

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

September 29, 2026

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DARREL BAILEY,

Defendant - Appellant.

No. 26-1115
(D.C. No. 1:94-CR-00152-WJM-1)
(D. Colo.)

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DARREL BAILEY,

Defendant - Appellant.

No. 26-1116
(D.C. No. 1:23-CR-00280-WJM-1)
(D. Colo.)

ORDER AND JUDGMENT*

Before **PHILLIPS, KELLY, and FEDERICO**, Circuit Judges.

* 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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

When Darrel Bailey got out of prison, his case manager told him he would need to register as a sex offender. When he started on supervised release, his probation officers told him again. The Denver Police Department told him, too—after arresting him for failing to register. Bailey got out on bond, and the message seemed to sink in. He registered on May 16, 2023, and was told he would need to periodically reregister.

He hasn't registered since.

Perhaps unsurprisingly, Bailey found himself in a supervised-release-revocation hearing. Facing a Guidelines range of 21 to 24 months, Bailey vigorously argued that sex-offender-registration laws do not apply to him. Even after the district court rejected his arguments and found him guilty of violating the terms of his supervised release, Bailey refused to acknowledge he was wrong. His intransigence disturbed the district court. Still, Bailey received a below-Guidelines sentence of six months in prison and another year of supervised release.

On appeal, Bailey does not challenge the revocation of his supervised release. Nor does he claim the district court committed any procedural error. He argues only that the six-month prison sentence was substantively unreasonable. Exercising jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a), we affirm.

BACKGROUND

Bailey's life of crime did not begin with his 1990 sentence for bank robbery (among other things). It began nearly two decades before. At 19 years old, he and one other person broke into the home of a man and a woman. They assaulted the man and stole money and a shotgun. Then Bailey ordered the woman into the bathroom and raped her.

A California jury convicted Bailey. He spent some time in a mental hospital—the result of a diagnosis as a mentally disordered sex offender—before transferring to a state penitentiary. Bailey got out on parole a little over two years later. That was in 1978; by the end of 1980, Bailey had racked up a slew of new convictions for violent and sexual crimes and found himself back in prison.

Bailey spent most of his adult life incarcerated, most recently from 1990 to 2023. That stint was originally for the bank robbery, but an assault on his prison guards earned him another sentence (to run consecutively) in 1996.

In March 2023, Bailey's terms of supervised release began to run in both the 1990 bank-robbery case and the 1996 assault case. His probation officers repeatedly told him he would need to register due to his status in California as a mentally disordered sex offender. Despite the repeated warnings, Bailey steadfastly refused. In the view of United States Probation, that refusal violated Bailey's conditions of supervised release twice over. First, he had violated the law by failing to register. Second, he had failed to obey the instructions of his

probation officers. For each violation, Probation calculated a Guidelines range of 21 to 24 months in prison. But it ultimately recommended a total prison sentence of only 10 months.

At a combined revocation hearing for both criminal cases, the district court found Bailey had committed both violations and revoked his supervised release (notwithstanding Bailey's dogged insistence that he did not need to register). At sentencing, Probation reiterated its below-Guidelines recommendation of ten months in prison. But the district court went even lower and imposed concurrent sentences of six months in prison (plus another year of supervised release, which is not at issue).

The court arrived at this figure after noting that Bailey's time on supervised release had been "somewhat positive" (aside from his failure to register). Suppl. R. Vol. II at 91. It also considered sentencing data suggesting that people of Bailey's age are less likely to reoffend. Still, Bailey's "unrepentant and persistent refusal to follow the law and register as a sex offender" troubled the court. *Id.*; *see also id.* at 88 ("I find it difficult to understand how it is that you continue to refuse to accept that not only your probation officer's telling you, but now I'm going to tell you, that you are required under federal and state law to register as a sex offender.").

Bailey now appeals his sentence, arguing the district court abused its discretion by failing to impose an even lower sentence.

STANDARD OF REVIEW

We review challenges to the substantive reasonableness of a sentence for abuse of discretion. *E.g.*, *United States v. Carter*, 941 F.3d 954, 960 (10th Cir. 2019). A district court abuses its discretion when its judgment is “arbitrary, capricious, whimsical, or manifestly unreasonable.” *United States v. Steele*, 603 F.3d 803, 809 (10th Cir. 2010) (quoting *United States v. Landers*, 564 F.3d 1217, 1224 (10th Cir. 2009)). In other words, we will not disturb a district court’s decision without a “definite and firm conviction” that it “made a clear error of judgment or exceeded the bounds of permissible choice in the circumstances.” *Id.* (quoting *United States v. Ortiz*, 804 F.2d 1161, 1164 n.2 (10th Cir. 1986)).

We evaluate the substantive reasonableness of a sentence by asking whether its length is reasonable under the circumstances of the case and the factors in 18 U.S.C. § 3553(a). *United States v. Cookson*, 922 F.3d 1079, 1090–91 (10th Cir. 2019) (citing *United States v. Friedman*, 554 F.3d 1301, 1307 (10th Cir. 2009)). A sentence below a correctly calculated advisory Guidelines range is presumed reasonable when challenged by the defendant. *Carter*, 941 F.3d at 961 (citing *United States v. Damato*, 672 F.3d 832, 848 (10th Cir. 2012)).

DISCUSSION

Bailey argues the district court’s sentence was substantively unreasonable: In light of “[t]he nature of the offense and [Bailey’s] personal

history and characteristics,” the district court should have imposed an “even lower downward variance.” Opening Br. at 10. He rattles off some of the things that he thinks the court “should have given more consideration” when applying the sentencing factors: (1) his otherwise uneventful and productive time on supervised release; (2) his good-faith legal arguments that he should not have to register as a sex offender; (3) his advanced age and mental health issues; (4) his religiousness and respect for the court; and (5) his low chance for recidivism. *Id.* at 9–10.

Bailey fails to demonstrate his sentence was substantively unreasonable. First, the district court expressly considered most of the factors that Bailey invokes. It observed that “apart from his failure to register as a sex offender, [Bailey’s] overall conduct on supervision ha[d] been somewhat positive.” Suppl. R. Vol. II at 91. The court also noted that “sentencing data from the Sentencing Commission” suggests Bailey is “at a lower risk of criminally recidivating.” *Id.* And the court *did* consider Bailey’s arguments that he should not have to register as a sex offender—it just considered those arguments to be an aggravating factor.

More importantly, though, Bailey offers no reason to believe a six-month sentence was unreasonably high. Nor does he attempt to rebut the presumption of reasonableness given to below-Guidelines sentences. Aside from conclusory assertions, he gives us nothing to go on. Bailey just thinks the district court should have balanced the § 3553(a) sentencing factors differently.

At bottom, Bailey invites us to “re-sentence him, giving greater weight to” certain factors than the district court did. *United States v. Martinez*, 610 F.3d 1216, 1229 (10th Cir. 2010). If we reviewed de novo a district court’s balancing of the sentencing factors, perhaps we could accept that invitation. But we do not. *Id.* We review for abuse of discretion. So long as the district court’s balance is not arbitrary, capricious, whimsical, or manifestly unreasonable, we must defer “even if we would not have struck the same balance in the first instance.” *Id.* (quoting *United States v. Sells*, 541 F.3d 1227, 1239 (10th Cir. 2008)).

CONCLUSION

The district court imposed a sentence well below the Guidelines range. Bailey has failed to show that six months is unreasonably long or that the district court’s sentence was arbitrary, capricious, whimsical, or manifestly unreasonable. We affirm.

Entered for the Court

Gregory A. Phillips
Circuit Judge