

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-11574
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

BRANDON BYNER,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:24-cr-00050-SDG-RDC-1

Before LUCK, LAGOA, and TJOFLAT, Circuit Judges.

PER CURIAM:

Brandon Byner appeals his 540-month prison sentence for producing and possessing child pornography. He argues that the sentence is substantively unreasonable. We affirm.

I.

In February 2024, Byner was charged with two counts of production of child pornography, in violation of 18 U.S.C. § 2251(a), and one count of possession of child pornography, in violation of 18 U.S.C. § 2252(a)(4)(B). His conduct underlying these charges dates back to 2014, and he pleaded guilty to all counts without a plea agreement.

Byner's production charges concern conduct involving two minor victims. Victim 1 was the daughter of Byner's then-girlfriend. Between January 2016 and December 2018, when Victim 1 was between three and five years old, Byner forced Victim 1 to perform oral sex on him. He videotaped the act and distributed images and videos of it. In one of the videos, he can be heard telling Victim 1 that "she can grow up and be my little bitch"; in another, he can be heard calling Victim 1 "you stupid little hoe." In July 2023, Byner met Victim 2, an eleven-year-old girl, in an online chatroom. Byner enticed her to produce 176 images and eight videos of child sexual abuse material ("CSAM") for him by offering her money and gifts and by threatening to post online the CSAM she had already sent him. He told Victim 2 that he would post the content to look like Victim 2's mother posted it, which would lead to the mother's arrest and Victim 2's placement in foster care.

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Prior to Byner's sentencing, agents identified eight additional minor victims in the videos and images Byner possessed. As with Victim 2, Byner met these victims online and enticed, pressured, and threatened them to send him CSAM. He offered multiple victims money and gifts in exchange for CSAM and threatened to show their CSAM to others. He threatened to kill one victim's family if she stopped sending him images. With another, he posed as a law enforcement officer and threatened to show her parents the CSAM she sent him if she did not send more. He told the victims what to do in the CSAM they sent him, and he convinced two victims to involve their siblings in their CSAM. One of the siblings was three years old at the time.

Byner has five previous convictions on his record as well. These date back to 2008 and include two charges for marijuana possession, one for loitering and prowling, two for theft by receiving stolen property, one for burglary, and one for obstruction of a law enforcement officer.¹ Byner has no juvenile adjudications on his

¹ Byner pleaded *nolo contendere* to one of the theft charges and one of the marijuana possession charges. He pleaded guilty pursuant to *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160 (1970), for the burglary charge. When a criminal defendant enters an *Alford* plea, he maintains his innocence of the crime charged but waives his right to a trial and consents to the court's imposition of a sentence. *Id.* at 37, 91 S. Ct. at 167 ("An individual accused of [a] crime may voluntarily, knowingly, and understandingly consent to the imposition of a prison sentence even if he is unwilling or unable to admit his participation in the acts constituting the crime."). This differs from a plea of *nolo contendere*. Both involve waiving the right to trial and authorizing the court to im-

record, but he was placed in counseling by a juvenile court after he molested his five-year-old sister when he was fifteen years old.

The presentence investigation report calculated Byner's total offense level at 43,² his criminal history category at III, and his Guidelines imprisonment range at 960 months.³

Both parties submitted sentencing memoranda. The Government requested a 540-month prison sentence based on the seriousness of Byner's offenses and the fact that his victims were young, impressionable, and defenseless. The Government also noted that Byner's criminal conduct dated back many years, and it

pose a sentence. *Id.* at 35–37. But, when pleading *nolo contendere*, the defendant does not assert his innocence; he simply does not expressly admit guilt. *Id.* at 35–36.

