24-2529-cr
United States v. Fox

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 3rd day of November, two thousand twenty-six.

PRESENT: DENNY CHIN,
EUNICE C. LEE,
ALISON J. NATHAN,
Circuit Judges.

- -x

UNITED STATES OF AMERICA,
Appellee,

-v- 24-2529-cr

JAMES P. FOX,
Defendant-Appellant.*

- -x

FOR APPELLEE: TIFFANY H. LEE, Assistant United States Attorney, *for* Michael DiGiacomo, United States Attorney for the Western District of New York, Buffalo, NY.

* The Clerk of Court is respectfully directed to amend the caption accordingly.

FOR DEFENDANT-APPELLANT: ROBERT A. CULP, Law Office of Robert A. Culp, Garrison, NY.

Appeal from the United States District Court for the Western District of New York (Sinatra, *J.*).

UPON DUE CONSIDERATION, IT IS ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is **AFFIRMED**.

Defendant-Appellant James P. Fox appeals from a judgment entered September 23, 2024 in the United States District Court for the Western District of New York (Sinatra, *J.*). Following his guilty plea, Fox was convicted of one count of sex trafficking by force, fraud, or coercion in violation of 18 U.S.C. § 1591(a)(1) and (b)(1). The district court sentenced him to 360 months in prison and 15 years of supervised release with special conditions, including a computer monitoring special condition. On appeal, Fox challenges his sentence, arguing that (1) the 30-year sentence is procedurally unreasonable, (2) the 30-year sentence is substantively unreasonable, and (3) the district court abused its discretion in imposing the computer monitoring special condition. We assume the parties' familiarity with the underlying facts, the procedural history of the case, and the issues on appeal, to which we refer only as necessary to explain our decision to affirm.

I. Procedural Reasonableness

Fox contends that his sentence is procedurally unreasonable because the district court failed to explain its reasoning for the sentence adequately and because the district court incorrectly calculated the applicable Guidelines sentencing range. We reject both claims.

A. *The Purported Failure to Explain the Sentence Adequately*

A sentencing court procedurally errs when it fails to adequately explain the imposed sentence, including any deviation from the Guidelines range. *United States v. Cavera*, 550 F.3d 180, 190 (2d Cir. 2008) (en banc). "Where, as here, a defendant does not object at sentencing to a district court's failure to explain its reasoning, we review the procedural challenge for plain error." *United States v. Smith*, 949 F.3d 60, 66 (2d Cir. 2020); *see also United States v. Ortiz*, 100 F.4th 112, 120 (2d Cir. 2024). "To establish plain error, a defendant must show (1) there is an error; (2) the error is clear or obvious, rather than subject to reasonable dispute; (3) the error affected the defendant's substantial rights; and (4) the error seriously affects the fairness, integrity, or public reputation of judicial proceedings." *United States v. Cooke*, 143 F.4th 164, 167 (2d Cir. 2025) (citation modified). The defendant bears the burden of establishing these elements, and reversal for plain error "should be used sparingly." *Id.* (quoting *United States v. Villafuerte*, 502 F.3d 204, 209 (2d Cir. 2007)).

Although a district court need not utter "robotic incantations" during sentencing, it must "explain enough about the sentence for a reviewing court both to understand it and to assure itself that the judge considered the principles enunciated in federal statutes and the Guidelines." *United States v. Corsey*, 723 F.3d 366, 374 (2d Cir. 2013) (per curiam) (citation modified). Thus, when a district court deviates from the Guidelines range, it must consider and sufficiently explain the degree of deviation. *See United States v. Aldeen*, 792 F.3d 247, 252 (2d Cir. 2015), *superseded by statute on other grounds as recognized in United States v. Smith*, 949 F.3d 60, 64 (2d Cir. 2020). A court must support a "major departure" with a "more significant justification." *Id.* (citation modified). "[O]nce we are sure that the sentence resulted from the reasoned exercise of discretion," though, "we must defer heavily to the expertise of district judges," even if such deference results in "substantial variation" among sentences. *Cavera*, 550 F.3d at 193.

