FILED
United States Court of Appeals
Tenth Circuit

September 30, 2021

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ILLYA TYLER,

Defendant - Appellant.

No. 20-3246
(D.C. No. 2:19-CR-20045-JAR-1)
(D. Kan.)

ORDER AND JUDGMENT*

Before **BACHARACH**, **MURPHY**, and **CARSON**, Circuit Judges.

Defendant Illya Tyler pleaded guilty to possession with intent to distribute more than fifty grams of methamphetamine. The district court sentenced Defendant to 188 months' imprisonment, which he appeals. Exercising jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a), we affirm.

Law enforcement stopped Defendant for speeding. But after approaching the vehicle and smelling marijuana, the officer searched his car and found nearly

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* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

seventy-four pounds of methamphetamine. After the search, police read Defendant his Miranda rights. He waived them and admitted that the methamphetamine belonged to him.[1] Later, in his official statement to police, Defendant again admitted the methamphetamine belonged to him. Defendant also admitted this was not his first time transporting drugs for a Mexican cartel. He later repeated this information to law enforcement, and admitted that he had done this around forty-eight times before.

A federal grand jury indicted Defendant for possession with intent to distribute more than fifty grams of methamphetamine in violation of 21 U.S.C. § 841(a)(1), § 841(b)(1)(A)(viii), and 18 U.S.C. § 2. Defendant pleaded guilty. He then requested that the district court sentence him to seventy-two months' imprisonment—a sentence lower than the ten-year statutory minimum. He argued that he qualified for this lesser sentence based on a safety valve reduction under 18 U.S.C. § 3553(f).[2] Although the district court agreed that Defendant qualified, exercising its discretion and relying on the 18 U.S.C. § 3553(a) factors, it sentenced him at the low end of the

[1] Defendant told police, "Ain't nothing to think about. I got caught with it. It's mine. That's it."

[2] Congress created the safety valve as an exception to the statutory minimum for "the least culpable participants" in federal drug-trafficking offenses. United States v. Hargrove, 911 F.3d 1306, 1326 (10th Cir. 2019) (citation omitted). To qualify, a defendant must have less than four criminal history points, he cannot be a leader or organizer in the offense, and he must truthfully provide all information and evidence concerning the offense. 18 U.S.C. § 3553(f)(1), (4)–(5). The crime must be non-violent, committed without the use of a firearm, and cannot result in death or serious bodily injury. 18 U.S.C. § 3553(f)(2)–(3).

guideline range—188 months. The district court gave particular weight to the large quantity of meth involved, and Defendant's admission of prior conduct.[3] Defendant argues the district court improperly weighed the § 3553(a) factors and thus imposed a substantively unreasonable sentence.

We review the substantive reasonableness of the district court's sentence for an abuse of discretion, taking "into account the totality of the circumstances." Gall v. United States, 552 U.S. 38, 51 (2007). Under this standard, we presume a sentence within the statutory guidelines to be reasonable, and do not "second guess the district court's treatment of the § 3553(a) factors." United States v. Vasquez-Alcarez, 647 F.3d 973, 977–78 (10th Cir. 2011). So we affirm unless the district court acted in an "arbitrary, capricious, whimsical, or manifestly unreasonable" manner when weighing the § 3553(a) factors. United States v. Craig, 808 F.3d 1249, 1261 (10th Cir. 2015) (citation omitted).

Defendant argues the district court imposed a substantively unreasonable sentence because he qualified for a safety valve reduction. He argues his qualification for the safety valve, along with his age, lack of prior criminal history, and cooperation with law enforcement, entitle him to a sentence lower than the

[3] Law enforcement never charged Defendant for his cooperative admissions—that he transported drugs for a Mexican cartel—but the district court weighed them when imposing his sentence. We distinguish this prior conduct from Defendant's criminal history of unlicensed carrying of a handgun and driving with a suspended license. We refer to his repeated drug trafficking as "prior conduct" and his former convictions as "criminal history."

statutory minimum. The government does not contest Defendant's eligibility for a safety valve reduction under § 3553(f). But eligibility for sentencing below the mandatory minimum does not create entitlement, nor does the statute mandate the district court do so. See § 3553(f). Regardless of Defendant's qualification for a safety valve reduction, § 3553(a) mandates the district court consider its enumerated factors when imposing a sentence. United States v. Smart, 518 F.3d 800, 803 (10th Cir. 2008). And even if we believe a different sentence may have been appropriate, we affirm unless the district court abused its discretion in weighing and balancing the § 3553(a) factors. Gall, 552 U.S. at 51. So we analyze whether, given Defendant's eligibility, the district court abused its discretion by imposing a sentence within the guideline range based on its § 3553(a) analysis. It did not.

Defendant argues the district court abused its discretion by giving too little weight to three factors: (1) age; (2) criminal history; and (3) cooperation with law enforcement. We disagree. First, the district court considered that Defendant's age showed he was unlikely to transport drugs again in the future. Second, the district court gave weight to Defendant's "relatively minimal criminal history," noting that Defendant had only a few criminal convictions on his record. And third, in weighing his cooperation with law enforcement, the district court granted him a two-level, downward adjustment of his offense guideline.[4] But these factors do not exist in a

[4] Defendant argues the district court unreasonably considered his cooperative testimony in imposing this sentence. Specifically, he says he told law enforcement he transported drugs forty-eight times to minimize his prison time, and the district court unfairly used that information in imposing a sentence.

vacuum. The district court must consider all § 3553(a) factors including the severity and history of Defendant's conduct. Smart, 518 F.3d at 803. In doing so, the district court expressed concern about the "off the charts" quantity of methamphetamine Defendant possessed, and his extensive prior drug-trafficking conduct. We will not second guess the district court unless it "exceeded the bounds of permissible choice." United States v. McComb, 519 F.3d 1049, 1053 (10th Cir. 2007) (citation omitted). The district court did not exceed those bounds here.

AFFIRMED.

Entered for the Court

Joel M. Carson III
Circuit Judge

But the district court has no limit when considering "information concerning the background, character, and conduct" of a convicted person when imposing a sentence. United States v. Pinson, 542 F.3d 822, 836 (10th Cir. 2008).