

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 26-10768
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RODRIQUES JAVAUN HUMPHREY,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Alabama
D.C. Docket No. 2:25-cr-00233-BL-SMD-1

Before LUCK, LAGOA, and DUBINA, Circuit Judges.

PER CURIAM:

Appellant Rodriques Humphrey appeals his sentence of 480 months' imprisonment, a 285-month upward variance from the high end of the properly calculated guideline range. Humphrey

pled guilty to four counts: (1) illegal possession of a machine gun; (2) possession of a firearm with an obliterated serial number; (3) possession of marijuana with the intent to distribute; and (4) possession of a firearm in furtherance of a drug trafficking crime. On appeal, Humphrey argues that the district court plainly erred when it stated that Count 4's guideline range was 60 months' imprisonment to life imprisonment, when the proper guideline range for that count was 60 consecutive months' imprisonment. He also argues that the district court failed to explain adequately its decision to sentence him to Counts 1-3 consecutively and to 240 consecutive months for Count 4, and that the district court abused its discretion in improperly weighing the 18 U.S.C. § 3553(a) factors, which led to a substantively unreasonable sentence. Having reviewed the record and read the parties' briefs, we affirm Humphrey's sentence.

I.

"We normally review the procedural reasonableness of a sentence under an abuse-of-discretion standard." *United States v. Waters*, 937 F.3d 1344, 1358 (11th Cir. 2019). Procedural errors include improperly calculating the guideline range, treating the Guidelines as mandatory, "failing to consider the 18 U.S.C. § 3553(a) factors, selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence." *United States v. Trailer*, 827 F.3d 933, 936 (11th Cir. 2016) (footnote omitted). "[W]e review the application of the Sentencing Guidelines de novo." *United States v. Leonard*, 4 F.4th 1134, 1141 (11th Cir. 2021).

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When a defendant fails to object to the procedural reasonableness of his sentence at the sentencing hearing, we review for plain error his objections to the procedural reasonableness of his sentence. *United States v. Brenes-Colon*, 136 F.4th 1343, 1345 (11th Cir. 2025), *cert denied*, ___ U.S. ___, 146 S. Ct. 346 (2025). The defendant bears the burden of establishing plain error by proving that “(1) an error occurred; (2) the error was plain; (3) it affected his substantial rights; and (4) it seriously affected the fairness of the judicial proceedings.” *Id.* (quoting *United States v. Ramirez-Flores*, 743 F.3d 816, 822 (11th Cir. 2014)). To show that an error affected his substantial rights, a defendant “must show a reasonable probability that, but for the error, the outcome of the proceeding would have been different.” *Molina-Martinez v. United States*, 578 U.S. 189, 194, 136 S. Ct. 1338, 1343 (2016) (quotation marks omitted). In most cases, the fourth prong of plain error is met if “a plain Guidelines error . . . affects a defendant’s substantial rights.” *Rosales-Mireles v. United States*, 585 U.S. 129, 145, 138 S. Ct. 1897, 1911 (2018).

In the context of plain-error review of a Guidelines error, the Supreme Court has specified that, if the district court calculated an erroneous Guidelines range, whether the defendant’s final sentence is within the correct Guideline range, “the error itself can, and most often will, be sufficient to show a reasonable probability of a different outcome absent the error.” *Molina-Martinez*, 578 U.S. at 198, 136 S. Ct. at 1345. Nevertheless, the Court explained that there may be instances where a “reasonable probability of prejudice does not exist” despite application of an erroneous guideline range, such as where the record shows that “the district court

thought the sentence it chose was appropriate irrespective of the Guidelines range” because the court’s explanation “make[s] it clear that the judge based the sentence he or she selected on factors independent of the Guidelines.” *Id.* at 200, 136 S. Ct. at 1346-47. The Court clarified that, “[w]here, however, the record is silent as to what the district court might have done had it considered the correct Guidelines range, the court’s reliance on an incorrect range in most instances will” establish that the defendant’s substantial rights were affected. *Id.* at 201, 136 S. Ct. at 1347. Hence, “in the ordinary case a defendant will satisfy his burden to show prejudice by pointing to the application of an incorrect, higher Guidelines range and the sentence he received thereunder.” *Id.*

