

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-14471
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ADALBERTO GUERRERO-ALBA,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Alabama
D.C. Docket No. 5:25-cr-00369-LCB-HNJ-1

Before ABUDU, ANDERSON, and DUBINA, Circuit Judges.

PER CURIAM:

Appellant Adalberto Guerrero-Alba appeals his sentence of 24 months' imprisonment for illegal reentry after deportation or removal, which was an upward variance from the guideline range

of 0 to 6 months' imprisonment. Guerrero-Alba argues that the district court imposed a procedurally unreasonable sentence because it failed to explain adequately its reasoning for imposing an upward variance. Guerrero-Alba also argues that the court imposed a substantively unreasonable sentence because the upward variance to 24 months, the statutory maximum term and 4 times the high end of the guideline range, was not supported by the circumstances of the case. Having reviewed the record and read the parties' briefs, we affirm Guerrero-Alba's 24 months' sentence.

I.

We review for plain error unpreserved challenges to a district court's failure to explain the reason for its sentence in accordance with 18 U.S.C. § 3553(c). *United States v. Steiger*, 99 F.4th 1316, 1324 (11th Cir. 2024) (en banc). Under plain error review, at our discretion, we may correct an error where the defendant demonstrates: (1) an error occurred; (2) the error was plain; and (3) the error affects substantial rights. *Rosales-Mireles v. United States*, 585 U.S. 129, 134, 138 S. Ct. 1897, 1905 (2018). When these three factors are met, we may exercise our discretion and correct the error if it seriously affects the fairness, integrity or public reputation of judicial proceedings. *Id.* at 135, 138 S. Ct. at 1904-05.

An error is plain if it is clearly contrary to settled law at the time of sentencing or at the time of appellate consideration. *United States v. Shelton*, 400 F.3d 1325, 1330-31 (11th Cir. 2005). A plain error affects substantial rights if it was prejudicial, meaning that the error made an actual difference in the defendant's sentence. *Id.* at

1332. When the court’s reasons for imposing a sentence are clear in the sentencing record, the district court’s failure to explain its reason for the chosen sentence does not affect the defendant’s substantial rights. *Steiger*, 99 F.4th at 1319.

Under § 3553(c), a district court is required to “state in open court the reasons for its imposition of [a] particular sentence,” and if it imposes a sentence that is outside of the defendant’s calculated guideline range, it must provide the specific reasons justifying the above-guidelines sentence and articulate such reasons with specificity in a “statement of reasons form.” 18 U.S.C. § 3553(c). The purpose of requiring a district court to explain adequately the sentence imposed is to “allow for meaningful appellate review and to promote the perception of fair sentencing.” *Gall v. United States*, 552 U.S. 38, 50, 128 S. Ct. 586, 597 (2007). The adequacy of an explanation depends upon the circumstances of a particular case. *Steiger*, 99 F.4th at 1321. Specifically, “the length and amount of detail” necessary for an explanation depends on the circumstances of the case. *United States v. Livesay*, 525 F.3d 1081, 1090 (11th Cir. 2008).

However, a district court must ensure that its “justification is sufficiently compelling” to support a variance, and “a major departure should be supported by a more significant justification than a minor one.” *Gall*, 552 U.S. at 50, 128 S. Ct. at 597. A district court should “set forth enough to satisfy the appellate court that [it] has

considered the parties' arguments and has a reasoned basis for exercising [its] own legal decisionmaking authority." *Rita v. United States*, 551 U.S. 338, 356, 127 S. Ct. 2456, 2468 (2007).

In considering the § 3553(a) factors, a district court's acknowledgment that it considered the § 3553(a) factors and the parties' arguments is sufficient. *United States v. Sarras*, 575 F.3d 1191, 1219 (11th Cir. 2009). It need not state on the record that it has explicitly considered each of the § 3553(a) factors or discussed each of them. *Id.* The district court also does not have to discuss all mitigating evidence presented by the defendant. *United States v. Taylor*, 997 F.3d 1348, 1354 (11th Cir. 2021).

The record demonstrates that the district court did not plainly err in imposing Guerrero-Alba's sentence. The district court adequately explained its sentence, stating that it had considered several 18 U.S.C. § 3553(a) factors. The district court also considered the stipulated facts of the offense, the advisory Guidelines range, and the arguments of both parties. The district court stated that the sentence was necessary to afford adequate deterrence to criminal conduct due to Guerrero-Alba's prior illegal reentries without authorization. Moreover, the district court heard Guerrero-Alba's allocution and presentation of mitigating evidence.

Because Guerrero-Alba does not provide any binding precedent indicating that the district court was required to offer a more robust explanation for the sentence imposed, he cannot show plain error. Accordingly, because we conclude that the district court's

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reasoning is clear on the face of the record, Guerrero-Alba's sentence is procedurally sound.

