom-of-the-Guidelines sentence of 15 months’ imprisonment. Mr. Ortiz-Sorroza, who had been detained approximately 7 months,

argued for a sentence of time-served. During his allocution, Mr. Ortiz-Sorroza discussed how he had reformed his life, including leaving a gang while incarcerated on a prior charge, starting a new trade, supporting his family in Mexico, and discontinuing his use of alcohol. The district court stopped Mr. Ortiz-Sorroza during his allocution, stating that this was new information and remarking that defense counsel had neither filed a motion for a variance nor proffered any evidence to support Mr. Ortiz-Sorroza's contentions. Defense counsel indicated this was because Mr. Ortiz-Sorroza was anxious to proceed to the sentencing hearing "as quickly as possible." *Id.* at 17. The district court advised Mr. Ortiz-Sorroza that it was hesitant to accept his unsupported statements about reforming his life. It then recessed the hearing so that Mr. Ortiz-Sorroza could discuss with his counsel whether to proceed with sentencing or to reschedule sentencing so that he might obtain evidence in support of his contentions.

When the district court recalled the case, Mr. Ortiz-Sorroza's counsel informed the court that Mr. Ortiz-Sorroza wanted to proceed with sentencing, stating, "I don't know how many more ways I could read the tea leaves for Mr. Sorroza, but he wishes to proceed to sentencing, fully aware of -- after having a lengthy discussion of what can happen." *Id.* at 20. The district court informed Mr. Ortiz-Sorroza of the importance of presenting evidence to verify his contentions; but Mr. Ortiz-Sorroza stated his desire to proceed with sentencing. The district court imposed a middle-of-the-Guidelines sentence of 18 months' imprisonment.

Mr. Ortiz-Sorroza filed an appeal. On appeal, Mr. Ortiz-Sorroza argues the district court imposed a substantively unreasonable sentence that was longer than necessary to satisfy the sentencing factors set out by 18 U.S.C. § 3553(a).

II. DISCUSSION

“[W]e review the substantive reasonableness of a sentence for abuse of discretion.” *United States v. Sanchez-Leon*, 764 F.3d 1248, 1267 (10th Cir. 2014) (internal quotation marks omitted). An abuse of discretion exists “only if the district court was arbitrary, capricious, whimsical, or manifestly unreasonable when it weighed the permissible § 3553(a) factors in light of the totality of the circumstances.” *Id.* (internal quotation marks omitted). In conducting abuse of discretion review, “[w]e do not reweigh the sentencing factors.” *United States v. Blair*, 933 F.3d 1271, 1274 (10th Cir. 2019). As long as the selected sentence does not “exceed[] the bounds of permissible choice,” we will affirm the sentence. *United States v. Barnes*, 890 F.3d 910, 915 (10th Cir. 2018) (quotation marks omitted). Further, “[w]e presume a sentence is reasonable if it is within the properly calculated Guidelines range.” *United States v. Miller*, 978 F.3d 746, 754 (10th Cir. 2020) (internal quotation marks and brackets omitted). And in such cases, “[t]he defendant bears the burden of rebutting the presumption that a Guidelines sentence is reasonable.” *Id.*

Mr. Ortiz-Sorroza has not sustained his burden of demonstrating the district court abused its discretion by imposing an 18-month, within-Guidelines sentence. Most notably, Mr. Ortiz-Sorroza has a lengthy criminal history, including a prior

conviction for the very offense for which he presently stands convicted. Thus, the district court acted within reason by selecting a within-Guidelines sentence to adequately deter Mr. Ortiz-Sorroza. *See* 18 U.S.C. § 3553(a)(2). This is particularly true where authorities had removed Mr. Ortiz-Sorroza on three prior occasions, yet Mr. Ortiz-Sorroza decided to reenter the United States illegally once again. And while Mr. Ortiz-Sorroza contends his prior convictions were old, this might be the product of Mr. Ortiz-Sorroza reforming his life or it might be the product of Mr. Ortiz-Sorroza having been outside the country for that time, such that any record of criminal conduct was not easily available to authorities in the United States. Furthermore, and relatedly, although Mr. Ortiz-Sorroza contended he had reformed his life, he expressly declined the district court's offer and rejected his counsel's advice to continue the sentencing hearing so that he might obtain and present evidence supporting his contentions. Where Mr. Ortiz-Sorroza did not provide evidentiary support for his contentions, the district court was well within its discretion to question their veracity and place greater weight on Mr. Ortiz-Sorroza's known and significant criminal history. Moreover, it appears the court credited the contentions to some degree, as evident by the imposition of a middle-of-the-Guidelines sentence rather than a high-end sentence the court initially contemplated. This further exemplifies the substantive reasonableness of the sentence selected by the district court. Finally, contrary to Mr. Ortiz-Sorroza's argumentation, the fact that a lesser sentence might also have satisfied § 3553(a) does not demonstrate an abuse of discretion by the district court. *See United States v. Sayad*, 589 F.3d 1110, 1116

(10th Cir. 2009) (“The fact that the appellate court might reasonably have concluded that a different sentence was appropriate is insufficient to justify reversal of the district court.” (quoting *Gall v. United States*, 552 U.S. 38, 51 (2007))). Accordingly, the district court did not abuse its discretion, and we reject Mr. Ortiz-Sorroza’s substantive reasonableness challenge.

III. CONCLUSION

We AFFIRM the district court’s selection of an 18-month sentence.

ENTERED FOR THE COURT

Carolyn B. McHugh
Circuit Judge