

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

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No. 07-13973  
Non-Argument Calendar

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| FILED<br>U.S. COURT OF APPEALS<br>ELEVENTH CIRCUIT<br>April 4, 2008<br>THOMAS K. KAHN<br>CLERK |
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D. C. Docket No. 03-00558-CR-TWT-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ALFREDO P. RIVERA,  
a.k.a. Cukie,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Georgia

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**(April 4, 2008)**

Before BIRCH, DUBINA and BARKETT, Circuit Judges.

PER CURIAM:

Alfredo P. Rivera appeals his 63-month sentence following convictions for

conspiracy to possess at least five kilograms of cocaine, 21 U.S.C.

§ 841(b)(1)(A)(ii) and 846, and possession with intent to distribute at least five kilograms of cocaine, 21 U.S.C. § 841(a)(1), (b)(1)(A)(ii), and 18 U.S.C. § 2.

On appeal, Rivera argues that the district court imposed a procedurally unreasonable sentence because it gave the guideline range a presumption of appropriateness, in violation of Rita v. United States, 551 U.S. \_\_\_, 127 S.Ct. 2456, 2462, 168 L.Ed.2d 203 (2007), and it failed to consider that the guidelines did not contemplate the mitigating factors in the case. He also argues that his sentence was substantively unreasonable because the court relied on the fact that, unlike his co-defendants, Rivera went to trial, and it imposed a sentence that was greater than necessary to comply with the purposes of sentencing.

We review the final sentence imposed by the district court for reasonableness. United States v. Agbai, 497 F.3d 1226, 1229 (11th Cir. 2007). Unreasonableness may be procedural, when the court's procedure does not follow the requirements of United States v. Booker, 543 U.S. 220, 125 S.Ct. 738, 160 L . Ed.2d 621 (2005), or substantive. See Gall v. United States, 552 U.S. \_\_\_, 128 S.Ct. 586, 597, 169 L.Ed.2d 445 (2007). The U.S. Supreme Court has explained that a sentence may be procedurally unreasonable if the district court improperly calculates the guideline imprisonment range, treats the guidelines as mandatory,

fails to consider the appropriate statutory factors, bases the sentence on clearly erroneous facts, or fails to explain its reasoning adequately. Id. The Court also has explained that the substantive reasonableness of a sentence is reviewed under an abuse-of-discretion standard. Id. It has suggested that review for substantive reasonableness under this standard involves inquiring whether the factors in 18 U.S.C. § 3553(a) support the sentence in question. Id. at 600.

We have reviewed the record and considered the briefs of the parties and find no reversible error. The record demonstrates that the district court correctly calculated the advisory guideline range, considered the sentencing factors set forth in § 3553(a), specifically mentioning the nature and seriousness of the offense, Rivera's personal history and characteristics, and the need to avoid unwanted sentencing disparities, considered the parties' arguments concerning the sentence to be imposed, and sufficiently explained its reasons for imposing the sentence.

In short, Rivera has not established that his sentence of 63 months' imprisonment, which is at is at the low-end of the advisory guideline range, is either procedurally or substantively unreasonable. Therefore, the district court did not abuse its discretion in sentencing Rivera to 63 months' imprisonment.

**AFFIRMED.**