II.

When reviewing for substantive reasonableness, we consider the totality of the circumstances under a deferential abuse-of-discretion standard. *Gall*, 552 U.S. at 51, 128 S. Ct. at 597. 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).

The 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. Irej*, 612 F.3d 1160, 1189 (11th Cir. 2010) (en banc) (quoting *United States v. Campa*, 459 F.3d 1121, 1174 (11th Cir. 2006) (en banc) (Birch, J., dissenting)). The proper factors are set out in § 3553(a) and include the history and characteristics of the defendant, the nature and seriousness of the crime, the need for the sentence to promote respect for the law, provide just punishment, afford adequate deterrence, and protect the public from further crimes of the defendant, the guideline range, and “the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.” 18 U.S.C. § 3553(a).

We have “underscored” that we must give “due deference” to the district court to consider and weigh the proper sentencing

factors. *United States v. Shabazz*, 887 F.3d 1204, 1224 (11th Cir. 2018). A district court’s unjustified reliance upon a single § 3553(a) factor is a symptom of an unreasonable sentence. *United States v. Crisp*, 454 F.3d 1285, 1292 (11th Cir. 2006) (quotation marks omitted). However, 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. *United States v. Gomez*, 955 F.3d 1250, 1257 (11th Cir. 2020). We have held that we will only reverse a procedurally proper sentence 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 lies outside the range of reasonable sentences dictated by the facts of the case.” *United States v. McBride*, 511 F.3d 1293, 1297-98 (11th Cir. 2007) (quoting *United States v. Williams*, 456 F.3d 1353, 1363 (11th Cir. 2006)).

One of the purposes of the Guidelines is to provide certainty and fairness in sentencing, which includes “avoiding unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal conduct.” *United States v. Docampo*, 573 F.3d 1091, 1102 (11th Cir. 2009) (quoting 28 U.S.C. § 991(b)(1)(B)). Thus, “[a] well-founded claim of disparity . . . assumes that apples are being compared to apples.” *Id.* at 1101 (quoting *United States v. Mateo-Espejo*, 426 F.3d 508, 514 (1st Cir. 2005)). We have indicated that the defendant’s arguments regarding unwarranted disparity should be specific enough for us to “gauge.” See *United States v. Hill*, 643 F.3d 807, 885 (11th Cir. 2011).

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We will not substitute our own judgment for that of the sentencing court when reviewing the reasonableness of a sentence. *United States v. Butler*, 39 F.4th 1349, 1355 (11th Cir. 2022). Rather, we will affirm a district court’s sentencing decision if it was “in the ballpark of permissible outcomes.” *Id.* (quoting *United States v. Rosales-Bruno*, 789 F.3d 1249, 1257 (11th Cir. 2015)). “A district court making an upward variance must have a justification compelling enough to support the degree of the variance and complete enough to allow meaningful appellate review.” *United States v. Dougherty*, 754 F.3d 1353, 1362 (11th Cir. 2014).

The record demonstrates that the district court did not substantively err in imposing Guerrero-Alba’s sentence. The district court did not commit a clear error of judgment in weighing the 18 U.S.C. § 3553(a) factors and sufficiently justified the upward variance in accordance with its analysis of these factors. The district court stated that it considered the factors and that the sentence was supported by the need to afford adequate deterrence to criminal conduct, protect the public, and account for the nature and circumstances of the offense. Considering the history and characteristics of the defendant, we conclude that it was reasonable for the district court to weigh more heavily the repeated illegal reentry violations.

Moreover, although Guerrero-Alba may believe the district court should have given more weight to his health, family struggles, and desire to return to Mexico, and perhaps less weight to his recidivism, the court did not abuse its discretion in giving the various factors the weight it deemed appropriate. Additionally, the

court here cited several sentencing factors in support of its sentence, indicating that it had several justifications for imposing a variance.

Further, the district court did not commit a clear error of judgment by failing to sentence Guerrero-Alba in alignment with the sentencing data he cited. Guerrero-Alba failed to show that the sentencing data he cited included similarly situated defendants; for example, defendants who had illegally entered the United States three times. *Docampo*, 573 F.3d at 1102. While Guerrero-Alba described data including defendants with no criminal history and the same total offense level sentenced under the same primary guideline, he did not provide any information about these defendants and failed to demonstrate with any specificity that these defendants were similarly situated. *See Hill*, 643 F.3d at 885. Thus, we conclude that the district court did not impose a substantively unreasonable sentence.

Accordingly, based on the aforementioned reasons, we affirm Guerrero-Alba's 24 months' sentence.

AFFIRMED.