

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 26-10745
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ANTHONY CURTIS BREWER,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Florida
D.C. Docket No. 4:25-cr-00064-AW-MAF-1

Before LUCK, LAGOA, and MARCUS, Circuit Judges.

PER CURIAM:

Anthony Brewer appeals his above-Guideline sentence of 24 months' imprisonment for theft of government property. On appeal, Brewer argues that the district court erred: (1) procedurally

by failing to explain his sentence and why it was imposed consecutively to his state sentence; and (2) substantively by varying upward despite his low risk of reoffending. After careful review, we affirm.

I.

The relevant background is this. Brewer's offense conduct involved the theft of Department of Veterans Affairs ("VA") funds that had been paid to a victim ("Victim 1") who was receiving them as the surviving spouse of a veteran ("Victim 2"). After the VA found Victim #1 to be incompetent to handle the disbursement of her VA funds, Brewer -- who was romantically involved with Victim #1's daughter, Latadra Layton -- became Victim #1's fiduciary. As her fiduciary, Brewer agreed to use her VA funds for her care, support, comfort, and desires and to not commingle her VA funds with his own funds. The VA later found, however, that Brewer misused \$67,232.33 of Victim #1's VA funds and, in 2022, removed him as her fiduciary. He pleaded guilty to one count of theft of more than \$1,000 from the VA, in violation of 18 U.S.C. § 641.

At Brewer's sentencing hearing, the court found him responsible for \$53,567 of loss, resulting in a Guideline range of 15–21 months' imprisonment. While Brewer argued for a low-end or below-Guideline sentence, the government sought an upward variance to 24 months' imprisonment. It detailed his criminal history, which included an earlier fraud when he attempted to impersonate another person, reckless driving involving alcohol, stalking against Latadra Layton, and a "pretty egregious" fraud where he set fire to his own vehicle and gave false information to receive insurance

26-10745

Opinion of the Court

3

money. At the time of his federal sentencing, Brewer still had over two years left on a four-year state sentence for his 2024 convictions for arson, insurance fraud, and burning to defraud an insurer. The federal district judge sentenced him to 24 months' imprisonment, consecutive to his state sentence, followed by three years of supervised release, and \$53,567 in restitution.

This timely appeal follows.

II.

We normally review the sentence a district court imposes for “reasonableness,” which “merely asks whether the trial court abused its discretion.” *United States v. Pugh*, 515 F.3d 1179, 1189 (11th Cir. 2008) (citation modified). However, if the defendant did not object to an alleged error at sentencing, we review only for plain error. *United States v. Hamilton*, 168 F.4th 1354, 1367 (11th Cir. 2026). To establish plain error, the defendant must show (1) an error; (2) that was plain; and (3) that affected a substantial right. *United States v. Steiger*, 99 F.4th 1316, 1324 (11th Cir. 2024) (en banc). If all three conditions are met, then we have discretion to correct the forfeited error if it (4) seriously affected the fairness, integrity, or public reputation of judicial proceedings. *Id.* “An error is not plain unless the explicit language of a statute or rule specifically resolves the issue or there is precedent from the Supreme Court or us directly resolving it.” *Hamilton*, 168 F.4th at 1365.

III.

First, we are unpersuaded by Brewer's claim that the district court procedurally erred in sentencing him. In reviewing this

claim, we “ensure that the district court committed no significant procedural error, such as failing to calculate (or improperly calculating) the Guidelines range, treating the Guidelines as mandatory, failing to consider the § 3553(a) factors, selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence -- including an explanation for any deviation from the Guidelines range.” *Pugh*, 515 F.3d at 1190 (quoting *Gall v. United States*, 552 U.S. 38, 51 (2007)).¹ Indeed, a sentencing court has an obligation under 18 U.S.C. § 3553(c) to “adequately explain the chosen sentence to allow for meaningful appellate review.” *Stegier*, 99 F.4th at 1321 (quoting *Gall*, 552 U.S. at 50). The necessary degree of explanation depends on the circumstances of the case, so sentences within the Guideline range sometimes require little explanation, while major departures from the Guideline tend to require more significant explanation. *Id.* If the district court exercises its discretion to vary from the recommended Guideline range, it assumes an additional statutory obligation to “state in open

¹ The § 3553(a) factors include: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (3) the need for the sentence imposed to afford adequate deterrence; (4) the need to protect the public; (5) the need to provide the defendant with educational or vocational training or medical care; (6) the kinds of sentences available; (7) the Sentencing Guidelines range; (8) the pertinent policy statements of the Sentencing Commission; (9) the need to avoid unwarranted sentencing disparities; and (10) the need to provide restitution to victims. 18 U.S.C. § 3553(a).

