

**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 4th day of September, two thousand twenty-six.

Present:

REENA RAGGI,
DENNY CHIN,
WILLIAM J. NARDINI,
Circuit Judges.

UNITED STATES OF AMERICA,

Appellee,

v.

25-1093-cr

EUGENE WILLIAM AUSTIN, JR.,

Defendant-Appellant.

For Appellee:

OLGA I. ZVEROVICH (Andrew K. Chan, Matthew Weinberg, James Ligtenberg, *on the brief*), Assistant United States Attorneys, *for* Jay Clayton, United States Attorney for the Southern District of New York, New York, NY

For Defendant-Appellant:

PETER J. TOMAO, Garden City, NY

Appeal from a judgment of the United States District Court for the Southern District of New York (P. Kevin Castel, *District Judge*).

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

Defendant-Appellant Eugene William Austin, Jr. (“Austin”) appeals from a judgment of the United States District Court for the Southern District of New York entered on April 24, 2025. After a one-week trial, a jury found Austin guilty of conspiracy to commit wire fraud in violation of 18 U.S.C. § 1349, conspiracy to commit money laundering in violation of 18 U.S.C. § 1956(h), and conspiracy to commit interstate transportation of stolen property in violation of 18 U.S.C. § 371. The charges stemmed from Austin’s role in a fraudulent scheme in which Austin and his son, Brandon Austin (“Brandon”), purported to be successful cryptocurrency investors and businessmen and induced several victims to, among other things, participate in supposed cryptocurrency transactions or other short-term investment or loan transactions in exchange for the promise of high returns, which the victims never received. Instead, Austin and his son spent the investors’ funds on personal expenses such as shopping, airline travel, and restaurants, as well as nominal payments to investors that furthered their scheme. In total, Austin caused losses of more than \$12 million to approximately 26 victims.

The district court sentenced Austin to a total of 216 months in prison, to be followed by three years of supervised release, and ordered that he pay restitution in the amount of \$12,662,564, forfeiture in the amount of \$6,062,564, and a special assessment of \$300. Austin now appeals, challenging the district court’s disposition of a pretrial motion *in limine*, the district judge’s failure to recuse himself, the failure to relieve trial counsel, and his prison sentence. We assume the parties’ familiarity with the case.

I. Evidentiary Challenge

Before trial, the government filed a motion *in limine* seeking to admit evidence of (1) Austin’s failure to file tax returns between 2017 and 2021 (with the exception of the year 2019, when he reported \$1 in taxable income), and (2) other frauds and related conduct Austin committed against testifying victims prior to the charged crimes, either as direct evidence of the charged conspiracy or pursuant to Federal Rule of Evidence 404(b). The district judge granted the government’s motion in part and denied it in part, outlining which evidence would or would not be admitted. The government ultimately declined to call any of these other fraud victims at trial.

Nevertheless, appearing to refer to the district court’s resolution of the pre-trial motion *in limine*, Austin argues in his opening brief that “the lower court erroneously admitted evidence that [he] obtained money from other people through a series of fraudulent schemes,” which improperly conveyed the message “that [he] must have conspired as charged in the indictment . . . because he was a serial fraudster . . .” Appellant’s Br. at 21, 24. Because such evidence was never introduced at trial, Austin’s argument fails to cast doubt on the integrity of his convictions.

In reply, Austin does not dispute that the challenged other-fraud evidence was not introduced at trial. Instead, he shifts to a different argument, challenging the admission of evidence of his failure to file tax returns, which was presented to the jury via a summary stipulation and with a limiting instruction. But we will not consider arguments raised for the first time in a reply brief. *See United States v. Kandic*, 134 F.4th 92, 102–03 (2d Cir. 2025). And even if we were to review this claim, we would conclude that it lacks merit. The district court allowed the evidence regarding Austin’s failure to file tax returns to demonstrate his consciousness of guilt, “because one would not report fraudulent earnings to the IRS, so you conceal them by not filing.” App’x at 147. The district court did not abuse its discretion in reaching this conclusion. *See*

United States v. Valenti, 60 F.3d 941, 946 (2d Cir. 1995) (upholding admission of evidence that defendant failed to report allegedly embezzled funds on tax returns; such evidence was “obviously probative” to refute defense that funds were legitimately earned). The district court instructed the jury that this evidence could be considered only with respect to Austin’s mental state, and so any potential prejudice was minimized.

Austin’s evidentiary challenges to his convictions therefore fail.