² The PSR calculated each count's offense level separately and combined them pursuant to the Guidelines. The counts added up to an adjusted offense level of 46, but this number was lowered to 43 because 43 is the highest offense level contemplated by the Guidelines. *See* U.S. Sent'g Guidelines Manual ch. 5, pt. A, cmt. n.2 (U.S. Sent'g Comm'n 2025). Byner objected to various parts of the offense level calculation, but he makes no argument about the calculation here. The details are, therefore, irrelevant to this appeal, so we omit them for simplicity.

³ The normal Guidelines sentence for an offense level of 43 is life imprisonment, but statutory maximums lowered Byner's range to 80 years. *See* U.S. Sent'g Guidelines Manual ch. 5, pt. A (U.S. Sent'g Comm'n 2025). Counts One and Two had statutory maximums of 30 years' imprisonment, and Count Three had a statutory maximum of 20 years. Counts One and Two also had a mandatory minimum of 15 years.

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emphasized the need for specific and general deterrence and the need to protect the public from Byner.

Byner asked for a 240-month sentence, citing both national sentencing averages and the sentences of specific individuals convicted of similar crimes. He explained that his conduct largely did not involve physical contact, that he was abused as a child, that he had a son and was a good father, and that he was remorseful for his actions. Byner also referenced a psychological evaluation that (1) diagnosed him with multiple disorders, (2) asserted that the disorders contributed to his conduct, and (3) opined that he had a “moderate” sexual violence level. Finally, Byner argued that his criminal history category overrepresented his criminal history, noting that his past convictions were from many years earlier and were for possessing small amounts of marijuana, misdemeanor offenses, and one burglary offense for which he entered an *Alford* plea.

At sentencing, the Court agreed with Byner that the PSR’s criminal history calculation overstated the seriousness of his prior record; the Court reduced Byner’s criminal history category from III to II.⁴ It otherwise accepted the PSR and turned to the parties for their arguments.

The Government reiterated its request for a 540-month sentence along with the reasons it had listed in its sentencing memorandum. It also stated that Byner’s own experience of abuse as a

⁴ This reduction did not change Byner’s Guidelines’ imprisonment range.

child did not warrant a lower sentence and explained that the classification of Byner as a “moderate” risk was based on Byner being in custody, where he did not have access to children. It further argued that the defendants Byner referenced in his memorandum were not similarly situated to him, and it submitted the sentences of others for consideration.

Byner again requested a 240-month sentence and repeated many of the arguments he made in his sentencing memorandum. He also attacked the structure of the Guidelines themselves and stated that the statutory minimum and maximum sentences for his crimes showed that Congress thought a prison sentence between 15 and 30 years was reasonable. Byner reminded the Court that he cooperated with police, pleaded guilty from the start, and faces the potential of civil detention after serving the sentence imposed by the Court.⁵ He also defended the similarity of the defendants whose sentences he submitted in his sentencing memorandum and differentiated those that the Government submitted. Byner apologized for his actions. His father also spoke, asking the Court for leniency.

The District Court sentenced Byner to 360 months for Count 1, 360 months for Count 2, and 240 months for Count 3. 180 months of the Count 2 and 3 sentences were to run consecutive to

⁵ Byner stated that, as part of the Bureau of Prison’s sex offender treatment program, the Bureau would independently determine whether Byner still posed a danger to others upon completion of his prison sentence. If it determined that he did pose a danger, it could civilly detain him.

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the Count 1 sentence, and the rest of the months were to run concurrently. This resulted in a total of 540 months in prison. Upon release, Byner was to be placed on supervised release for life.

