

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-12159
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

EMMANUEL OTHELLO,

a.k.a. Mono,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:09-cr-20264-DMM-2

Before JILL PRYOR, BRANCH, and WILSON, Circuit Judges.

PER CURIAM:

Defendant-Appellant Emmanuel Othello appeals his sentence of 96 months' imprisonment for three counts of conspiracy

to possess with intent to distribute cocaine under 21 U.S.C. § 841(b)(1)(B). On appeal, Othello argues that his sentence is both procedurally unreasonable and substantively unreasonable. After careful review, we affirm.

I.

Othello argues that his sentence is procedurally unreasonable because, by imposing a sentence to minimize sentencing disparities with his codefendants, the district court misapplied 18 U.S.C. § 3553(a)(6). But Othello did not object to the procedural reasonableness of the sentence at the time of sentencing, so we review his challenge on appeal for plain error. *United States v. Vandergrift*, 754 F.3d 1303, 1307 (11th Cir. 2014). Plain error occurs where: (1) there is an error; (2) that is plain; (3) that affects the defendant's substantial rights; and (4) seriously affected the fairness of the judicial proceedings. *United States v. Ramirez-Flores*, 743 F.3d 816, 822 (11th Cir. 2014).

The district court commits a procedural error if it fails to calculate the guidelines range, treats the guidelines as mandatory, fails to consider the § 3553(a) factors, selects a sentence based on clearly erroneous facts, or fails to adequately explain the sentence. *Gall v. United States*, 552 U.S. 38, 51 (2007). A district court satisfies the requirement of considering the § 3553(a) factors by acknowledging that it has considered them. *United States v. Turner*, 474 F.3d 1265, 1281 (11th Cir. 2007). And the court need not give a long explanation for imposing a sentence within the guidelines range unless a party argues that a sentence within the guideline range is

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inappropriate based on the § 3553(a) factors. *Rita v. United States*, 551 U.S. 338, 357 (2007).

Upon review of the record, the district court expressly said that it considered the parties' statements; the PSI, which included the guideline calculations; and the § 3553(a) factors. The court acknowledged Othello's individual circumstances, including his difficult background and the support from his family, but then the court explained how the sentence should reflect the nature and circumstances of the offense and adequate punishment for the crime. Thus, the court satisfied the procedural requirement that it had considered the § 3553(a) factors¹ and explained its sentence.

II.

Othello argues that his sentence is substantively unreasonable because the district court misapplied § 3553(a)(6), gave significant weight to an improper factor, and imposed a sentence greater than necessary to comply with the § 3553(a) factors.

¹ Othello disputes how the court considered the § 3553(a) factors, especially the need to avoid unwarranted sentencing disparities under § 3553(a)(6). Othello asserts that by misapplying this legal standard—minimizing the sentencing disparities between Othello and his codefendants—the court procedurally erred. Othello's argument misses the mark. When considering the appropriate sentence, the court found that Othello's sentence must reflect the nature of the crime and be an adequate punishment, so it did not rely exclusively on the sentencing disparity factor. Instead, the court considered the PSI, the agreed upon guideline range, and the parties' § 3553(a) arguments as required. Thus, the district court did not err in its consideration of § 3553(a)(6).

When reviewing for substantive reasonableness, we consider the totality of the circumstances under a deferential abuse-of-discretion standard. *Gall*, 552 U.S. at 41. A district court abuses its discretion and imposes a substantively unreasonable sentence only 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. Rosales-Bruno*, 789 F.3d 1249, 1256 (11th Cir. 2015) (quotation marks omitted).

Under 18 U.S.C. § 3553(a), a district court’s sentence must be sufficient, but not greater than necessary to achieve the goals of sentencing, which include: reflecting the seriousness of the offense, promoting respect for the law, providing just punishment, deterring future criminal conduct, protecting the public, and providing the defendant with any needed training or treatment. The district court must also consider the nature and circumstances of the offense, the defendant’s history and characteristics, the kinds of sentences available, the Sentencing Guidelines, any pertinent public policy statement, the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct, and the need to provide restitution to any victims. 18 U.S.C. § 3553(a).

“A well-founded claim of disparity, however, assumes that apples are being compared to apples,” such as defendants who both plead guilty to the same offense. *United States v. Docampo*, 573 F.3d 1091, 1101 (11th Cir. 2009) (quotation marks omitted). A district

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court “should not draw comparisons to cases involving defendants who were convicted of less serious offenses, pleaded guilty, or who lacked extensive criminal histories,” if those things are not true of the defendant. *United States v. Jayyousi*, 657 F.3d 1085, 1118 (11th Cir. 2011).

The weight given to any specific § 3553(a) factor is “committed to the sound discretion of the district court.” *United States v. Riley*, 995 F.3d 1272, 1279 (11th Cir. 2021). The district court does not have to give all the factors equal weight and is given discretion to attach great weight to one factor over another. *Rosales-Bruno*, 789 F.3d at 1254. The party challenging the sentence bears the burden of establishing that it is unreasonable based on the facts of the case and the § 3553(a) factors. *United States v. Tome*, 611 F.3d 1371, 1378 (11th Cir. 2010).

Here, the district court did not abuse its discretion in sentencing Othello to a 96-month sentence. First, Othello’s guideline range was 78-97 months,² so his 96-month sentence was within the guidelines range. And a sentence within the guidelines range is generally reasonable. *See United States v. Osorto*, 995 F.3d 801, 823 (11th Cir. 2021). Second, Othello’s 96-month sentence was below

² This is the guideline range that the parties agreed to when Othello signed his plea agreement. But without the plea agreement, Othello would have been eligible for two enhancements: a 2-level firearm enhancement under U.S.S.G. § 2D1.1(b)(1) and a 4-level aggravating role enhancement under U.S.S.G. § 3B1.1, resulting in a guideline range of 151-188 months.

the statutory maximum of 40 years (480 months), which is another indicator of a reasonable sentence. *Id.*

Third, the district court was within its discretion to consider the need to avoid sentencing disparities between Othello and his codefendants. Othello and his codefendants committed similar conduct—conspiracy to possess and distribute cocaine. There is evidence in the record illustrating how the nature of Othello’s offense is similar to those who received the longer sentences, such as possession of a firearm in furtherance of drug trafficking, playing a major role in the conspiracy, and the amount of cocaine for which Othello is held responsible. And the court recognized that some codefendants had career offender enhancements, which resulted in high sentences. While the court talked about avoiding sentencing disparities, it did not improperly rely on it as the single factor in determining Othello’s sentence. *See United States v. Kuhlman*, 711 F.3d 1321, 1327 (11th Cir. 2013). Instead, the court also gave the most weight to the nature of the crime and just punishment, which is within its discretion. *Id.* Thus, the district court did not abuse its discretion when it imposed a 96-month sentence.³

AFFIRMED.

³ Othello argues that the district court improperly considered the benefits that Othello received with his plea agreement. The record shows only that the district court used the plea agreement to explain that had it not been for that agreement, Othello’s guideline range would have been much larger. The court did not abuse its discretion in its discussion of the plea agreement when talking about Othello’s sentence.