FILED
United States Court of Appeals
Tenth Circuit

September 18, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

WILLIAM JOSEPH DANIEL,

Defendant - Appellant.

No. 23-6011
(D.C. No. 5:22-CR-00229-R-1)
(W.D. Okla.)

ORDER AND JUDGMENT*

Before **TYMKOVICH**, **EID**, and **CARSON**, Circuit Judges.

William Joseph Daniel pled guilty to sexual battery. The district court sentenced him to 18 months' imprisonment. Mr. Daniel appeals, arguing his sentence was substantively unreasonable. Exercising jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742, we affirm.

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* After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore 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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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 Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

I. BACKGROUND

For approximately twenty years, Mr. Daniel was the middle and high school band director for Marlow Public Schools in Marlow, Oklahoma. One night in May 2022, Mr. Daniel's wife discovered him and Jane Doe—a high school band student whom Mr. Daniel had taught since she was eleven years old—in his office at Marlow Middle School. This discovery led to interviews in which Mr. Daniel and Jane Doe disclosed the sexual nature of their interactions.

Mr. Daniel and Jane Doe had a close teacher/student relationship for years. During her freshman year of high school, Jane Doe gave Mr. Daniel a handwritten note, thanking him for being a great band teacher and for being a dad to her after her own father left. Over time, the relationship changed. And between February and mid-May 2022, Mr. Daniel had an inappropriate sexual relationship with Jane Doe. At the time, he was forty-five (and still her band teacher) and she was an 18-year-old high school senior.

In June 2022, a federal grand jury indicted Mr. Daniel for rape by instrumentation and sexual battery. *See* Okla. Stat. tit. 21, §§ 1111.1(B), 1114(A)(6), 1123(B)(3).[1] The district court placed him under supervised pretrial release, subject to various conditions. The conditions included avoiding all contact with Jane Doe

[1] As assimilated into federal law by 18 U.S.C. §§ 13 and 1152. Section 1152 applies because the charged offenses were committed in Indian country.

and participating in counseling. On July 8, in accord with a plea agreement, Mr. Daniel pled guilty to sexual battery.[2]

Based on his guilty plea, the court modified the condition requiring Mr. Daniel's participation in counseling to include sex-offense-specific treatment. Yet the presentence investigation report ("PSR") noted that Mr. Daniel did not participate appropriately in either sex-offender group therapy or the peer support program. On July 15, Mr. Daniel violated the no-contact condition and made direct, in-person contact with Jane Doe. Following the consequent bond revocation hearing, the district court added home detention to Mr. Daniel's pretrial release conditions.

Regarding the offense level for committing sexual battery, the PSR found the sentencing factors under 18 U.S.C. § 3553(a) controlled because there was no sufficiently analogous Sentencing Guideline level. The PSR also noted that ten years' imprisonment is the maximum sentence for sexual battery under Oklahoma law. *See* Okla. Stat. tit. 21, § 1123(D). The parties agreed with those two premises. For punishment, the government argued a term of incarceration followed by supervised release was appropriate, whereas Mr. Daniel argued probation would be sufficient.

At sentencing, the district court adopted the PSR's factual findings and stated it had considered, inter alia, the § 3553(a) factors, character letters submitted on Mr. Daniel's behalf, the sentencing memoranda, and Mr. Daniel's allocution.

[2] Pursuant to the plea agreement, the government dismissed the rape-by-instrumentation charge at sentencing.

Ultimately, the district court sentenced Mr. Daniel to 18 months' imprisonment, followed by a three-year term of supervised release. He now appeals, challenging the sentence as substantively unreasonable.[3]

II. DISCUSSION

"We review a district court's sentencing decision for substantive reasonableness under an abuse-of-discretion standard." *United States v. Cookson*, 922 F.3d 1079, 1090 (10th Cir. 2019). And we will reverse only if the sentence was "arbitrary, capricious, whimsical, or manifestly unreasonable," or if the district court "exceeded the bounds of permissible choice, given the facts and the applicable law in the case at hand." *United States v. DeRusse*, 859 F.3d 1232, 1236 (10th Cir. 2017) (internal quotation marks omitted).