II. Recusal

Austin next argues that the district judge should have recused himself *sua sponte* from his sentencing because the judge also presided over the related case against Austin’s son and co-conspirator, Brandon. Austin contends that the judge’s failure to recuse renders his sentence procedurally unreasonable. Brandon pleaded guilty before the judge to one count of conspiracy to commit money laundering and was sentenced four months before Austin’s trial. At that sentencing, the judge referenced Austin’s role as Brandon’s co-conspirator in the fraudulent scheme and agreed that Austin’s influence on Brandon was a motivating factor in Brandon’s criminal conduct, as relevant to Brandon’s mitigating-circumstances argument. Austin submits that a disinterested observer would construe these statements to show the judge’s bias against Austin so as to require recusal. *See* 28 U.S.C. § 455(a) (stating that “[a]ny justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned”).

We generally “review a district court’s decision not to recuse itself for abuse of discretion,” and “rarely disturb a district court’s decision not to recuse itself.” *United States v. Wedd*, 993

F.3d 104, 114 (2d Cir. 2021).¹ Where, as here, a defendant did not make a recusal motion below, we review a district court’s failure to recuse itself for plain error, reversing only if “(1) there is an error; (2) the error is clear or obvious, rather than subject to reasonable dispute; (3) the error affected the appellant’s substantial rights, which in the ordinary case means it affected the outcome of the district court proceedings; and (4) the error seriously affects the fairness, integrity or public reputation of judicial proceedings.” *Id.* at 115–16. “We evaluate partiality under Section 455(a) on an *objective* basis, so that what matters is not the reality of bias or prejudice but its appearance.” *Id.* at 114. As relevant here, “opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible.” *Id.* at 115.

The district judge did not err when he failed to recuse himself *sua sponte*. Austin “does not argue, nor does the record suggest, that the district court formed an opinion of [Austin’s] culpability based on anything other than facts introduced or events occurring in the course of the current proceedings, or of prior proceedings.” *Id.* at 116. And the district judge’s reference to Austin’s comparative culpability with respect to Brandon does not indicate an ingrained favoritism or animus that impeded his ability to make fair judgments. Judges regularly and permissibly preside over the trials of co-conspirators and necessarily “form[] opinions about [one] defendant’s likely guilt” during those proceedings. *Id.* “Here, the district court’s comments were made in the context of a convicted co-defendant’s impending sentencing. . . . A judge cannot be said to have manifested partiality simply by expressing a view of a particular defendant’s culpability

¹ Unless otherwise indicated, when quoting cases, all internal quotation marks, alteration marks, emphases, footnotes, and citations are omitted.

based on information that has been presented to the court.” *Id.* at 117. That is exactly what the district judge did here; and quite properly so. Accordingly, we find no error, let alone plain error, in the district judge’s failure to recuse himself under § 455(a).

III. New Counsel

Two weeks before his sentencing, and the day before his counsel was supposed to file his sentencing memorandum, Austin wrote a letter to the district court asking to replace his trial counsel with new counsel because there had been “a complete breakdown in communication and trust” that made it impossible to work together with his lawyers. App’x at 195. Austin highlighted that his counsel appeared to disagree with him regarding “several concerns” he had about his Presentence Investigative Report. *Id.* The day after the letter was filed, the district court appointed an additional lawyer to represent Austin at sentencing and noted that Federal Rule of Criminal Procedure 32(b)(1) instructs district courts to impose sentences without unnecessary delay. Trial counsel filed Austin’s sentencing submission, which Austin’s newly appointed counsel did not sign, withdrawing certain objections Austin had made to his PSR. The district court then granted Austin’s new counsel’s request for a 30-day adjournment of sentencing to permit him to familiarize himself with the case, after which new counsel reinstated Austin’s objections to the PSR. The parties subsequently resolved the disputes over the PSR through a series of stipulations and sentencing proceeded. During sentencing, Austin’s new counsel stated that he believed his appointment as lead counsel had been fruitful and led to “resolution [of] what was essentially a disagreement when it came to sentencing,” thanks to having a “fresh pair of eyes” on the issues. App’x at 232–33.

On appeal, Austin now complains for the first time that the district court should have “isolated” his new counsel from his trial counsel instead of having them operate as a “tainted unit,”

because the new attorney could not “effectively argue for a continuance or a different sentencing strategy without criticizing his own ‘team.’” Appellant’s Br. at 33–34. According to Austin, his new counsel merely played the role of mediator instead of “focusing fully on the sentencing issues.” *Id.* at 34. Austin also asserts that the district court should have inquired into his reasons for being dissatisfied with his trial lawyers.