In *Thomas*, we held that the district court plainly erred in calculating the defendant’s criminal history category, resulting in a guideline range of 57 to 71 months’ imprisonment when the proper range should have been 63 to 78 months’ imprisonment. *United States v. Thomas*, 108 F.4th 1351, 1357 (11th Cir. 2024), *cert. denied*, 145 S. Ct. 1102 (2025). Applying *Molina-Martinez* and *United States v. Corbett*, 921 F.3d 1032 (11th Cir. 2019), we held that the plain error did not affect the defendant’s substantial rights. *Thomas*, 108 F.4th at 1356-57. We noted that the upward variance that was nearly double the guideline range “was ‘well [above] any possible sentencing range,’ which” it noted could be a “‘powerful indicator’ that a guidelines error did not impact a defendant’s substantial rights.” *Id.* at 1357 (quoting *Corbett*, 921 F.3d at 1040) (alteration in original). Moreover, we concluded that the “broader circumstances” indicated that “‘the district court thought the sentence it chose was

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appropriate irrespective of the Guidelines range,” noting the court’s extensive comments that the defendant’s criminal history category underrepresented the severity of his criminal history. *Id.* (quoting *Molina-Martinez*, 578 U.S. at 200, 136 S. Ct. at 1346-47).

The Sentencing Guidelines provide that, “if the defendant, whether or not convicted of another crime, was convicted of violating [18 U.S.C. §§ 924(c) or 929(a)], the guideline sentence is the minimum term of imprisonment required by statute.” U.S.S.G. § 2K2.4(b). Section 924(c)(1)(A)(i) of Title 18 provides that a defendant convicted for possessing a firearm in furtherance of a drug trafficking crime has a statutory minimum sentence of 5 years’ imprisonment. 18 U.S.C. § 924(c)(1)(A)(i).

We review Humphrey’s objection to the district court’s announcement of the guidelines for Count 4 under a plain error standard because Humphrey did not object to the statement at sentencing. *Brenes-Colon*, 136 F.4th at 1345. At sentencing, the district court stated that it was making the specific finding that the advisory guideline range of imprisonment is 108 to 135 months imprisonment on Counts 1, 2, and 3, and 60 months to life as to Count 4. It was a plain error to note that the guideline for Count 4 is 60 months to life, as U.S.S.G. § 2K2.4(b) dictates that for a conviction under 18 U.S.C. § 924(c), the guideline range is the statutory minimum, which for possessing a firearm in furtherance of drug trafficking, Humphrey’s crime of conviction, is 60 months’ imprisonment.

We conclude that the district court made a misstatement in its original pronouncement of Count 4’s guidelines; however, the

error did not affect Humphrey's substantial rights. We rely on evidence in the record that there was no discussion or debate on Count 4's guidelines, and the district court only noted Count 4's guideline range once. Additionally, after the district court's pronouncement of Count 4's guideline range, Humphrey noted that the district court had ruled that the guideline range was 108 to 135 months plus 60, and the district court did not correct this statement. The government also asked for an upward variance via sentencing Humphrey to life as to Count 4. While the district court did not sentence Humphrey to life, it did find that an upward variance was appropriate, granting the government's motion.

The statement of reasons also provides evidence that the district court made a misstatement of the guidelines range for Count 4. The statement of reasons noted that it adopted the PSI with only two changes, and neither change related to Count 4's guideline range, which was properly listed in the PSI. The statement of reasons also included a guideline calculation with the guideline range being listed as 108 to 135 months' imprisonment on Counts 1, 2, 3, plus 60 months consecutive on Count 4. Additionally, the statement of reasons noted that the district court granted the government's request for an above guidelines sentence, and it cited to the § 3553(a) factors it considered.

