

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-14487
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DANTAVIOUS JACKSON,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Georgia
D.C. Docket No. 1:25-cr-00038-DHB-BKE-1

Before JORDAN, KIDD, and WILSON, Circuit Judges.

PER CURIAM:

Defendant-Appellant Dantavious Jackson appeals his sentence of 84 months' imprisonment for mail fraud, which was an

upward variance from the guideline range of 33 to 41 months' imprisonment. On appeal, Jackson makes two arguments. First, the district court erred in finding it lacked authority to grant the government's motion for a downward departure based on substantial assistance. Second, his sentence is substantively unreasonable. After careful review, we affirm.

I.

Jackson argues that the district court erred in denying the government's motion for a downward departure based on substantial assistance, under U.S.S.G. § 5K1.1, because it erroneously believed that it lacked authority to grant the motion.¹

We may not review the merits of a district court's refusal to grant a downward departure, but we review de novo a defendant's claim that the district court did not believe that it had the authority to depart from the sentencing guideline range. *United States v. Fossett*, 881 F.2d 976, 979 (11th Cir. 1989); *United States v. Winingear*, 422 F.3d 1241, 1245 (11th Cir. 2005). When a district court does not "express any ambivalence regarding its authority to depart and the evidence does not otherwise reflect the district court misappre-

¹ The government argues that because Jackson did not object below that the district court misunderstood its authority to depart downward, we should review only for plain error. See *United States v. Henderson*, 409 F.3d 1293, 1307 (11th Cir. 2005). While the government is correct that Jackson did not object, this is immaterial because Jackson's claim also fails under de novo review.

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hended its authority,” we presume that the district court understood that it could depart from the guideline range. *United States v. Rodriguez*, 34 F.4th 961, 975 (11th Cir. 2022).

The district court was clearly aware that it had the authority to depart from the sentencing guideline range. The court reviewed the downward departure motion and engaged in a sufficiency analysis. As the court was determining Jackson’s sentence, it said that “[t]he guidelines provide a roadmap” but “the law . . . is still embodied in [18 U.S.C. § 3553(a)].” When read in this context, the court’s statement, after it had reviewed the downward departure motion, that “there is no substance in this motion which would authorize me, impel me, require me, or otherwise allow me to grant a downward departure” only signifies that the court determined that a downward departure would be improper. Because the district court believed that it had the authority to grant the motion and found the downward departure to be improper, we cannot review that conclusion.

II.

Jackson argues that his sentence is substantively unreasonable. Jackson asserts that the district court gave undue weight to the factors of the need for adequate deterrence and the nature of the offense, did not give adequate weight to mitigating factors, did not sufficiently justify the extent of the upward variance, and created an unwarranted sentencing disparity.

When reviewing for substantive reasonableness, we consider the totality of the circumstances under a deferential abuse-of-discretion standard. *Gall v. United States*, 552 U.S. 38, 41 (2007). 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).

The weight given to any specific § 3553(a) factor is “committed to the sound discretion of the district court.” *United States v.*

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Riley, 995 F.3d 1272, 1279 (11th Cir. 2021) (quotation marks omitted). 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).

When a sentence is far outside the sentencing guideline range, we do not presume that the sentence is unreasonable, but “the justification for the variance must be sufficiently compelling to support the degree of the variance.” *United States v. Irely*, 612 F.3d 1160, 1187 (11th Cir. 2010) (en banc) (quotation marks omitted). We defer “to the district court’s decision that the § 3553(a) factors . . . justify the extent of the variance.” *Gall*, 552 U.S. at 51.

Here, the district court’s upward variance from the guideline range was not substantively unreasonable because the district court did not abuse its discretion in weighing the factors of adequate deterrence and the nature of the offense more heavily. The court considered several factors, including Jackson’s family support, his military service, and his minimal criminal history. But the court gave greater weight to deterring future criminal conduct, which is within the court’s discretion to do. *Rosales-Bruno*, 789 F.3d at 1254.

Jackson points to the § 3553(a) factor that the court should avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.

Jackson argues that most criminal defendants who have similar loss amounts with similar criminal histories are sentenced closely to the guideline range that he had. But the court found that the facts of Jackson's conduct supported the variance upward. The court considered Jackson's intent to steal, out of greed, over four million dollars from funds that were to provide relief to those threatened with loss of income and business during the pandemic. And while the court recognized that Jackson owned his own business, the court explained that Jackson also received monthly payments from Veterans Affairs and from his Army Reserve Duty. The court also explained that Jackson deliberately filed multiple fraudulent forms to the Internal Revenue Service after he received about \$50,000 from filing the first fraudulent form, and none of the \$1,500,000 that he stole is available for restitution. The court sufficiently justified the upward variance by distinguishing the facts of Jackson's offense from others with the same criminal history category and offense level.

Thus, the district court did not abuse its discretion when it imposed an 84-month sentence.²

AFFIRMED.

² Jackson's 84-month sentence was also below the statutory maximum of 20-years, which is another indicator of a reasonable sentence. See *United States v. Jayyousi*, 657 F.3d 1085, 1118 (11th Cir. 2011).