

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-14182
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DAMIEN FOLEY,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Georgia
D.C. Docket No. 1:08-cr-00071-JRH-BKE-1

Before ROSENBAUM, NEWSOM, and ABUDU, Circuit Judges.

PER CURIAM:

Damien Foley appeals his 36-month revocation sentence for violating the terms of his supervised release, which was imposed by the United States District Court for the Southern District of

Georgia and which is to be served consecutively with a separate 125-month controlled-substance-offense sentence that was imposed by the United States District Court for the Middle District of Georgia. Foley contends that, because the Middle District already took his supervised release violations into account when imposing his 125-month sentence—which included an upward variance from the 70–87-month Guideline range—the Southern District’s imposition of a 36-month consecutive sentence for his release violations was unreasonable.¹ For the reasons below, and after careful consideration, we conclude that the district court did not act unreasonably in imposing the 36-month consecutive sentence.² We therefore affirm.

If a district court determines that a defendant violated a condition of supervised release, it may revoke the supervised release and “require the defendant to serve in prison all or part of the term of supervised release authorized by statute for the offense that resulted in such term of supervised release.” 18 U.S.C. § 3583(e)(3).³

¹ Foley doesn’t clarify whether he is alleging procedural or substantive unreasonableness. Because his arguments pertain solely to substantive unreasonableness, we treat him as raising only a substantive-unreasonableness challenge and limit our review accordingly.

² A note on terminology: Because this case is an appeal from the Southern District of Georgia, when we use the term “district court,” we are referring to the Southern District. When we discuss the Middle District of Georgia, we identify that court as the “Middle District.”

³ In some circumstances, including when a defendant unlawfully possesses a controlled substance, the district court *must* revoke the supervised release. 18

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We review a sentence imposed upon revocation of supervised release for reasonableness. *United States v. Sweeting*, 437 F.3d 1105, 1106–07 (11th Cir. 2006).

When assessing whether a revocation sentence is substantively unreasonable, we review only “for abuse of discretion, based on the totality of circumstances.” *United States v. Moore*, 22 F.4th 1258, 1269 (11th Cir. 2022) (citing *United States v. Trailer*, 827 F.3d 933, 935–36 (11th Cir. 2016) (per curiam)). “[A] district court abuses its discretion and renders a substantively unreasonable sentence if 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. Gomez*, 955 F.3d 1250, 1257 (11th Cir. 2020) (quoting *United States v. Irely*, 612 F.3d 1160, 1189 (11th Cir. 2010) (en banc)). We ordinarily expect a within-Guideline sentence to be substantively reasonable. *United States v. Foster*, 878 F.3d 1297, 1309 (11th Cir. 2018) (citing *United States v. Hunt*, 526 F.3d 739, 746 (11th Cir. 2008)).

The party challenging a sentence bears the burden of proving that it is substantively unreasonable. *United States v. Rosales-Bruno*, 789 F.3d 1249, 1256 (11th Cir. 2015) (citing *United States v. Langston*, 590 F.3d 1226, 1236 (11th Cir. 2009)). This burden is a heavy one. As this Court has said, “[we] may vacate [a] sentence only if we are left with the definite and firm conviction that the

U.S.C. § 3583(g). Foley illegally—and repeatedly—possessed cocaine, so revocation of his supervised release was mandatory.

district court committed a clear error of judgment in weighing the [statutory factors in 18 U.S.C. § 3553(a)] by imposing a sentence that falls outside the range of reasonableness as dictated by the facts of the case.” *United States v. Taylor*, 997 F.3d 1348, 1355 (11th Cir. 2021) (citation modified) (quoting *United States v. Irely*, 612 F3d 1160, 1190 (11th Cir. 2010) (en banc)).

The relevant § 3553(a) factors are “the nature and circumstances of the offense and the history and characteristics of the defendant,” 18 U.S.C. § 3553(a)(1); the need for the sentence to “afford adequate deterrence to criminal conduct,” “protect the public from further crimes of the defendant,” and “provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner,” *id.* § (a)(2)(B)–(D); the need for the sentence to consider “the applicable guidelines or policy statements issued by the Sentencing Commission,” *id.* § (a)(4)(B), and “any pertinent policy statement,” *id.* § (a)(5); “the need to avoid unwarranted sentence disparities,” *id.* § (a)(6); and “the need to provide restitution to any victims of the offense,” *id.* § (a)(7). The district court, however, may not consider the “retributive purpose of § 3553(a)(2)(A),” which concerns the need for a sentence to reflect the seriousness of a criminal offense, promote respect for the law, and provide just punishment for the offense, in sentencing a defendant upon revocation of supervised release. *See Esteras v. United States*, 145 S. Ct. 2031, 2045 (2025); 18 U.S.C. § 3553(a)(2)(A).

