

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 10-10689
Non-Argument Calendar

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT SEPT 27, 2010 JOHN LEY CLERK
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D.C. Docket No. 2:09-cr-14044-DLG-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

TERRY BURNEY DELION, JR.

Defendant-Appellant.

Appeal from the United States District Court for the
Southern District of Florida

(September 27, 2010)

Before BARKETT, HULL and KRAVITCH, Circuit Judges.

PER CURIAM:

Terry Burney Delion, Jr. appeals his 117-month total sentence, consisting of a 33-month term for bank robbery and a consecutive 84-month mandatory minimum term for brandishing a firearm during a crime of violence. We affirm.

Delion pleaded guilty to bank robbery, in violation of 18 U.S.C. § 2113(a), and brandishing a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. § 924(c)(1)(A)(ii). The district court determined his guideline range for the bank robbery offense as 33 to 41 months' imprisonment. The firearm offense carried a consecutive mandatory minimum sentence of 84 months' imprisonment.

After determining that a reasonable sentence for bank robbery was 33 months' imprisonment to run consecutively to the 84-month term imposed for brandishing the firearm, the court rejected Delion's request for a lower sentence: "I hear many reasons, but to use a firearm and to point a firearm at someone is reprehensible. That is the worst possible crime of violence. And for those reasons the Court determined that a sentence within the guideline range was appropriate." The court also rejected Delion's claims that the government manipulated the system by charging him with separate offenses and that the sentence as imposed

failed to reflect his actual conduct, which was the intent of the sentencing guidelines. Delion now appeals the substantive reasonableness of his sentence.¹

We review the reasonableness of a sentence under a “deferential abuse-of-discretion standard.” *Gall v. United States*, 552 U.S. 38, 41, 128 S.Ct. 586, 591, 169 L.Ed.2d 445 (2007). The sentencing court shall impose a sentence “sufficient, but not greater than necessary” to comply with the purposes of sentencing set forth in § 3553(a)(2), namely, 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 further criminal conduct by the defendant, and provide the defendant with needed educational or vocational training or medical care. 18 U.S.C. § 3553(a)(2). In imposing a particular sentence, the 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 guideline range, the pertinent policy statements of the Sentencing Commission, the need to avoid unwarranted sentencing disparities, and the need to provide restitution to victims. 18 U.S.C. § 3553(a)(1), (3)-(7).

¹ Delion argues only that his sentence is substantively unreasonable and thus has abandoned any argument as to procedural unreasonableness. *United States v. Jernigan*, 341 F.3d 1273, 1284 n.8 (11th Cir. 2003).

“[W]hen the district court imposes a sentence within the advisory Guidelines range, we ordinarily will expect that choice to be a reasonable one.” *United States v. Talley*, 431 F.3d 784, 788 (11th Cir. 2005). “[T]he party who challenges the sentence bears the burden of establishing that the sentence is unreasonable in the light of both [the] record and the factors in section 3553(a).” *Id.* “The review for substantive unreasonableness involves examining the totality of the circumstances, including an inquiry into whether the statutory factors in § 3553(a) support the sentence in question.” *United States v. Gonzalez*, 550 F.3d 1319, 1324 (11th Cir. 2008), *cert. denied*, 129 S.Ct. 2848 (2009).

We conclude that the sentence imposed was substantively reasonable. As the court explained, pointing a firearm at someone was reprehensible. The district court had no obligation to reduce Delion’s sentence for bank robbery in order to compensate for his mandatory minimum sentence for brandishing a firearm during the robbery.

Additionally, the district court did not abuse its discretion by declining to exercise its power over the alleged manipulation of an indictment; dual counts of bank robbery and brandishing a firearm during a crime of violence are not inappropriate manipulation of an indictment.

Finally, Delion's sentence was reasonably uniform and proportional, and his argument that the Sentencing Guidelines are flawed is directed to the wrong forum. Thus, the district court did not abuse its discretion and we affirm the district court.

AFFIRMED.