26-10745

Opinion of the Court

5

court . . . the specific reason for the imposition of a [variance]”
18 U.S.C. § 3553(c)(2).

When imposing a sentence upon a defendant already subject to an undischarged term of imprisonment, the district court may order it to run consecutively after considering the § 3553(a) factors. *Id.* § 3584(a)–(b). The Guidelines provide that when the defendant did not commit the instant offense while incarcerated and the other offense conduct is not relevant conduct to the instant offense, “the sentence for the instant offense may be imposed to run concurrently, partially concurrently, or consecutively to the prior undischarged term of imprisonment to achieve a reasonable punishment for the instant offense.” U.S.S.G. § 5G1.3(d).

The § 3553(a) factors are the primary consideration for whether to impose a sentence concurrently or consecutively, but consideration of those factors “‘includ[es] any applicable guidelines or policy statements issued by the Sentencing Commission.’” *United States v. Gomez*, 955 F.3d 1250, 1258 (11th Cir. 2020) (quoting U.S.S.G. § 5G1.3, cmt. Background); *see also* 18 U.S.C. § 3553(a)(4)(A).² In a footnote in *Gomez*, we explained that the Guidelines instruct the district court to consider the type and length of the undischarged sentence, the time already served and likely to be served before release, the fact that it may have been

² A federal court need only rely on the Sentencing Commission’s commentary to interpret a Guideline provision if that provision is “genuinely ambiguous.” *United States v. James*, 135 F.4th 1329, 1333 (11th Cir. 2025) (citation modified), *cert. denied*, 146 S. Ct. 2159 (2026).

imposed in a state court, and any other circumstance relevant to the determination of an appropriate sentence. 955 F.3d at 1258 n.5 (citing U.S.S.G. § 5G1.3, cmt. n.4(A)(ii)–(iv)). For inquiries similar to whether to impose a sentence concurrently or consecutively -- like how long to impose a sentence of supervised release -- we’ve said that the district court’s explanation of why the sentence is reasonable overall under § 3553(a) also serves as its explanation for why a specific condition is reasonable. *United States v. Hamilton*, 66 F.4th 1267, 1275–76 (11th Cir. 2023). “Nothing in § 3553(c) requires a district court to make two separate explanations.” *Id.* at 1275.

Here, Brewer did not make a procedural error objection in district court on the ground that the district court failed to explain his sentence -- particularly the decision to run his federal sentence consecutively to his Florida sentence -- so we review this claim for plain error, and we can find none. As the record reflects, the district court expressly laid out its reasoning for the sentence. The court said it had considered all the § 3553(a) factors and rested its conclusion on (1) Victim #1’s vulnerability, (2) Brewer’s attempts to evade responsibility, and (3) Brewer’s other fraudulent acts around the time of the offense conduct -- factors that bore on the need to protect the public and the need to deter Brewer. As for the three-month upward variance it imposed, the court fulfilled its obligation under § 3553(c)(2) by explaining that a lesser sentence would be insufficient to protect the public and to deter Brewer, especially in light of Victim #1’s incapacitation and Brewer’s other fraud. This explanation was more than sufficient to allow for meaningful appellate review. *See Steiger*, 99 F.4th at 1321.

26-10745

Opinion of the Court

7

Nor did the court plainly err by not explaining why it was imposing his sentence consecutively to, instead of concurrently with, his Florida sentence. Brewer's Florida convictions for arson and insurance fraud were unrelated to the federal theft offense at issue, so his Florida convictions were not relevant conduct. As a result, the Guidelines permitted the district court to sentence him concurrently, partially concurrently, or consecutively "to achieve a reasonable punishment for [the theft offense]." U.S.S.G. § 5G1.3(d); *see also Gomez*, 955 F.3d at 1256; 18 U.S.C. § 3584(a)–(b). And because the district court explained why the sentence it imposed was reasonable overall, a further explanation was not necessary. *Cf. Hamilton*, 66 F.4th at 1275–76 (adopting the same reasoning for the explanation of a term of supervised release).

