

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-13602

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DAMIAN J. BROWN,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Florida
D.C. Docket No. 1:24-cr-00012-AW-MAL-1

Before NEWSOM, GRANT, and MARCUS, Circuit Judges.

PER CURIAM:

Damian Brown appeals his sentence of 108 months' imprisonment for possessing a firearm and ammunition after a felony conviction, which was an upward variance from the 46-to-57-month guideline range. On appeal, Brown argues his sentence is substantively unreasonable because: (1) the district court impermissibly imposed a large variance based on conduct subject to a pending state charge; (2) the district court insufficiently weighed his substance abuse history; and (3) the district court failed to explain why a 108-month sentence was superior to the 60-to-66-month term he suggested at the sentencing hearing. After careful review, we affirm.

We review "all sentences -- whether inside, just outside, or significantly outside the Guidelines range -- under a deferential abuse of discretion standard." *Gall v. United States*, 552 U.S. 38, 41 (2007). In reviewing the "substantive reasonableness of [a] sentence imposed under an abuse-of-discretion standard," we consider the "totality of the circumstances." *United States v. Pugh*, 515 F.3d 1179, 1190 (11th Cir. 2008) (quoting *Gall*, 552 U.S. at 51). The district court must impose a sentence "sufficient, but not greater than necessary to comply with the purposes" listed in 18 U.S.C. § 3553(a).¹ The court must consider all of the § 3553(a) factors, but

¹ The § 3553(a) factors include: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the

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“the weight given to each factor is committed to the sound discretion of the district court,” and the court may attach great weight to one factor over the others -- a decision that is within its sound discretion. *United States v. Butler*, 39 F.4th 1349, 1354–55 (11th Cir. 2022); *United States v. Rosales-Bruno*, 789 F.3d 1249, 1254 (11th Cir. 2015). In particular, a district court may give weight to a defendant’s criminal record, since “[p]lacing substantial weight on a defendant’s criminal record is entirely consistent with § 3553(a) because five of the factors it requires a court to consider are related to criminal history.” *Rosales-Bruno*, 789 F.3d at 1263.

However, a sentence may be substantively unreasonable when a court unjustifiably relies on any single § 3553(a) factor, fails to consider pertinent § 3553(a) factors, bases the sentence on impermissible factors, or selects the sentence arbitrarily. *Pugh*, 515 F.3d at 1191–92. A sentence that suffers from one of these symptoms is not *per se* unreasonable; rather, we must examine the totality of the circumstances to determine the sentence’s reasonableness. *Id.* at 1192. “We will not second guess the weight (or lack thereof) that the [court] accorded to a given [§ 3553(a)] factor . . .

sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (3) the need for the sentence imposed to afford adequate deterrence; (4) the need to protect the public; (5) the need to provide the defendant with educational or vocational training or medical care; (6) the kinds of sentences available; (7) the Sentencing Guidelines range; (8) the pertinent policy statements of the Sentencing Commission; (9) the need to avoid unwarranted sentencing disparities; and (10) the need to provide restitution to victims. 18 U.S.C. § 3553(a).

as long as the sentence ultimately imposed is reasonable in light of *all* the circumstances presented.” *United States v. Snipes*, 611 F.3d 855, 872 (11th Cir. 2010) (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 is outside the range of reasonable sentences dictated by the facts of the case. *Pugh*, 515 F.3d at 1191.

A sentence containing a variance is substantively reasonable when the district court provides an explanation that is “compelling enough to support the degree of variance.” *United States v. Early*, 686 F.3d 1219, 1221 (11th Cir. 2012). Thus, major variances require “a more significant justification.” *United States v. Irey*, 612 F.3d 1160, 1196 (11th Cir. 2010) (*en banc*). An extensive criminal history can be a significant justification for a major variance. *United States v. Shaw*, 560 F.3d 1230, 1240–41 (11th Cir. 2009).

Here, Brown has not shown that his 108-month sentence was substantively unreasonable. For starters, although the district court went 51 months over the guideline range, which would appear to constitute a major variance, the district court provided sufficient justification for doing so. *See Irey*, 612 F.3d at 1187; *see also Shaw*, 560 F.3d at 1240–41. In particular, the district court explained its upward variance in light of Brown’s entire criminal record, citing Brown’s “egregious conduct” during the present offense, numerous unscored offenses, prior firearm-possession convictions, and consistent misuse of firearms, including an armed

robbery where he put a gun to a victim's chest. Indeed, Brown's presentence investigation report did not score *five* parts of Brown's criminal history -- including his 12 juvenile convictions; 21 juvenile offenses for which he was charged but not convicted; three adult convictions he pleaded no contest to; 63 charges authorities pursued against Brown as an adult but resolved without an adjudication (that is, 29 burglary charges, 16 theft charges, and 14 criminal mischief charges); and two offenses, for possession of a firearm and ammunition and for firing a weapon in public or residential property, that Brown allegedly committed at the Sweetwater Square Apartments in Gainesville, Florida about five weeks before the police arrested him in the instant case.

Based on these circumstances, Brown's criminal history is similar to the defendant's in *Shaw*. There, the defendant previously had received 105 months in prison sentences and had been arrested 27 times; here, Brown had 120 months of prison sentences for possession of firearms as a felon and arrests for 87 charges the PSI did not score. *Shaw*, 560 F.3d at 1232–35. In addition, the defendant in *Shaw* repeatedly committed similar crimes after imprisonment, and Brown did as well, twice possessing guns after his first conviction for felony possession of a firearm. *Id.* at 1237. It's also worth noting that the defendant in *Shaw* never committed a violent crime, while Brown committed an armed robbery in tandem with his second felony possession offense. *Id.* at 1238.

In *Shaw*, we held that the district court reasonably concluded that the defendant's extensive criminal history merited a

sentence 83 months above the guideline range and that a longer sentence was necessary to deter the defendant from reoffending. *Id.* at 1240. So too here. The district court determined that Brown was a threat to public safety based, in part, on his numerous unscored offenses, that Brown’s extensive criminal history merited a sentence 51 months above the guideline range, and that sentencing Brown to four years more than his prior sentences for felony possession of a firearm was necessary to deter him from further gun possession -- especially since two previous five-year sentences for this offense did not deter Brown from possessing guns. In so doing, the district court acted well within its discretion, reasonably weighing deterrence, pursuing its statutory mandate to protect the public, and relying on Brown’s criminal history as a “significant justification” for a major variance. 18 U.S.C. § 3553(a)(2); *Shaw*, 560 F.3d at 1232–35, 1240–41; *Irey*, 612 F.3d at 1187.

The district court also properly considered the mitigating factors. As our case law has well established, the district court only had an obligation to reasonably consider the mitigating factors, which it expressly did by explaining that it reduced Brown’s sentence by 72 months from the statutory maximum to account for the mitigating factors, which included Brown’s substance abuse history. *Butler*, 39 F.4th at 1355. Otherwise, the district court had no obligation to place a particular weight on any mitigating factor. *Id.*

Finally, Brown’s argument that the district court did not explain why it imposed a 108-month sentence instead of his requested

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sentence is meritless. As we've described, the district court detailed on the record how it arrived at Brown's sentence after considering the relevant factors, including his criminal history and the mitigating factors. Accordingly, none of Brown's arguments demonstrate that the sentence the district court imposed was substantively unreasonable, and we affirm.

AFFIRMED.