We review a district court’s decision on a motion to substitute counsel for abuse of discretion. *See United States v. Simeonov*, 252 F.3d 238, 241 (2d Cir. 2001). “[W]here a defendant voices a seemingly substantial complaint about counsel, the court should inquire into the reasons for dissatisfaction,” but “[i]f the reasons are made known to the court, the court may rule without more.” *Id.*

We hold that the district court’s decision to appoint new counsel to advise Austin on sentencing in conjunction with his trial counsel was well within the considerable discretion accorded to district courts in these matters. Its approach reasonably balanced the need to avoid undue delay in sentencing with Austin’s insistence that new counsel was required. Moreover, Austin’s new counsel appears to have dutifully discharged Austin’s wishes in connection with his PSR, which was the only point of disagreement he raised with his prior counsel’s sentencing strategy: His new counsel reinstated Austin’s objections to the PSR and negotiated with the government to reach a mutual resolution regarding those objections. Austin does not identify any other issues on which he disagreed with his trial counsel and has not provided us with any reason beyond mere speculation to think that his new counsel was unable to provide him with an “independent, effective defense.” Appellant’s Br. at 34.

Similarly, the district court did not abuse its discretion by failing to inquire further about the nature of Austin’s conflict with his counsel. Austin’s letter, received the day before his

sentencing submission was due, referenced disagreements about the PSR and stated that he feared the breakdown in the relationship could negatively impact his sentencing. The district court needed no more information to conclude that Austin wanted a new lawyer for the purposes of sentencing—which is precisely what he got.

IV. Sentence

Finally, Austin argues that his prison sentence is substantively unreasonable because he was 62 at the time of his sentencing and has health issues, although he does not explain the nature of those health issues. Sentences must be “sufficient, but not greater than necessary” to achieve the goals of sentencing. 18 U.S.C. § 3553(a). “We review the substantive reasonableness of a sentence deferentially, recognizing the broad discretion entrusted to sentencing judges. . . . We will reverse only rare cases that, although procedurally correct, would nonetheless damage the administration of justice because the sentence imposed was shockingly high, shockingly low, or otherwise unsupportable as a matter of law. We lack authority to simply substitute our own judgment for the district court’s on the question of what is sufficient to meet the § 3553(a) considerations in any particular case.” *United States v. DeJesus*, 182 F.4th 233, 241 (2d Cir. 2026).

The 216-month sentence imposed on Austin, which was below the advisory Guidelines range of 262 to 327 months adopted by the district court, is not “shockingly high” in light of the record before the district court and is therefore not substantively unreasonable. As the district court noted while evaluating the § 3553(a) factors, Austin perpetrated a criminal scheme “tailored to” his victims, using his “skill, expertise, [and] knowledge” to manipulate them into parting with their money—which they will likely never get back. App’x at 270, 275. The district court

recognized Austin's age, but concluded that a proper weighing of all of the sentencing factors, particularly in light of the harms Austin caused, made a 216-month sentence appropriate.

Austin argues that the district court should have balanced the sentencing factors differently by (1) shortening his sentence due to his age, (2) acknowledging that older offenders are less likely to re-offend, (3) adopting the view that 120 months in jail was adequate to deter similar conduct (and further criminal conduct by Austin), and (4) aligning the length of his sentence more closely with those imposed on his co-conspirators, who pleaded guilty. In short, he asks us to “substitute our own judgment for the district court’s on the question of what is sufficient to meet the § 3553(a) considerations,” which we may not do. *United States v. Cavera*, 550 F.3d 180, 189 (2d Cir. 2008) (en banc). Austin falls short of establishing that this is an “exceptional case[] where the trial court’s decision cannot be located within the range of permissible decisions.” *Id.*²

* * *

For the foregoing reasons, we **AFFIRM** the judgment of the district court.

FOR THE COURT:

Catherine O’Hagan Wolfe, Clerk

² Austin also highlights that the Probation Department recommended a sentence of 120 months. But this does not tend to show that the sentence is substantively unreasonable. “The sentencing recommendations of the Probation Office, though often quite helpful, are no more than that: suggestions that are not entitled to any judicial deference. . . . [A] sentence cannot be impugned on appeal by pointing to its divergence from the recommendation of the Probation Department.” *DeJesus*, 182 F.4th at 242.