Our focus is on "whether the length of the sentence is reasonable given all the circumstances of the case in light of the [§ 3553(a)] factors." *Cookson*, 922 F.3d at 1091 (internal quotation marks omitted). Those factors are: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for a sentence to reflect the seriousness of the crime, deter future criminal conduct, protect the public, and provide rehabilitation; (3) the legally available sentences; (4) the Sentencing Guidelines; (5) the Sentencing Commission's policy statements; (6) the need to avoid unwarranted disparities among sentences;

[3] On August 10, 2023, Mr. Daniel attempted to file a pro se letter in this case. Because he has the assistance of counsel, we decline to consider Mr. Daniel's pro se filing. *See Bunn v. Perdue*, 966 F.3d 1094, 1098 (10th Cir. 2020).

and (7) the need for restitution. *See* 18 U.S.C. § 3553(a). In conducting our analysis, "[w]e do not reweigh the sentencing factors but instead ask whether the sentence fell within the range of rationally available choices that facts and the law at issue can fairly support." *United States v. Blair*, 933 F.3d 1271, 1274 (10th Cir. 2019) (internal quotation marks omitted).

Mr. Daniel argues his 18-month sentence is excessive given the nature and circumstances of his crime, his background, the purported peculiarity of his conviction statute, and the fact that probation alone was a legally available sentence.[4] We disagree.

The range of punishment for Mr. Daniel's crime was zero to ten years' imprisonment. *See* Okla. Stat. tit. 21, § 1123(D). Thus, while the district court could have ordered a shorter sentence (or forgone sentencing a term of imprisonment entirely as Mr. Daniel requested), it was also within the district court's discretion to order a much longer sentence than he received.

Mr. Daniel raises largely the same arguments on appeal that he made before the district court. In our view, his arguments here boil down to disagreement with the way the district court balanced the § 3553(a) factors and the facts of his case. But this court does not reweigh the sentencing factors. *Blair*, 933 F.3d at 1274.

[4] Mr. Daniel also suggests his conviction statute may be unconstitutional and contends that lends further support to his position that the district court abused its discretion. This ancillary argument is not persuasive. Statutes are presumed to be constitutional, and Mr. Daniel presented insufficient evidence to rebut that presumption. *See Gillmor v. Thomas*, 490 F.3d 791, 798 (10th Cir. 2007).

Moreover, "no algorithm exists that instructs the district judge how to combine the factors or what weight to put on each one," *United States v. Barnes*, 890 F.3d 910, 916 (10th Cir. 2018), and "we will defer on substantive-reasonableness review not only to a district court's factual findings but also to its determinations of the weight to be afforded to such findings," *Cookson*, 922 F.3d at 1094.

In rendering its sentencing decision, the district court referenced myriad considerations specific to Mr. Daniel and his crime. For example, the court acknowledged Mr. Daniel's career success, lack of prior criminal history, and the collateral consequences of his crime, including his having to register as a sex offender, loss of career, and divorce. Conversely, the court expressed concern about Mr. Daniel's lack of adjustment to pretrial release and his failure to meaningfully acknowledge the wrongfulness of his actions or the impact on his victim. The court was also troubled that Mr. Daniel's allocution characterized his conduct as a mere technical violation of the law. The court emphasized that Mr. Daniel's engaging in a sexual relationship with Jane Doe was illegal and exploitative given their teacher/student relationship. Finally, the district court stated that the sentence it imposed was sufficient to provide just punishment for Mr. Daniel's crime and for general deterrence.

Mr. Daniel's disagreement with the way the district court balanced the § 3553(a) factors with the facts of his case does not make his sentence substantively unreasonable. He has demonstrated neither that the district court's sentence was "arbitrary, capricious, whimsical, or manifestly unreasonable," nor that it "exceeded

the bounds of permissible choice, given the facts and the applicable law in the case at hand." *DeRusse*, 859 F.3d at 1236 (internal quotation marks omitted). We therefore hold the district court did not abuse its discretion when it imposed Mr. Daniel's sentence.

III. CONCLUSION

Under our deferential standard of review, Mr. Daniel has not demonstrated his sentence was substantively unreasonable. We affirm the district court's judgment.

Entered for the Court

Allison H. Eid
Circuit Judge