In explaining the sentence, the Court stated that it had “carefully considered all of the sentencing goals of 18 U.S.C. § 3553(a).” It found that specific deterrence was important here, because it was as if Byner “went through the sentencing guidelines with an intent to check every possible aggravating factor when he committed these crimes.”⁶ General deterrence was also relevant as these crimes are among the “most serious offenses that we see in federal court . . . because the victims could not be any more vulnerable” and the harm lasts for their entire lives. The Court did acknowledge that Byner had been a victim of childhood sexual abuse but asserted that that did not justify his crimes. Though the system had failed Byner in many ways, the Court determined that protecting the public was more important than rectifying those system failures. Finally, the Court explained that the comparator sentences the parties submitted did not give much information about the defendants or their circumstances. Though, a 50-year sentence imposed on a defendant convicted at trial did help justify to the Court that a 45-year sentence was sufficient for Byner, who pleaded

⁶ We note that the Court’s earlier reduction of Byner’s criminal history category from III to II conflicts with its focus here on specific deterrence. For, the “primary importance” of considering an offender’s criminal history when fashioning his sentence is “to ensure that the specific defendant is deterred from future criminal conduct.” *United States v. Scroggins*, 880 F.2d 1204, 1209 (11th Cir. 1989).

guilty. Ultimately, the Court determined that the mitigating circumstances did not justify a sentence shorter than 45 years, and it explained that though the sentence imposed was “lengthy,” it was roughly half of what the Guidelines recommended and 35 years shorter than what the law allowed.

Byner objected to the substantive and procedural reasonableness of his sentence. He now timely appeals, arguing only that his sentence was substantively unreasonable.

II.

When reviewing the substantive reasonableness of a sentence, we consider the totality of the circumstances under the deferential abuse of discretion standard. *Gall v. United States*, 552 U.S. 38, 51, 128 S. Ct. 586, 597 (2007). A district court abuses its discretion 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. Irey*, 612 F.3d 1160, 1189 (11th Cir. 2010) (internal quotation marks omitted).

Proper factors to consider at sentencing include, among others, the history and characteristics of the defendant, the nature and circumstances of the crime, specific and general deterrence of criminal conduct, protecting the public, providing the defendant with needed treatment, and avoiding unwarranted sentence disparities among similarly situated defendants. 18 U.S.C. § 3553(a). However, a district court does not have to give all factors equal weight, and it has the discretion to attach great weight to one factor over

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another. *United States v. Rosales-Bruno*, 789 F.3d 1249, 1254 (11th Cir. 2015). Further, a district court “is not required to explicitly address each of the [sentencing] factors”; an “acknowledgment” that it has considered the factors and the defendant’s arguments is enough. *United States v. Al Jaber*, 97 F.4th 1310, 1330 (11th Cir. 2024) (citation and internal quotation marks omitted).

Byner brings multiple arguments on appeal. He first argues that because this is his first CSAM offense—not a situation where he received treatment to correct this type of behavior and then subsequently reoffended—he is owed at least one opportunity to rehabilitate and reenter society. The 45-year sentence effectively denies him that opportunity because he will likely die in prison while serving it. And the Court effectively ignored the sentencing goal of rehabilitation—encapsulated by the sentencing factor of the need to provide treatment to the defendant—when it imposed the sentence. We read this as two arguments: that the Court improperly considered Byner’s history and improperly considered his treatment needs. Byner also argues that his sentence creates a sentence disparity between similarly situated defendants, citing a statistic from the United States Sentencing Commission that 52.2% of sexual abuse offenders were sentenced below the Guidelines range between 2018 and 2022.

Byner’s arguments are unavailing. The Court explicitly discussed and considered Byner’s history—it even lowered his criminal history category at sentencing. The Court also acknowledged that Byner experienced sexual abuse as a child and that the system

did not give him the treatment he needed. The Court simply weighed the need to protect the public more heavily. Finally, sentences in this Circuit are not “subject to a national grade curve.” *United States v. Hill*, 643 F.3d 807, 885 (11th Cir. 2011).

The District Court properly considered and weighed the sentencing factors. The Court merely weighed the factors different from how Byner wanted it to. This was not error. *Rosales-Bruno*, 789 F.3d at 1254 (“The decision about how much weight to assign a particular sentencing factor is committed to the sound discretion of the district court.”).

III.

Byner’s sentence was substantively reasonable. Therefore, we affirm.

AFFIRMED.