

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-13022

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ARVIN JOSEPH MIRASOL,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 0:24-cr-60046-MD-1

Before NEWSOM, LAGOA, and WILSON, Circuit Judges.

PER CURIAM:

Arvin Joseph Mirasol appeals his 360-month sentence for production of child pornography. He argues that the district court imposed a procedurally and substantively unreasonable sentence because it failed to properly consider the need to avoid unwarranted sentence disparities. The facts of the case are known to the parties, and we repeat them here only as necessary to decide the case. After carefully considering the record and the parties' arguments, we affirm.

"We review the reasonableness of a sentence for abuse of discretion using a two-step process." *United States v. Cubero*, 754 F.3d 888, 892 (11th Cir. 2014) (citation modified). "First, we look at whether the district court committed any significant procedural error, such as . . . failing to consider the 18 U.S.C. § 3553(a) factors" *Id.* "Then, we examine whether the sentence is substantively unreasonable under the totality of the circumstances and in light of the § 3553(a) factors." *Id.* "Because [Mirasol] did not object at the sentence hearing, however, we review the alleged error only for plain error." *United States v. Waters*, 937 F.3d 1344, 1358 (11th Cir. 2019); *see* Tr. of Sentencing at 17:17–20, Dkt. No. 49 (Mirasol, through counsel, expressly not objecting to his sentence at his sentencing hearing). "Under plain error review, we can correct an error only when (1) an error has occurred, (2) the error was plain, (3) the error affected substantial rights, and (4) the error seriously

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affects the fairness, integrity or public reputation of judicial proceedings.” *Waters*, 937 F.3d at 1359 (citation modified). Here, the district court did not commit procedural or substantive error—let alone plain error.

First, procedural reasonableness. “When reviewing for procedural reasonableness, we ensure that the district court: (1) properly calculated the Guidelines range; (2) treated the Guidelines as advisory; (3) considered the 18 U.S.C. § 3553(a) factors; (4) did not select a sentence based on clearly erroneous facts; and (5) adequately explained the chosen sentence.” *United States v. Wayerski*, 624 F.3d 1342, 1353 (11th Cir. 2010). “In general, the district court is not required to state on the record that it has explicitly considered each of the § 3553(a) factors or to discuss each of the § 3553(a) factors.” *United States v. Sanchez*, 586 F.3d 918, 936 (11th Cir. 2009) (citation modified). “It is sufficient that the district court considers the defendant’s arguments at sentencing and states that it has taken the § 3553(a) factors into account.” *Id.*

Mirasol argues that the district court “imposed a procedurally unreasonable sentence” because (1) “it failed to properly consider the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct as required by 18 U.S.C. § 3553(a)” and (2) “the Sentencing Commission’s statistics clearly demonstrate that the sentence imposed created such an unwarranted sentence disparity in violation of 18 U.S.C. § 3553(a).” Br. of Appellant at 9. His brief points to two reports from the United States Sentencing

Commission. See United States Sentencing Comm’n, *Special Report to Congress: Federal Child Pornography Offenses* (Dec. 2012) (2012 Report); United States Sentencing Comm’n, *Federal Sentencing of Child Pornography: Production Offenses* (Oct. 2021) (2021 Report).

Mirasol is correct that “the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct” is one of the § 3553(a) factors the district court must consider. See 18 U.S.C. § 3553(a)(6). But the district court did properly consider this factor. First, as explained above, as a procedural matter, the district court need do no more than “state[] that it has taken the § 3553(a) factors into account.” *Sanchez*, 586 F.3d at 936. The district court did more than that here, explicitly stating that it had “considered the need to avoid unwarranted sentencing disparities.” Tr. of Sentencing at 14:7–8. Second, the court was not required to consider the reports that Mirasol discusses on appeal, especially because he did not bring those reports to the attention of the court below. In *Cubero*, which we issued after the 2012 Report, we held that the report “does not heighten the district court’s statutory duty to state the reasons for imposing a particular sentence.” 754 F.3d at 901. Instead, we held that our precedent remained unchanged—“namely, that a district court’s decision to apply the guidelines to a particular case does not necessarily require lengthy explanation.” *Id.* (collecting cases) (citation modified). So, too, with the 2021 Report.

