

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

**For the Seventh Circuit
Chicago, Illinois 60604**

Submitted October 3, 2023*

Decided October 10, 2023

Before

MICHAEL B. BRENNAN, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

No. 22-3262

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

TERRANCE ELKINS,
Defendant-Appellant.

Appeal from the United States District
Court for the Northern District of
Illinois, Eastern Division.

No. 1:21-CR-00130-1

John J. Tharp, Jr.,
Judge.

ORDER

Terrance Elkins pleaded guilty to unlawful possession of a firearm. He now challenges his within-Guidelines sentence of 36 months' imprisonment as substantively

* By prior order (App. Dkt. 20), we vacated oral argument in this appeal. We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

unreasonable, contending that the district court improperly weighed his mitigation arguments. But the district court reasonably weighed the sentencing factors under 18 U.S.C. § 3553(a) in sentencing Elkins, leading us to affirm.

Elkins committed the federal firearm offense after a disabled car being pushed by another driver accidentally bumped into his car. Elkins reacted by getting out of his car and confronting the other driver. He then returned to his car, retrieved a handgun, and walked back towards the other driver. As he approached, Elkins displayed the handgun and threatened to shoot the driver. Police later recovered the handgun from Elkins's trunk, where he had stashed it in a duffle bag after the confrontation.

After Elkins pleaded guilty to unlawfully possessing a firearm as a felon, *see* 18 U.S.C. § 922(g)(1), the district court used the Presentence Investigation Report to calculate the advisory sentencing range under the Sentencing Guidelines. Elkins's long criminal history includes felony convictions for possessing and delivering controlled substances. He successfully objected to one proposed enhancement to his offense level, but otherwise did not dispute any facts, including his criminal history, in the PSR. After striking the proposed enhancement, the district court determined the advisory range, unchallenged on appeal, to be 30–37 months' imprisonment.

The parties took different positions on the appropriate sentence. For its part, the government sought a sentence at the high end of that range to deter Elkins and other felons from possessing firearms. Elkins requested a sentence at the low end of the range. In mitigation, his counsel emphasized Elkins's difficult upbringing and his more recent efforts at rehabilitation since relocating to care for his family. Counsel also highlighted how, during Elkins's 20 months of pretrial detention, the tragic deaths of his two children and brother had motivated him to improve his life and address through therapy the anger issues at the root of his criminal behavior. Elkins apologized for his misconduct and acknowledged the harm he had caused. He also submitted to the district court some shoe and clothing designs that he had drawn while detained, explaining that he hoped to launch a clothing line upon his release. The sentencing record further included letters of support from his mother and two sisters.

Before imposing sentence, the district court discussed the "facts and circumstances that are most relevant to achieving [the] sentencing objectives." First, analyzing the seriousness of the offense, the court stressed that Elkins "escalated the seriousness of this incident dramatically" by grabbing a handgun "in an effort to intimidate the individual who had bumped into his car." After describing Elkins's criminal history, the court

acknowledged that Elkins's past record of convictions did not "[inspire] a great deal of optimism." Next, the court highlighted "some reasons to be optimistic," including Elkins's talent for shoe and clothing design and his desire to provide for his children and stepchildren. The court also remarked that Elkins "said all the right things" in contrition at sentencing. And although the court recognized Elkins's difficult upbringing as a mitigating factor, it also determined that "it's part of what is creating the risk that you will continue along the path of criminal conduct."

In the end, the district court imposed a within-Guidelines sentence of 36 months, followed by three years' supervised release. Weighing the § 3553(a) factors that it had just discussed, the court concluded that a sentence of 36 months was proper given the nature of the offense and the need for deterrence. Again emphasizing the seriousness of Elkins's offense, the court explained the need for a sentence that "[reflects] that this could have been a far more dangerous, injurious encounter." The court also weighed the need to deter Elkins and other convicted felons who are not permitted "to drive around with [a firearm] in their car, much less to get it out and start brandishing it during a traffic incident." Finally, the sentence needed to "reinforce the public's understanding that ... this kind of conduct will be met with serious criminal sanctions." Before imposing the 36-month sentence, the court reiterated its consideration of the parties' arguments as well as the advisory sentencing range and the § 3553(a) factors.

On appeal, Elkins argues that the district court did not adequately weigh his mitigation arguments and therefore imposed an unreasonable sentence. We review the substantive reasonableness of a defendant's sentence by asking whether the district court abused its discretion in weighing the sentencing factors of § 3553(a). *See United States v. Morgan*, 987 F.3d 627, 632 (7th Cir. 2021). Further, a within-Guidelines sentence is presumed reasonable. *See United States v. Melendez*, 819 F.3d 1006, 1013 (7th Cir. 2016) (citing *United States v. Castro-Alvarado*, 755 F.3d 472, 477 (7th Cir. 2014)). Elkins bears the hefty burden of overcoming this presumption. *See Melendez*, 819 F.3d at 1014.

Elkins cannot overcome the presumption of reasonableness. In his view, the district court did not weigh heavily enough his personal characteristics, including his talents, difficult upbringing, and commitment to improve for his family. *See* § 3553(a)(1). But he does not dispute (nor can he) that the court expressly considered these factors—his design talents, troubled youth, contrition, and desire to support his family.

The barrier for Elkins is that the court had to weigh other factors as well—his criminal history, the seriousness of the offense, and the need for deterrence and public

protection—under § 3553(a)(1) and (2). See *United States v. Wood*, 31 F.4th 593, 601 (7th Cir. 2022). And these factors, the district court reasonably determined, more than counterbalanced the mitigating factors. First, Elkins has a long criminal history of drug use and dealing. Second, he transformed a minor traffic accident with a disabled car into a potentially deadly affair by displaying a gun and threatening another person. Finally, despite his desire for change, he still has unresolved anger-control issues from his youth.

We recognize that Elkins might see the balance of these factors differently. But his within-Guidelines prison term of 36 months is substantively reasonable because we do not “second-guess the district court’s weighing of the information at its disposal, a task committed to its sound discretion.” *United States v. Hendrix*, 74 F.4th 859, 872 (7th Cir. 2023) (citing *Wood*, 31 F.4th at 600).

We address one final issue. Elkins appears to dispute the propriety of the district court’s factual finding that he “displayed” a gun during the traffic incident. This finding, which we review for clear error, see *United States v. Jarigese*, 999 F.3d 464, 471 (7th Cir. 2021), finds ample support in the record. According to the PSR, Elkins “displayed” a gun, and later did not object to this finding at sentencing. Indeed, Elkins conceded at sentencing that “he may have brandished” or “shown” the weapon.

For these reasons, we AFFIRM.