

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 14th day of September, two thousand twenty-six.

PRESENT: RAYMOND J. LOHIER, JR,
Chief Judge,
GUIDO CALABRESI,
SUSAN L. CARNEY,
Circuit Judges.

UNITED STATES OF AMERICA,

Appellee,

v.

No. 25-368-cr

NIKOLAY GRIGOREV,

*Defendant-Appellant.**

* The Clerk of Court is directed to amend the caption as reflected above.

FOR DEFENDANT-APPELLANT: Tony Mirvis, Esq., Brooklyn,
NY

FOR APPELLEE: Antoinette N. Rangel, Susan
Corkery, Assistant United
States Attorneys, *for* Joseph
Nocella, Jr., United States
Attorney for the Eastern
District of New York,
Brooklyn, NY

Appeal from a judgment of the United States District Court for the Eastern
District of New York (Nicholas G. Garaufis, *Judge*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED,
AND DECREED that the judgment of the District Court is REMANDED in part
for further proceedings consistent with this order.

Nikolay Grigorev appeals from the February 7, 2025 judgment of the
United States District Court for the Eastern District of New York (Garaufis, *J.*)
sentencing him to four years' probation and imposing a \$150,000 fine following
his guilty plea, pursuant to a plea agreement, to one count of conspiracy to
defraud the United States in violation of 18 U.S.C. § 371. On appeal, Grigorev
contends that the imposition of a \$150,000 fine was both procedurally and
substantively unreasonable, without challenging the reasonableness of the
remainder of his sentence. We assume the parties' familiarity with the

underlying facts and the record of prior proceedings, to which we refer only as necessary to explain our decision to remand.

Grigorev's conviction carried a maximum fine of \$250,000. *See* 18 U.S.C. §§ 371, 3571(b)(3). His plea agreement provided for an adjusted offense level of 19 under the Sentencing Guidelines, yielding a range of imprisonment of 30 to 37 months and a fine of between \$10,000 to \$100,000. As relevant to this appeal, the District Court ordered Grigorev to pay a fine of \$150,000 within 30 days of sentencing. Grigorev moved unsuccessfully to amend or correct the judgment, raising the same challenge to the fine that he now raises on appeal.

Grigorev argues that the District Court failed to justify the \$150,000 fine. The amount of that fine represents a major upward variance from the Guidelines range set forth in § 5E1.2(c)(3).¹ Grigorev adds that the variance from the \$10,000 to \$100,000 Guidelines range is in any event at odds with the substantial downward variance that his non-prison term represented. He also faults the District Court for failing to consider his financial circumstances when imposing

¹ It is "clear from the record that the District Court relied on its power under § 3553(a)—and not on any Guidelines provision—as a basis for the . . . 'departure.'" *United States v. Keller*, 539 F.3d 97, 100 (2d Cir. 2008) (citation modified). Accordingly, we view the court's deviation from the Guidelines fine range as an upward variance rather than a departure from the Guidelines.

the fine, and says that the fine is so disproportionate to his offense that it violates his right to due process. The Government counters that Grigorev failed to object to the amount of the fine before the District Court, so that we should review only for plain error; it also defends on the merits, arguing that the District Court's findings about Grigorev's ability to pay the fine were adequate.

We first address Grigorev's claim that the District Court failed to make explicit findings to justify the variance, rendering the \$150,000 fine procedurally defective. Although "[w]e have declined to articulate precise standards for assessing whether a district court's explanation of its reason for imposing a non-Guidelines sentence is sufficient," *United States v. Pereira*, 465 F.3d 515, 524 (2d Cir. 2006), district courts "must adequately explain the chosen sentence to allow for meaningful appellate review," *Gall v. United States*, 552 U.S. 38, 50 (2007); see *Chavez-Meza v. United States*, 585 U.S. 109, 112 (2018) ("If the sentence is outside the Guidelines range (whether because of a 'departure' or a 'variance'), the judge must state 'the specific reason for the imposition of a . . . different' sentence," in open court) (citing 18 U.S.C. § 3553(c)).

We have made clear that "[i]f the court decides to impose a fine that is different from the Guidelines-recommended range, it must also provide an

explanation as to the specific reason for its decision.” *United States v. Elfgeeh*, 515 F.3d 100, 137 (2d Cir. 2008). Although the District Court justified its downward variance in imposing a term of probation, it is not clear to us from the record what facts or factors it relied on to justify its upward variance as to the fine.

At this stage, we believe this issue is best addressed by means of a *Jacobson* remand, in which we remand “partial jurisdiction to the district court to supplement the record on a discrete factual or legal issue while retaining jurisdiction over the original appeal.” *Corporación Mexicana de Mantenimiento Integral, S. de R.L. de C.V. v. Pemex-Exploración y Producción*, 832 F.3d 92, 115 (2d Cir. 2016) (Winter, J., concurring); see *United States v. Jacobson*, 15 F.3d 19, 22 (2d Cir. 1994) (recognizing the authority of federal appellate courts to seek “supplementation of a record without a formal remand or the need for a new notice of appeal before the appellate panel acts on the supplemental record”).

Accordingly, we direct the District Court to elaborate on its rationale for imposing a fine greater than the applicable Guidelines range, for the amount selected, and for the thirty-day payment deadline it imposed. Upon such elaboration by the District Court, either party may restore the matter to the active docket of this Court by letter, without filing a new notice of appeal. In the event

that either party seeks further action from this Court, the matter will be referred to this panel. Since the matter is remanded on this basis, we need not reach Grigorev's alternative arguments.

For the foregoing reasons, we REMAND the judgment of the District Court pursuant to *Jacobson* for further proceedings consistent with this order.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court