Here, the district court fulfilled its obligation to adequately explain Fox's 30-year sentence, including the upward variation from the Guidelines range of 235 to 293 months' imprisonment (as calculated by the parties in the plea agreement). The district court emphasized the "extraordinarily bad" nature of Fox's offense and the fact that much of Fox's conduct "is not captured by the guidelines." App'x at 484-85. The court explained that the conduct included, but was not limited to, "prey[ing] on vulnerable, drug-addicted women . . . when they were high, or suffering from

withdrawal, and unable to consent," "engag[ing] in sexual acts with [women who] . . . did not consent" to those acts, and "physical abuse of human beings that wouldn't be tolerated . . . if it were conducted on an animal." *Id.* The district court also noted the need to account for Fox's possession of drugs with intent to distribute and Fox's possession of a firearm "in connection with [his] interaction with drug dealers." *Id.* at 487. The district court concluded that "a guidelines sentence would be less than necessary to comply with the purposes of sentencing set forth in the sentencing statute." *Id.* at 498.

Fox nevertheless contends that the district court did not adequately explain the weight it placed on several factors, including the sexual abuse he suffered as a child. To the contrary, with one exception, the record shows that the district court explicitly addressed all the factors Fox raises on appeal. Although the district court did not specifically address the abuse Fox had endured as a child, it noted that it had read and considered "everything that was submitted in this case related to sentencing." *Id.* at 483; *see also id.* at 495; *see generally United States v. Riga*s, 583 F.3d 108, 119 (2d Cir. 2009) ("That the District Court did not . . . address . . . each of defendants' sentencing arguments does not render the ultimate sentence procedurally unreasonable."). We are thus satisfied that the district court fulfilled its obligation to explain the sentence it imposed.

B. *The Purported Failure to Calculate the Guidelines Range Correctly*

A sentencing court commits procedural error when it incorrectly calculates the Guidelines range. *Cooke*, 143 F.4th at 167. Where, as here, a defendant does not object at sentencing to a district court's calculation of the applicable Guidelines sentencing range, we review the procedural challenge for plain error. *See id.*[1]

A defendant may stipulate in a plea agreement to facts affecting a Guidelines calculation, including, *e.g.*, that he has committed offenses other than the ones charged. U.S.S.G. § 1B1.2(c). If the stipulation "specifically establishes" the commission of these additional offenses, the plea agreement "shall be treated as if the defendant had been convicted of" those additional offenses. *Id.* The district court, however, must still determine relevant facts based on the record as a whole, including the stipulation (as long as it was knowing and voluntary), the defendant's affirmation as to the accuracy of the plea agreement, and any other evidence before the court. *United States v. Granik*, 386 F.3d 404, 411-12 (2d Cir. 2004). "[F]acts admitted in a plea agreement can, and usually will, be accepted by the sentencing court as true." *Id.* at 413.

Here, Fox claims that the district court erred by including KD among the victims in the Guidelines calculation, resulting in a Guidelines range of 235 to 293 months rather than 210 to 262 months. In fact, Fox's plea agreement stipulated to KD's

[1] The Government argues that Fox waived this challenge by entering into a plea agreement that stipulated to the inclusion of KD in the Guidelines calculation. Given our disposition, we do not reach the waiver issue.

inclusion in the Guidelines calculation, to a Guidelines range of 235 to 293 months, and to the fact that he coerced KD to engage in commercial sex acts. Fox also affirmed to the district court that he was pleading guilty because he "did the things that the plea agreement says [he] did," including with respect to KD. App'x at 295. Accordingly, the district court did not err in accepting as true the facts to which Fox stipulated and the resulting Guidelines range accounting for KD. The district court therefore did not plainly err in its calculation.

II. Substantive Reasonableness

Fox also contends that his 30-year sentence is substantively unreasonable because the district court's stated justifications for the sentence do not adequately support the upward variance from the agreed-upon Guidelines range of 235 to 293 months' imprisonment. We disagree.

