[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-12494
Non-Argument Calendar

D.C. Docket No. 9:11-cr-80087-CMA-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ERICK JEAN-LOUIS,

Defendant-Appellant.

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

(April 9, 2019)

Before TJOFLAT, JORDAN and WILLIAM PRYOR, Circuit Judges.

PER CURIAM:

Erik Jean-Louis appeals his 36-month, within-guideline sentence upon the revocation of his supervised release. Jean-Louis argues that the District Court procedurally and substantively erred in imposing his sentence because it erroneously found that he had committed three Grade A violations and, therefore, miscalculated his sentence range under the Sentencing Guidelines. With respect to the two violations of aggravated assault on a law enforcement officer, Jean-Louis argues that the Government did not present sufficient evidence to establish his intent because the evidence "as a whole was susceptible of the conclusion that [he] was simply trying to extricate [his car] as opposed to intending to assault the agents." With respect to possession with the intent to distribute heroin and fentanyl, Jean-Louis argues that the Government presented no direct evidence linking him to the narcotics and that the quantity of heroin was consistent with personal use.

We generally review the sentence imposed upon revocation of supervised release for reasonableness. *See United States v. Vandergrift*, 754 F.3d 1303, 1307 (11th Cir. 2014). The party who challenges the sentence bears the burden to show that the sentence is unreasonable. *United States v. Trailer*, 827 F.3d 933, 936 (11th Cir. 2016). Generally, we review both the procedural and substantive reasonableness of a sentence for an abuse of discretion. *United States v. Ellisor*, 522 F.3d 1255, 1273 n.25 (11th Cir. 2008). We ordinarily expect a sentence under

the Guidelines range to be reasonable. *United States v. Hunt*, 526 F.3d 739, 746 (11th Cir. 2008).

A sentence is procedurally unreasonable if the district court calculated the Guidelines range incorrectly or selected a sentence based on clearly erroneous facts. *Trailer*, 827 F.3d at 936. A district court's findings of fact during a revocation of supervised release proceeding are binding unless clearly erroneous. *United States v. Almand*, 992 F.2d 316, 318 (11th Cir. 1993). Clear error will be present when we are "left with a definite and firm conviction that a mistake has been committed." *United States v. Crawford*, 407 F.3d 1174, 1177 (11th Cir. 2005) (citation omitted).

A district court may revoke a defendant's term of supervised release if the court finds by a preponderance of the evidence that the defendant violated any condition of his supervised release. 18 U.S.C. § 3583(e)(3); *see also United States v. Trainor*, 376 F.3d 1325, 1331 (11th Cir. 2004) (explaining that the preponderance of the evidence standard requires only that the trier of fact believe that "the existence of a fact is more probable than its nonexistence").

In a policy statement, the Guidelines establish three "grades" of supervised release violations. *See* U.S.S.G. § 7B1.1(a), p.s.; *see also United States v. Silva*, 443 F.3d 795, 799 (11th Cir. 2006) (stating that district courts are required to consider the policy statements in Chapter 7 of the Guidelines but that the

statements "are merely advisory and not binding"). A Grade A violation is the commission of a felony that constitutes, *inter alia*, a crime of violence as defined in U.S.S.G. § 4B1.2(a) or a controlled substance offense as defined in U.S.S.G § 4.1.2(b). U.S.S.G. § 7B1.1 cmt. (n. 2).

In another policy statement, the Guidelines establish ranges of sentences for supervised release violations that are based on violation grade and criminal history category. *See* U.S.S.G. § 7B1.4(a), p.s. Where a defendant (1) had a criminal history category of VI at the time the term of supervised release was originally imposed and (2) commits a Grade A violation, the applicable range is 33 to 41 months. *Id.* However, where a defendant is subject to a statutory maximum less than the applicable guideline range, his range becomes the statutory maximum. *Id.*, § 7B1.4(b)(1).

Under Florida law, aggravated assault is "an assault: (a) [w]ith a deadly weapon without intent to kill; or (b) [w]ith an intent to commit a felony." Fla. Stat. § 784.021 (1997, 2000). "An 'assault' is an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent." Fla. Stat. § 784.011 (1997, 2000). If a defendant commits an aggravated assault upon a law enforcement officer who is engaged in

the lawful performance of his duties, the aggravated assault is a second-degree felony. Fla. Stat. § 784.07(2)(c).

In imposing a sentence upon revocation of supervised release, a district court must normally impose a sentence "sufficient, but not greater than necessary, to comply with the purposes" listed in 18 U.S.C. § 3553(a)(2), specifically the need to afford adequate deterrence, protect the public from the defendant's future criminal conduct, and provide the defendant with educational or vocational training, medical care, or other correctional treatment. 18 U.S.C. §§ 3553(a), (a)(2)(B)-(D), 3583(e). 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 Guidelines range, the pertinent policy statements of the Sentencing Commission, and the need to provide restitution to any victims. *Id.* §§ 3553(a)(1), (4)-(7), 3583(e). A court can abuse its discretion by imposing a substantively unreasonable sentence when it (1) fails to consider relevant factors that were due significant weight, (2) gives an improper or irrelevant factor significant weight, or (3) commits a clear error of judgment by balancing the proper factors unreasonably. *United States v. Irey*, 612 F.3d 1160, 1189 (11th Cir. 2010). While the court must consider all applicable § 3553(a) factors, it need not give each factor equal weight. *United States v. Rosales-Bruno*, 789 F.3d 1249, 1254 (11th Cir.

2015). The weight given to any specific factor is committed to the sound discretion of the district court. *Id*.

The District Court did not clearly err in finding that Jean-Louis had committed three Grade A violations. Therefore, Jean-Louis cannot show that the Court committed procedural error by improperly calculating the Guidelines sentence range. Because the Court correctly applied the Guidelines, it did not give significant weight to an improper factor and did not commit a clear error of judgment. Accordingly, the Jean-Louis's sentence was procedurally and substantively reasonable.

AFFIRMED.