Thus, despite the district court's plain error in its stated guidelines for Count 4 at the sentencing hearing, Humphrey fails to ultimately show that this error affected his substantial rights such that there is a reasonable probability that he would receive a

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different sentence if this Court were to reverse, as it appears that the district court was tethered to the proper guideline range. See *Molina-Martinez*, 578 U.S. at 200-01, 136 S. Ct. at 1346-47; *United States v. Corbett*, 921 F.3d 1032, 1041 (11th Cir. 2019) (remanding for resentencing because we concluded that “there [wa]s a reasonable probability that the district court’s error affected Corbett’s sentence because, even though the district court varied downward from its calculated sentencing range, its sentencing decision was ‘tethered’” to an incorrect Guidelines range, including to the variance that it thought the probation officer would recommend after the district court applied an acceptance-of-responsibility reduction). Accordingly, we affirm as to this issue.

II.

Issues not raised in a party’s initial brief on appeal are considered abandoned and will not be addressed absent extraordinary circumstances. *United States v. Campbell*, 26 F.4th 860, 865, 871-73 (11th Cir. 2022) (en banc). An appellant abandons a claim when he does not “plainly and predominately” raise it and instead only makes a claim with passing references or in a perfunctory manner without authority or argument in support. *United States v. Smith*, 967 F.3d 1196, 1204 n.5 (11th Cir. 2020) (quotation marks omitted). We review Humphrey’s argument for plain error because he did not raise his substantive reasonableness argument in the district court.

After we determine that the imposed sentence includes no procedural errors, we then consider the substantive reasonableness

of the sentence imposed under a deferential abuse of discretion standard. *Gall v. United States*, 552 U.S. 38, 41, 51, 128 S. Ct. 586, 591 (2007). We review for an abuse of discretion the district court’s decision to impose a consecutive sentence. *United States v. Covington*, 565 F.3d 1336, 1346 (11th Cir. 2009); *see also United States v. Turner*, 626 F.3d 566, 573-74 (11th Cir. 2010) (applying an abuse of discretion standard to a defendant’s argument that running his sentences consecutively was substantively unreasonable). A defendant preserves a substantive reasonableness objection by advocating for a shorter sentence before the district court. *See Holguin-Hernandez v. United States*, 589 U.S. 169, 174-75, 140 S. Ct. 762, 766-67 (2020).

District courts generally have discretion to decide whether sentences will run concurrently or consecutively. 18 U.S.C. § 3584(a); *Setser v. United States*, 566 U.S. 231, 236, 132 S. Ct. 1463, 1468 (2012). Under the Sentencing Guidelines, except as otherwise required by law, “[i]f the sentence imposed on the count carrying the highest statutory maximum is adequate to achieve the total punishment, then the sentences on all counts shall run concurrently.” U.S.S.G. § 5G1.2(c). However:

If the sentence imposed on the count carrying the highest statutory maximum is less than the total punishment, then the sentence imposed on one or more of the other counts shall run consecutively, but only to the extent necessary to produce a combined sen-

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tence equal to the total punishment. In all other respects, sentences on all counts shall run concurrently, except to the extent otherwise required by law.

Id. § 5G1.2(d).

In determining whether a consecutive sentence is appropriate, the district court must consider the factors set forth in 18 U.S.C. § 3553(a). *United States v. Bradford*, 277 F.3d 1311, 1316-17 (11th Cir. 2002); 18 U.S.C. § 3584(b). We have noted that, once the district court considers the § 3553(a) factors, “the only limitation on running sentences consecutively is that the resulting total sentence must be reasonable.” *Covington*, 565 F.3d at 1347. In *Bonilla*, we concluded that the district court’s sentence was procedurally and substantively reasonable when it included consecutive sentences, as the district court considered the factors outlined in the comments to U.S.S.G. § 5G1.2, analyzed the § 3553(a) factors, and “offered a detailed explanation as to why consecutive sentences were still warranted.” *United States v. Bonilla*, 579 F.3d 1233, 1244-45 (11th Cir. 2009).

Under § 3553(a), the district court must impose a sentence that is “sufficient, but not greater than necessary,” “to reflect the seriousness of the offense, to promote respect for the law,” “to provide just punishment for the offense,” “to afford adequate deterrence to criminal conduct,” “to protect the public from further crimes of the defendant,” and “to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.”

