[DO NOT PUBLISH]

# In the United States Court of Appeals

## For the Eleventh Circuit

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No. 22-13443

Non-Argument Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

*versus*

ANTHONY ROAN,
a.k.a. Yayo,

Defendant-Appellant.

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Appeal from the United States District Court
for the Middle District of Georgia
D.C. Docket No. 7:21-cr-00045-HL-TQL-1

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Before WILSON, LUCK, and ANDERSON, Circuit Judges.

PER CURIAM:

Anthony Roan, who was convicted of one count of possession with intent to distribute a controlled substance, in violation of 21 U.S.C. § 841(a)(1) & (b)(1)(C) and 18 U.S.C. § 2, appeals his 75-month upward variance sentence. On appeal, Roan claims that the 75-month sentence is substantively unreasonable because the Sentencing Guidelines recommended a 30- to 37-month sentence and that the district court did not properly weigh the 18 U.S.C. § 3553(a) factors when it varied upward.

We review the reasonableness of a sentence under a deferential abuse-of-discretion standard. *Gall v. United States*, 552 U.S. 38, 51 (2007). Where, as here, procedural reasonableness is not at issue, we will measure substantive reasonableness by considering the totality of the circumstances and whether the sentence achieves the sentencing purposes stated in § 3553(a). *United States v. Sarras*, 575 F.3d 1191, 1219 (11th Cir. 2009). The weight given to any specific § 3553(a) factor is committed to the sound discretion of the district court. *United States v. Clay*, 483 F.3d 739, 743 (11th Cir. 2007). However, "a district court abuses its discretion when it (1) fails to afford consideration to relevant factors that were due significant weight, (2) gives significant weight to an improper or irrelevant factor, or (3) commits a clear error of judgment in considering the proper factors." *United States v. Irey*, 612 F.3d 1160,

1189 (11th Cir. 2010) (*en banc*). Yet, the simple imposition of a sentence above the guideline range does not mean that the sentence is inherently unreasonable. *United States v. Hunt*, 941 F.3d 1259, 1263 (11th Cir. 2019). Instead, a sentence that is well below the statutory maximum punishment is an indicator of reasonableness. *Id.* at 1264. Importantly, the maximum sentence for possession with intent to distribute a controlled substance in violation of § 841(b)(1)(C) is 240 months. 21 U.S.C. § 841(b)(1)(C).

The district court must issue a sentence "sufficient, but not greater than necessary," to comply with the § 3553(a) factors, which includes the need to reflect the seriousness of the offense, promote respect for the law, provide just punishment for the offense, deter criminal conduct, protect the public from the defendant's future criminal conduct, and provide medical care in the most effective manner. 18 U.S.C. § 3553(a)(2). In imposing a particular sentence, the district court must also consider the nature and circumstances of the offense, the history and characteristics of the defendant, the kinds of sentences available, the applicable guidelines range, the pertinent policy statements of the Sentencing Commission, the need to avoid unwarranted sentencing disparities, and the need to provide restitution to victims. *Id.* § 3553(a)(1), (3)-(7).

We will not second guess the weight that the district court gave to a § 3553(a) factor so long as the sentence is reasonable in light of all the circumstances. *United States v. Pugh*, 515 F.3d 1179, 1191 (11th Cir. 2008). The district court is permitted to attach great weight to one § 3553(a) factor over others. *United States v.*

*Overstreet*, 713 F.3d 627, 638 (11th Cir. 2013). After evaluating for reasonableness, we will only vacate a defendant's sentence if we are "left with the definite and firm conviction that the district court committed a clear error of judgment in weighing the 18 U.S.C. § 3553(a) factors by arriving at a sentence that lies outside the range of reasonable sentences dictated by the facts of the case" even where the variance is substantial. *Id.* at 637. "The party challenging a sentence has the burden of showing that the sentence is unreasonable in light of the entire record, the § 3553(a) factors, and the substantial deference afforded sentencing courts." *United States v. Rosales-Bruno*, 789 F.3d 1249, 1256 (11th Cir. 2015).

Here, the district court did not abuse its discretion in sentencing Roan to 75 months' imprisonment, instead of the guideline range of 30 to 37 months, on the charge of possession with intent to distribute cocaine because it properly weighed the § 3553(a) factors. *Overstreet*, 713 F.3d at 637.

At the sentencing hearing, the government noted, in part, that Roan's criminal history spanned from 16 years' old to his present age. The district court explained that it had considered the § 3553(a) factors and made an individualized assessment of Roan based on the facts presented. Specifically, the court stated that it had considered the need for the sentence to adequately reflect the history and characteristics of the defendant, promote respect for the law, and afford adequate deterrence. It explained that it had considered the nature of Roan's prior arrests and convictions, which consistently involved drugs and obstruction. *See United*

*States v. Early*, 686 F.3d 1219, 1222 (11th Cir. 2012) (determining that the district court's sentence was not substantively unreasonable where the district court found that the advisory "guidelines did not adequately account for [the defendant's] criminal history" because the criminal history score "did not reflect the sustained nature of [the defendant's] criminal conduct"). Thus, the court properly weighed the appropriate § 3553(a) factors and acted within its discretion when considering which factors outweighed others. *Overstreet*, 713 F.3d at 638.

Moreover, the statutory maximum for possession with intent to distribute cocaine is 240 months. 21 U.S.C. § 841(b)(1)(C). Thus, Roan's 75-month sentence for possession with intent to distribute cocaine is well below the statutory maximum, which further supports its reasonableness. *Hunt*, 941 F.3d at 1264.

Thus, the district court did not abuse its discretion, and we affirm Roan's sentence.

**AFFIRMED.**