We review challenges for substantive unreasonableness under a "particularly deferential" abuse-of-discretion standard, *United States v. Broxmeyer*, 699 F.3d 265, 278 (2d Cir. 2012), affording due respect to the district court's "very wide latitude to decide the proper" sentence, *Cavera*, 550 F.3d at 188. Review for substantive reasonableness "provide[s] a backstop for those few cases that, although procedurally correct, would nonetheless damage the administration of justice because the sentence imposed was shockingly high . . . or otherwise unsupportable as a matter of law." *Rigas*, 583 F.3d at 123. Thus, "[w]e will . . . set aside a district court's *substantive* determination

only in exceptional cases where the trial court's decision cannot be located within the range of permissible decisions." *Cavera*, 550 F.3d at 189 (citation modified).

In reviewing a sentence for substantive reasonableness, we consider whether the sentencing factors relied upon by the district court "can bear the weight assigned [them] under the totality of the circumstances in the case" -- not whether "we would ourselves have given a particular factor" the same weight. *Id.* at 191. In making this determination, we must be "mindful that 'facts may frequently point in different directions so that even experienced district judges may reasonably differ, not only in their findings of fact, but in the relative weight they accord competing circumstances.'" *Broxmeyer*, 699 F.3d at 289 (quoting *United States v. Jones*, 531 F.3d 163, 174 (2d Cir. 2008)). Consequently, "[t]he particular weight to be afforded aggravating and mitigating factors 'is a matter firmly committed to the discretion of the sentencing judge.'" *Id.* (quoting *United States v. Fernandez*, 443 F.3d 19, 32 (2d Cir. 2006)).

The record shows that the district court carefully examined the relevant factors and did not give any single factor undue weight in pronouncing Fox's sentence. Nevertheless, Fox criticizes the district court for failing to give sufficient weight to his acceptance of responsibility, arguing that the fact that Fox passed a polygraph test during which he stated that "[a]ll sex was consensual" shows that he believed that to be true. *See* Appellant's Br. at 31. The district court reasonably concluded, however, that Fox's continued "insist[ence] that all sex with [his] victims was consensual" reflected a

failure to appreciate the seriousness of his conduct -- plying vulnerable young women with drugs, then sexually abusing them. App'x at 495. Thus, considering the totality of circumstances and the discretion due to sentencing courts, we conclude that the district court reasonably balanced the aggravating and mitigating factors in this case and imposed a sentence that fell within the range of permissible decisions.

III. Computer Monitoring Special Condition

Finally, Fox argues that the district court failed to adequately justify the computer monitoring special condition of his supervised release term because "a computer bore only a tangential relation to the offense." Appellant's Br. at 46. We are not persuaded.

We review the imposition of supervised release conditions for abuse of discretion and any issues of law presented *de novo*. *United States v. Robinson*, 134 F.4th 104, 109 (2d Cir. 2025). Conditions of supervised release must be both substantively and procedurally reasonable. *United States v. Kunz*, 68 F.4th 748, 759 (2d Cir. 2023). Accordingly, a court may impose a special condition only if it is "reasonably related" to the nature of the offense, the history and characteristics of the defendant, deterrence and public protection interests, and the rehabilitative and other needs of the defendant. *Id.* at 758; 18 U.S.C. § 3583(d)(1); U.S.S.G. § 5D1.3(b). Special conditions must also involve "no greater deprivation of liberty than is reasonably necessary" for the purposes of sentencing. 18 U.S.C. § 3583(d)(2); *see also United States v. Johnson*, 529 U.S. 53, 59

(2000) ("Supervised release fulfills rehabilitative ends, distinct from those served by incarceration.").

As the district court explained when imposing the computer monitoring condition, Fox "used online escort advertisements to locate victims." App'x at 454. The computer monitoring special condition is therefore reasonably related to the nature and circumstances of Fox's offense. It is also reasonably necessary to fulfill the broad sentencing purposes indicated in U.S.S.G. § 5D1.3(b) and 18 U.S.C. § 3583(d), including deterrence, public protection, and rehabilitation. Moreover, as the district court emphasized at sentencing, Fox is free to seek modification of the condition in the future should technology develop such that the condition appears inappropriate when Fox commences his term of supervised release.

We therefore conclude that the district court did not abuse its discretion in imposing the computer monitoring special condition.

* * *

We have considered Fox's remaining arguments and conclude they are without merit. For the foregoing reasons, we **AFFIRM** the judgment of the district court.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk