

NOT FOR PUBLICATION

In the  
United States Court of Appeals  
For the Eleventh Circuit

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No. 25-11184  
Non-Argument Calendar

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UNITED STATES OF AMERICA,

*Plaintiff-Appellee,*

*versus*

FRANCISCO ALVAREZ-TELLO,

*Defendant-Appellant.*

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Appeal from the United States District Court  
for the Middle District of Florida  
D.C. Docket No. 5:24-cr-00112-TPB-PRL-1

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Before ROSENBAUM, GRANT, and LUCK, Circuit Judges.

PER CURIAM:

Francisco Alvarez-Tello was convicted of attempting to entice a minor for sex. He was sentenced to 144 months' imprisonment. He appeals his sentence, arguing that it was substantively unreasonable. After careful review, we affirm.

### **FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

In July 2024, the Department of Homeland Security and the Marion County Sheriff's Office conducted a joint undercover operation to catch individuals using the internet to meet and exploit minors for sexual activity. An agent posing as "Stevie," a thirteen-year-old girl, made a profile on an escort-advertising application.

That same month, Alvarez-Tello—a twenty-seven-year-old—contacted "Stevie." After he confirmed that she was almost fourteen, the conversation quickly turned sexual. Alvarez-Tello asked "Stevie" to sneak out of her house to meet him, and the undercover agent responded from the "Stevie" profile with a location where they could meet. When Alvarez-Tello arrived, members of the Marion County Sheriff's Office arrested and searched him. They discovered he'd brought a gun and marijuana to the meeting.

After arresting Alvarez-Tello, law enforcement officers interviewed him to get his side of the story. In the interview, Alvarez-Tello scoffed at the officers questioning him, telling one that he "hid[] behind a badge." He minimized the seriousness of trying to meet a thirteen-year-old for sex, explaining that he "just wanted to have a freaky Friday night" and "hit up some random girl." He also explained that having sex with underage girls was common in the

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trap houses he frequented, but the officers were “sitting here bugging [him] about it because [he] was going to pay her for it.” Ultimately, he suggested, the officers were too focused on “morals,” when they would have done the same thing in his situation. Later, on a phone call from jail, Alvarez-Tello recounted to a friend his interview with the officers, boasting that he’d “laughed in their f—king faces.”

Alvarez-Tello pleaded guilty to one count of attempted coercion and enticement of a minor to engage in sexual activity. *See* 18 U.S.C. § 2422(b). The United States Probation Office prepared a presentence investigation report. The report calculated Alvarez-Tello’s criminal history as a category three and his total offense level as twenty-seven, yielding a sentencing guideline range of 87 to 108 months’ imprisonment. But because Alvarez-Tello’s crime carried a ten-year mandatory minimum sentence, the guideline sentence was 120 months. *See* 18 U.S.C. § 2422(b); U.S.S.G. § 5G1.1(b).

The district court set Alvarez-Tello’s sentencing hearing for March 28, 2025. Before the hearing, Alvarez-Tello requested that the court sentence him to the mandatory minimum. To support his request, he pointed to his traumatic childhood, his history of substance abuse, and his remorse and acceptance of responsibility for the incident with “Stevie.” Alvarez-Tello also argued that his culpability was “mitigate[d]” because his “attraction to post-pubescent adolescents [wa]s normal for healthy adult males” and submitted a psychosexual evaluation to the same effect.

At the sentencing hearing, the government explained that, while it “typically” recommended guideline sentences, Alvarez-Tello’s case presented “factors that may warrant a higher sentence” than the guidelines suggested. Specifically, the government gave two reasons why it doubted that Alvarez-Tello “truly comprehend[ed] the seriousness of what he did and ha[d] truly taken accountability.” First, the government pointed to the assertions in Alvarez-Tello’s sentencing memorandum and psychosexual report that “being attracted to a 13-year-old girl is normal in healthy adult males” as evidence that Alvarez-Tello “just did not get” the seriousness of his crime. And second, the government explained that Alvarez-Tello’s “demeanor and his behavior when he was arrested” did not reflect “true remorse and understanding [of] the seriousness” of soliciting a minor for sex. To illustrate, the government played for the district court recordings of Alvarez-Tello’s interview with law enforcement officers and of his jail phone call. Alvarez-Tello’s lack of remorse, the government argued, had “a huge impact on whether” he would “reoffend later on.”

The district court first considered Alvarez-Tello’s psychosexual report, reading a paragraph aloud at the hearing. That paragraph of the report found that, because Alvarez-Tello thought he was going to meet a “postpubescent adolescent[,]” his behavior “reflect[ed] hebephilia, not pedophilia,” and that hebephilia was “normal for healthy adult males” and “a matter of biology.” The district court observed that the statement about hebephilia being normal was a “very common” one, with some support in scientific literature and “not a crazy thing” for the report to say. The district court

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explained it would weigh the statements in the report and the sentencing memorandum as it deemed appropriate.

Alvarez-Tello's counsel spoke next. She reminded the district court of the mitigating circumstances in Alvarez-Tello's sentencing memorandum—his “dependence on opioids and alcohol,” and “his father's alcoholism.” And she assured the district court that it had “nothing to fear in terms of recidivism here in the United States” both because Alvarez-Tello would be deported after serving his sentence and because this case involved “an isolated incident” and “an impulsive act.” The district court asked Alvarez-Tello's counsel to explain Alvarez-Tello's suggestion in his post-arrest interview that “going to trap houses and stuff with young girls is just common,” observing that “it sound[ed] like it was something he was familiar with.” Alvarez-Tello's counsel acknowledged that the statements were “regrettable.” The “best [she] c[ould] give” the district court to alleviate its concerns was a polygraph test indicating no deception when Alvarez-Tello stated he had no history of “sexual contact with [minors] as an adult.”

Finally, the district court offered Alvarez-Tello a chance to explain the post-arrest statements. Alvarez-Tello said he'd “made a mistake” and “[m]aybe [he'd] said some stuff [he] shouldn't have.” He'd “just barely gotten arrested,” he explained, and he “was still . . . angry with the system and stuff.”

After stating that it had “consider[ed] the advisory [s]entencing [g]uidelines and all the [section 3553(a)] factors,” the district

court sentenced Alvarez-Tello to 144 months' imprisonment followed by a lifetime of supervised release. The district court described the ten-year mandatory minimum sentence Alvarez-Tello faced as a "stiff" penalty calculated "to protect the public and to deter" child sex offenses. Still, the district court found it "necessary to go a little higher" than the mandatory minimum, mostly because of Alvarez-Tello's post-arrest conduct, which gave the district court "a concern that [Alvarez-Tello] [wa]s a little bit more of a danger to the public" than the typical defendant in a similar case. The two-year upward variance, the district court explained, would be "sufficient, but not greater than necessary, to comply with the statutory purposes of sentencing." *See* 18 U.S.C. § 3553(a).

### STANDARD OF REVIEW

We review for abuse of discretion the substantive reasonableness of a sentence. *Gall v. United States*, 552 U.S. 38, 41 (2007).

### DISCUSSION

On appeal, Alvarez-Tello contends the district court's upward variance from the guidelines was substantively unreasonable. We disagree.

A sentence is substantively unreasonable when a district court "(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. Irey*, 612 F.3d 1160, 1189 (11th Cir. 2010) (en banc). "Given the great advantages that

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district courts enjoy when it comes to deciding the proper sentence,” including sentencing experience and superior knowledge of the parties and proceedings, our review is “deferential.” *United States v. Rosales-Bruno*, 789 F.3d 1249, 1255 (11th Cir. 2015); *see also Gall*, 552 U.S. at 51–52 (explaining district courts’ “superior position” with respect to sentencing).

Before imposing a sentence, the district court must consider the following factors: (1) offense and offender characteristics; (2) the need for a sentence to reflect the basic aims of sentencing, namely, (a) just punishment, (b) deterrence, (c) incapacitation, and (d) rehabilitation; (3) the sentences legally available; (4) the sentencing guidelines; (5) Sentencing Commission policy statements; (6) the need to avoid unwarranted disparities between sentences; and (7) the need for restitution. *Rita v. United States*, 551 U.S. 338, 347–48 (2007) (citing 18 U.S.C. § 3553(a)). The district court should “impose a sentence sufficient, but not greater than necessary, to comply with” the basic aims of sentencing. *Id.* at 348 (quoting 18 U.S.C. § 3553(a)). We generally defer to a district court’s consideration of the relevant sentencing factors, *United States v. Shabazz*, 887 F.3d 1204, 1224 (11th Cir. 2018), and we don’t assume a sentence is unreasonable merely because it falls outside the sentencing guidelines, *Gall*, 552 U.S. at 51.

Alvarez-Tello’s sentence was substantively reasonable. When imposing the sentence, the district court said that it had considered “all the [section 3553(a)] factors.” *See United States v. Scott*,

426 F.3d 1324, 1330 (11th Cir. 2005) (explaining that, where a district court “explicitly acknowledged” that it had considered the defendant’s sentencing arguments and the section 3553(a) factors, “[that] statement alone [wa]s sufficient” to show that the district court had considered the relevant factors), *abrogated on other grounds by Rita*, 551 U.S. at 356–59. But here the district court went further and explained its sentence in a way that implicated several of the factors. The district court placed the most weight on the need for the sentence to protect the public from Alvarez-Tello and deter him from reoffending. *See* 18 U.S.C. § 3553(a)(2)(B)–(C); *Rosales-Bruno*, 789 F.3d at 1256 (explaining a district court may attach “great weight” to one sentencing factor relative to others). It expressed its concern that Alvarez-Tello lacked remorse and posed more of a danger to the public than other defendants it had seen in similar cases. And it explained that the life term of supervised release was “another way to protect the public.”

Deterrence and public protection weren’t the only factors the district court considered. It also accounted for Alvarez-Tello’s offense conduct and his particular characteristics, both positive and negative. *See* 18 U.S.C. § 3553(a)(1). The district court watched and listened to the government’s recordings in which Alvarez-Tello laughed about his crime and downplayed its seriousness. And the district court gave both Alvarez-Tello and his counsel an opportunity to respond to the recordings. But it also evaluated the mitigating evidence, including Alvarez-Tello’s psychosexual report. The district court discussed the available sentences, repeat-



edly noting the mandatory minimum sentence that applied to Alvarez-Tello's offense. *See id.* § 3553(a)(3). And it expressly considered the sentencing guidelines, after giving both parties an opportunity to object to their calculation. *See* 18 U.S.C. § 3553(a)(4)–(5).

After balancing the aggravating and mitigating evidence, the district court reasoned that it was “necessary to go a little higher” than the mandatory minimum sentence. The mitigation evidence could explain “most of the stuff” that the government had presented, but Alvarez-Tello's demeanor in the post-arrest recordings—and his insufficient explanations at the sentencing hearing—left the district court concerned that Alvarez-Tello didn't feel remorse and remained a danger to the public. Based on this record, we are not left with a “definite and firm conviction that the district court committed a clear error of judgment in weighing the [section] 3553(a) factors.” *United States v. Pugh*, 515 F.3d 1179, 1191 (11th Cir. 2008) (citation modified).