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When considering the § 3553(a) factors, “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 others.” *United States v. Butler*, 39 F.4th 1349, 1355 (11th Cir. 2022) (first citing *United States v. Amedeo*, 487 F.3d 823, 832 (11th Cir. 2007), and then citing *United States v. Overstreet*, 713 F.3d 627, 638 (11th Cir. 2013)). “We will not second guess the weight given to a § 3553(a) factor so long as the sentence is reasonable under the circumstances.” *Id.* (citing *United States v. Pugh*, 515 F.3d 1179, 1191 (11th Cir. 2008)). District courts are also free to give heavier weight to supervised-release violations than mitigating factors. *See United States v. King*, 57 F.4th 1334, 1339 (11th Cir. 2023).

Here, Foley argues that his sentence was unreasonable because the district court gave insufficient weight to his above-Guidelines Middle District sentence and the other mitigating factors that he presented. In his view, the Middle District sentence effectively included a revocation sentence, so the district court in this case “should have either imposed a lesser revocation sentence or run the revocation sentence concurrent to the [Middle District]’s 125-month sentence.” Br. of Appellant 5. He contends that by not doing so, the district court abused its discretion.

We disagree. The court here exercised its discretion to weigh the § 3553(a) factors in the manner it thought best, and there is nothing on the record to suggest that the court “fail[ed] to afford consideration to relevant factors that were due significant weight, . . . g[ave] significant weight to an improper or irrelevant factor, or

. . . commit[ted] a clear error of judgment in considering the proper factors.” *Gomez*, 955 F.3d at 1257.

Included in Foley’s “history and characteristics,” for example, were numerous, frequent violations of his supervised release, many of which involved drug-related criminal conduct. 18 U.S.C. § 3553(a)(1). At sentencing, the district court discussed many of the 15 supervised release violations to which Foley stipulated. And Foley acknowledged that the district court had already given him a second chance by recessing his prior revocation hearing, a chance that he “squandered” by committing seven additional violations. Tr. of Supervised Release Revocation Proceeding 19. This history provides strong justification for Foley’s sentence.

The Sentencing Guidelines and associated policy statements also support the sentence imposed by the district court. Foley’s 36-month sentence was squarely within the Guideline range of 33–41 months—a sign that it was substantively reasonable. *See Foster*, 878 F.3d at 1309. The Guidelines also provide that, if a revocation sentence is imposed along with another term of imprisonment for criminal conduct, the revocation should be served consecutively. U.S.S.G. § 7B1.3(f). This is because the primary goal in sentencing a defendant upon revocation of supervised release is to sanction “the defendant’s breach of trust,” not the particular conduct triggering the violation. *Id.* Ch. 7, Pt. A, intro. comment. 3(b). So “the sanction for the violation of trust should be in addition, or consecutive, to any sentence imposed for the new conduct.” *Id.* The

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upshot is that the district court did exactly what the Guidelines suggest—impose a within-Guidelines consecutive sentence.

The district court, of course, *could* have given greater weight to Foley’s above-Guidelines Middle District sentence as a mitigating factor. As previously stated, district courts have wide latitude to balance the sentencing factors as they see fit. *Butler*, 39 F.4th at 1355. But nothing *required* the district court to conclude that the Middle District sentence—or any other mitigating factor—justified imposing a shorter revocation sentence or a revocation sentence concurrent to Foley’s Middle District sentence. So the “[d]istrict [c]ourt acted within its discretion in giving greater weight to the nature and frequency of [Foley’s] violations of the conditions of his supervisory release” than to the mitigating factors he presented. *King*, 57 F.4th at 1339. We will not disturb its reasoned judgment.

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In sum, Foley has not persuaded us that the district court abused its discretion in imposing a 36-month consecutive revocation sentence. The abuse-of-discretion standard “allows a range of choice for the district court, so long as that choice does not constitute a clear error of judgment.” *Irey*, 612 F.3d at 1189 (quoting *United States v. Frazier*, 387 F.3d 1244, 1259 (11th Cir. 2004) (en banc)). For the reasons stated above, the district court was well within this permissible “range of choice” when it sentenced Foley to a within-Guidelines revocation sentence after he committed 15 supervised release violations. The sentence imposed by the district court, therefore, was not substantively unreasonable.

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AFFIRMED.