18 U.S.C. § 3553(a)(2)(A)-(D). In addition, the court must consider “the nature and circumstances of the offense,” “the history and characteristics of the defendant,” and “the need to avoid unwarranted sentencing disparities among” similarly situated defendants. *Id.* § 3553(a)(1), (6). The court must also consider the types of available sentences, the applicable Guidelines range, any relevant policy statements from the Sentencing Commission, and “the need to provide restitution to any” of the defendant’s victims. *Id.* § 3553(a)(4)-(7).

A sentencing court must “state in open court the reasons for its imposition of the particular sentence.” 18 U.S.C. § 3553(c). Whether a sentencing court’s explanation satisfies 18 U.S.C. § 3553(c) “necessarily depends upon the circumstances of the particular case.” *United States v. Steiger*, 99 F.4th 1316, 1321 (11th Cir. 2024) (en banc) (quotation marks omitted). A purported unobjected-to § 3553(c) error “warrants reversal under plain error review only when the district court’s reasoning is unclear on the face of the record.” *Id.* at 1322, 1325. “If someone with knowledge of the sentencing record can understand the reasons for the sentence imposed, then a district court’s technical violation does not warrant reversal under plain error review.” *Id.* at 1326.

A district court abuses its discretion and imposes a substantively unreasonable sentence when it (1) does not consider ““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) (en banc) (quoting *United States v. Campa*, 459 F.3d 1121, 1174 (11th Cir. 2006) (en banc)). The weight the district court gives “to each factor is committed to the sound discretion of the district court,” and the “court may attach great weight to one § 3553(a) factor over others.” *United States v. Butler*, 39 F.4th 1349, 1355 (11th Cir. 2022). Further, the district court need not reference all mitigating evidence, as an “acknowledgment that it has considered the § 3553(a) factors and the parties’ arguments is sufficient.” *Id.* at 1356. We will vacate a sentence “only 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,” resulting in “a sentence that lies outside the range of reasonable sentences dictated by the facts of the case.” *Irey*, 612 F.3d at 1190 (quotation marks omitted). It is the defendant’s burden to prove the unreasonableness of his sentence based on the record and the § 3553(a) factors. *United States v. Keene*, 470 F.3d 1347, 1350 (11th Cir. 2006).

Sentences outside the guideline range are not presumptively unreasonable. *Gall*, 552 U.S. at 51, 128 S. Ct. at 597. Although we may consider the extent of a variance, we “must give due deference to the district court’s decision that the § 3553(a) factors, as a whole, justify the extent of the variance.” *Id.* “The justifications must be compelling enough to support the degree of variance and complete enough to allow meaningful appellate review.” *United States v. Shaw*, 560 F.3d 1230, 1238 (11th Cir. 2009) (quotation marks omitted). We have upheld the substantive reasonableness of sentences far above the guidelines. *See e.g., United States v. Dougherty*, 754 F.3d

1353, 1356, 1358, 1361-64 (11th Cir. 2014) (holding a 428-month sentence substantively reasonable when the guideline range was 220 to 245 months, due to the seriousness of the armed robbery, the officers and civilians who could have been harmed, the need to promote respect for the law, the need to protect the public, and less prominently, the defendant's history and characteristics).

The record here shows that the district court did not plainly err in its explanation of Humphrey's sentence. We conclude that the district court adequately explained the § 3553(a) factors that the district court believed warranted an upward variance, including Humphrey's history and characteristics, the nature of the offense, and the need to deter Humphrey from additional criminal conduct. Specifically, the district court considered that when the instant offense occurred, Humphrey was on bond for a homicide that was still pending in state court; that Humphrey was still carrying and using a firearm; that Humphrey fled the scene and shot at the police officers; that Humphrey admitted he shot someone (in self-defense) who died as a result; and that Humphrey possessed a large amount of drugs. This explanation extended to both the district court's decision to have Counts 1-3 run consecutively and to its sentence for Count 4, as both contributed to the upward variance. Additionally, the sentence is substantively reasonable because the district court properly considered these and other § 3553(a) factors, adequately explaining its decision to vary upward.

Accordingly, based on the aforementioned reasons, we affirm Humphrey's sentence.

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AFFIRMED.