To the extent Brewer suggests the district court procedurally erred by not considering additional factors in the commentary to U.S.S.G. § 5G1.3, he does not cite any binding authority obligating the court to discuss factors not found in § 3553(a). This is especially true since commentary is only necessary to interpret a Guideline if it is genuinely ambiguous, and neither our Court nor the Supreme Court has held that § 5G1.3(d) is ambiguous. *James*, 135 F.4th at 1333. Thus, Brewer has not shown that the district court procedurally erred, plainly or otherwise, in explaining his sentence.

III.

We also find no merit to Brewer's claim that the district court substantively erred in sentencing him. We consider the "substantive reasonableness of the sentence imposed under an abuse-

of-discretion standard,” based on the “totality of the circumstances.” *Pugh*, 515 F.3d at 1190 (citation modified). A sentencing court would abuse its considerable discretion 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. *Hamilton*, 168 F.4th at 1369–70. However, the weight given to each factor is committed to the sound discretion of the trial court. *United States v. Butler*, 39 F.4th 1349, 1355 (11th Cir. 2022). Further, the district court need not specifically say it considered a mitigating factor nor weigh it very heavily -- “[t]hat the record reflects that the district court considered all the factors is enough.” *United States v. Hayden*, 119 F.4th 832, 837 (11th Cir. 2024). It is also within the district court’s discretion to find that a factor the defendant argues to be mitigating is instead aggravating. *United States v. Boone*, 97 F.4th 1331, 1343 (11th Cir. 2024).

The sentencing court has wide discretion to decide whether the § 3553(a) factors justify a variance. *Hamilton*, 168 F.4th at 1370. “A major variance must be supported by more significant reasoning than a minor one, but the court need not discuss each factor in its justification.” *Id.* (citation modified). When imposing an upward variance, the sentencing court must provide a justification “compelling enough to support the degree of the variance and complete enough to allow meaningful appellate review. But the Supreme Court has specifically rejected the idea that an extraordinary justification is required for a sentence outside the guidelines range.” *United States v. Shaw*, 560 F.3d 1230, 1238 (11th Cir. 2009)

26-10745

Opinion of the Court

9

(citation modified). “Even as to a substantial variance, we will not reverse a sentence unless 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” *United States v. Johnson*, 803 F.3d 610, 618–19 (11th Cir. 2015) (citation modified). We do not substitute our own judgment for the sentencing court; instead, we will reverse only if the sentence is not “in the ballpark” of permissible outcomes. *United States v. Sotelo*, 130 F.4th 1229, 1245 (11th Cir. 2025) (citation modified).

Here, the district court did not impose a substantively unreasonable sentence. As the record shows, the court properly exercised its discretion to conclude that a sentence lower than 24 months’ incarceration consecutive to Brewer’s Florida sentence would not sufficiently protect the public and deter Brewer’s conduct. In particular, the district court based its sentence, and its three-month upward variance, on two main sentencing factors: the need to deter Brewer’s future criminal conduct and to protect the public. It described Victim #1’s vulnerability, Brewer’s attempts to evade responsibility, and Brewer’s other fraudulent acts -- including the arson and false insurance claim of his own truck. The district court’s consideration and weight of those factors was within its sound discretion. See *Butler*, 39 F.4th at 1355. And the resulting sentence is still “in the ballpark” of permissible outcomes. *Sotelo*, 130 F.4th at 1245 (citation modified).

As for Brewer’s claim that those factors were given inordinate weight given his light criminal history prior to 2022 -- when

he committed two frauds and stalked his ex-girlfriend -- which he says shows that he is unlikely to reoffend, we disagree. It was reasonable for the district court to find that the severity and multiplicity of his fraud required a greater punishment to deter his future actions and to protect the public from his behavior. The district court acknowledged and considered Brewer's mitigation argument, and then properly exercised its discretion to find that his previous fraud was an aggravating factor. *See Hayden*, 119 F.4th at 837; *Boone*, 97 F.4th at 1343. Accordingly, we affirm Brewer's sentence.

AFFIRMED.