

FILED  
United States Court of Appeals  
Tenth Circuit

UNITED STATES COURT OF APPEALS

September 29, 2021

FOR THE TENTH CIRCUIT

Christopher M. Wolpert  
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

TIMATRESS TENAKA CADE,

Defendant - Appellant.

No. 21-6008  
(D.C. No. 5:17-CR-00256-R-1)  
(W.D. Okla.)

ORDER AND JUDGMENT\*

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

This appeal involves the length of Ms. Timatress Cade’s sentence. The sentence consisted of two years’ imprisonment for misrepresenting her Social Security number to obtain goods and services. 42 U.S.C. § 408(a)(7)(B). Ms. Cade argues that the sentence was substantively unreasonable because it was too long. We disagree and affirm the sentence.

\* Because oral argument would not materially help us to decide the appeal, we have decided the appeal based on the record and the parties’ briefs. *See* Fed. R. App. P. 34(a)(2)(C); 10th Cir. R. 34.1(G).

Our order and judgment does not constitute binding precedent except under the doctrines of law of the case, *res judicata*, and collateral estoppel. But the order and judgment may be cited for its persuasive value if otherwise appropriate. *See* Fed. R. App. P. 32.1(a); 10th Cir. R. 32.1(A).

Before obtaining this sentence, Ms. Cade had already served a prison term of one year for this crime. Upon completion of that prison term, Ms. Cade went on supervised release, which allowed her to stay out of prison upon certain conditions. These conditions not only prohibited any future crimes but also required her to pay restitution, notify the probation office of changes in her living arrangements, comply with drug testing, and attend treatment for substance abuse. She admittedly failed to comply with many of these conditions, including the prohibition on criminal activity, and the court revoked her supervised release.

Upon revocation of supervised release, the court had to impose a new sentence. To do so, the court considered the statutory sentencing factors. *See* 18 U.S.C. § 3553(a). These factors include the need to deter the defendant and protect the public from further crimes. 18 U.S.C. § 3553(a)(2)(B)–(C). The court zeroed in on these factors, focusing on Ms. Cade’s continued criminality while on supervised release.

The court pointed to two of Ms. Cade’s violations of supervised-release conditions: (1) continued use of fake identification cards and (2) theft from a law firm. The court viewed these violations as “stunning” and “serious[],” calling for “a very serious consequence.” Revocation Hr’g Tr. at 22–23.

Ms. Cade argues that

- the violations were “overblown,”
- she was honest with the probation officer about her crimes, and
- the sentence more than doubled the guideline range.

We consider these arguments based on the standard for challenges involving the substantive reasonableness of the sentence. The overarching standard is whether the district court abused its discretion. *United States v. Friedman*, 554 F.3d 1301, 1307 (10th Cir. 2009).

In our view, the court acted within its discretion. Ms. Cade downplays her continued thievery after release from prison. Before going to prison, Ms. Cade had received a settlement check from a law firm. From the check, she used routing and account numbers to set up automatic payments to herself from the law firm’s account. She then went to prison to serve her 12-month prison term. But when she got out, she continued to get automatic payments from the law firm’s account. The thievery continued until the law firm discovered what Ms. Cade had done.

From Ms. Cade’s perspective, she had simply forgotten about the automatic payments. But the district court could reasonably take a harsher view: Ms. Cade knew that she was continuing to receive payments from her fraudulent use of the law firm’s account information. The court could reasonably view Ms. Cade’s continued use of the fraudulent account as an alarming pattern of criminality even after her release from prison.

After her release, Ms. Cade didn't stop using others' personal information. For example, she used other individuals' social security numbers to open accounts for utility services. Ms. Cade again downplays the crimes, stating that she used a social security number only two digits different from her own.

Ms. Cade doesn't explain the significance of the similarity in the social security numbers. Perhaps she's suggesting that she made an innocent mistake when she used someone else's social security number. Regardless of what she's suggesting, however, the district court could reasonably view the discrepancy as intentional.

Despite the seriousness of these crimes, Ms. Cade's guideline range was only 4–10 months' imprisonment. The court acted reasonably by using this range at a starting point and stiffened the sentence because of the threat of recidivism. *See United States v. Steele*, 603 F.3d 803, 809 (10th Cir. 2010) (stating that “recidivism is generally a reason for increased sentencing severity”).

Given the threat of recidivism, the court doubled the original sentence, which had been only one year in prison. The new sentence served the primary purpose of punishing Ms. Cade for breaking the court's trust when she violated her supervised-release conditions. *United States v. Vigil*, 696 F.3d 997, 1003 (10th Cir. 2012). So the court was not constrained by

its earlier leniency. *United States v. Kelley*, 359 F.3d 1302, 1306 (10th Cir. 2004).

Ms. Cade insists that she was honest with her probation officer, admitting new crimes. But this honesty came only after Ms. Cade had been caught. She breached the court's trust by committing crimes while on supervised release. *See United States v. Contreras-Martinez*, 409 F.3d 1236, 1241 (10th Cir. 2005) ("The violation of a condition of supervised release is a breach of trust.").

\* \* \*

Given the continued thievery while on supervised release, the district court could reasonably conclude that a stiff sentence was necessary for deterrence and protection of the public. That conclusion might lead different judges to impose a variety of sentences. Some judges might reasonably have imposed a more lenient sentence. But this judge didn't abuse his discretion by selecting a sentence of two years' imprisonment. We thus affirm the sentence.

Entered for the Court

Robert E. Bacharach  
Circuit Judge