Alvarez-Tello mounts four attacks on the reasonableness of his sentence, but each of them fails. First, Alvarez-Tello maintains that the district court gave too little weight to the sentencing guidelines. But it didn't. The guidelines are just a “starting point and the initial benchmark” at sentencing—they're not binding. *See Gall*, 552 U.S. at 49. The district court must “make an individualized assessment based on the facts presented” as to whether “an outside-[g]uidelines sentence is warranted.” *Id.* at 50. Hewing to that rule, the district court began the sentencing process “by correctly calculating the applicable [g]uidelines range.” *Id.* It gave the parties an

opportunity to object to its calculation. When they didn't, it invited the parties to "argue for whatever sentence they deem[ed] appropriate" and listened to their competing proposals. It even credited much of Alvarez-Tello's evidence and argument for a guideline sentence. But, on balance, it reasoned that Alvarez-Tello's post-arrest conduct and his apparent "familiar[ity]" with situations where underage girls were present suggested he was especially dangerous to the community. Because the district court clearly explained both the guidelines and its rationale for departing from them, we can't agree that it gave the guidelines too little weight. *See United States v. Shaw*, 560 F.3d 1230, 1238 (11th Cir. 2009) (noting that district courts enjoy "considerable discretion" in assessing whether a variance is appropriate (citation modified)).

Second, Alvarez-Tello contends, the district court "failed to consider important mitigation that should have been given significant weight," including his history of addiction and trauma and the expert psychosexual evaluation he submitted. But the district court wasn't required to specifically discuss each piece of mitigating evidence to establish that it had considered that evidence. *See United States v. Butler*, 39 F.4th 1349, 1356 (11th Cir. 2022) ("A district court's failure to discuss mitigating evidence does not indicate that the court erroneously ignored or failed to consider the evidence." (citation modified)). And, in any event, the record shows that the district court did consider Alvarez-Tello's mitigation evidence at the sentencing hearing. For example, it read a quote from the psychosexual report to the parties and discussed the report with the

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government. It heard argument from Alvarez-Tello about his substance abuse problems and low recidivism risk. And it alluded to Alvarez-Tello's mitigating evidence when it said that "most of the stuff" the government had presented at the hearing was "explainable." Finally, the district court explained to the parties that it had considered the section 3553(a) factors, which include the defendant's "history and characteristics" and the need to "provide the defendant with needed . . . medical care or other correctional treatment in the most effective manner." *See* 18 U.S.C. § 3553(a)(1), 3553(a)(2)(D).

Third, Alvarez-Tello argues that the district court "improperly analyz[ed] and balanc[ed] the relevant sentencing factors," "focusing solely on the government's recordings" of his post-arrest conduct to the exclusion of all the other evidence. True, the district court focused on the recordings and the "need for the sentence imposed" to accomplish the purposes of sentencing, *see* 18 U.S.C. § 3553(a)(2), but it didn't ignore the other evidence, as we explained above. "[H]ow much weight to assign a particular sentencing factor is committed to the sound discretion of the district court." *Rosales-Bruno*, 789 F.3d at 1256 (citation modified). The district court was entitled to place great weight on Alvarez-Tello's dangerousness and the need "to protect the public and to deter people" from committing sex offenses against children. *See* 18 U.S.C. § 3553(a)(2)(B)–(C).

Fourth, Alvarez-Tello insists, the district court "did not adequately explain the justification for a two-year upward variance in

this case.” A “major departure” from the guidelines must, of course, “be supported by a more significant justification than a minor one.” *Gall*, 552 U.S. at 50. But the district court’s explanation for the upward variance was proportional to the magnitude of that variance. Alvarez-Tello sought to have sex with a minor and brought a gun and drugs to their meeting. In the interview afterward, Alvarez-Tello tried to justify his desire to have sex with a minor to law enforcement as commonplace. Then, he bragged about having laughed at the police in the interview. At sentencing, the district court offered Alvarez-Tello and his counsel an opportunity to explain that behavior. But the most his counsel could say was that, according to a polygraph, Alvarez-Tello had not actually had sexual contact with a minor, despite his boasting at the post-arrest interview. And to explain those statements, Alvarez-Tello himself offered only that he’d been “angry with the system” and “said some stuff [he] shouldn’t have.” It was fair for the district court to infer from this behavior that Alvarez-Tello posed “more of a danger to the public” than defendants it had recently seen “in these kinds of cases.” The district court did not abuse its discretion by making that assessment or by sentencing Alvarez-Tello accordingly.

**AFFIRMED.**