Second, substantive reasonableness. “A district court abuses its considerable discretion and imposes a substantively

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unreasonable sentence only 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. Rosales-Bruno*, 789 F.3d 1249, 1256 (11th Cir. 2015) (citation modified). “We will vacate a sentence only if we are left with the definite and firm conviction that the district court committed a clear error of judgment in weighing the § 3553(a) factors by arriving at a sentence that lies outside the range of reasonable sentences dictated by the facts of the case.” *United States v. Perkins*, 787 F.3d 1329, 1342 (11th Cir. 2015) (citation modified). And we “commit[] to the sound discretion of the district court the weight to be accorded to each § 3553(a) factor.” *Id.* “A well-founded claim of disparity [] assumes that apples are being compared to apples.” *United States v. Docampo*, 573 F.3d 1091, 1101 (11th Cir. 2009) (citation modified). And a district judge that “correctly calculate[s] and carefully review[s] the Guidelines range [] necessarily g[ives] significant weight and consideration to the need to avoid unwarranted disparities.” *Gall v. United States*, 552 U.S. 38, 54 (2007).

Although the header in Mirasol’s brief portrays his challenge as purely procedural, much of his briefing focuses explicitly on the alleged substantive unreasonableness of his sentence. Again, he focuses on sentence disparities. Pointing to the 2021 Report, he highlights (1) that “[t]he majority of child pornography production offenders sentenced under § 2G2.1 (57.2%) received a variance below the guideline range under 18 U.S.C. § 3553(a)”; (2) that the average sentence for production offenders was 275 months in 2019; and (3)

that more than 80 percent of child-pornography-production cases in 2019 involved sexual contact, many involved incapacitation, coercion, enticement, or misrepresentation, and some involved violence or threatened violence. *See* Br. of Appellant at 13–14 (citing 2021 Report at 21, 22, 35, 37–38).

We are not persuaded. *Cubero*, again, is relevant. There, we held that the 2012 Report “(1) does not alter the district court’s duties to calculate the advisory guidelines range and to impose a sentence after considering the § 3553(a) factors, (2) does not limit the district court’s discretion to determine what weight to give to each § 3553(a) factor, and (3) does not require the district court to vary from the § 2G2.2–based guidelines range.” *Cubero*, 754 F.3d at 900. And our precedent is clear that correctly calculating the Guidelines range is enough, by itself, to give proper consideration to the need to avoid sentence disparities. *See Gall*, 552 U.S. at 54. Here, Mirasol does not argue that the district court improperly calculated his Guidelines range. And 360 months—while being the statutory maximum term he could receive—was also at the very bottom of his Guideline imprisonment range.

Moreover, and in any event, the statistics Mirasol cites do not represent similarly situated defendants and therefore don’t present an apples-to-apples comparison. *See Docampo*, 573 F.3d at 1101. While Mirasol’s description of the statistics is accurate, it is incomplete. The 2021 Report also explained that the majority of child-pornography-production cases in 2019 involved a single victim (and only 11.3% of cases involved more than four victims), *see*

2021 Report at 27, far fewer than the 13 minor victims in Mirasol’s case. The report also explained that the average sentence for production offenders who victimized toddlers was 330 months, *see id.* at 46, which is much closer to the 360 months that Mirasol—whose victims included a two-year-old—received. Given the age and number of Mirasol’s victims, the statistics he cites do not concern similarly situated defendants. And as the statistical comparators become more similar to him, their average sentences rise to a similar level. Therefore, Mirasol’s sentence does not “lie[] outside the range of reasonable sentences dictated by the facts of the case.” *Perkins*, 787 F.3d at 1342.

For the reasons above, we **AFFIRM** Mirasol’s sentence.

AFFIRMED.