

NONPRECEDENTIAL DISPOSITION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**

Argued July 12, 2023

Decided July 31, 2023

Before

DIANE S. SYKES, *Chief Judge*

ILANA DIAMOND ROVNER, *Circuit Judge*

DIANE P. WOOD, *Circuit Judge*

No. 23-1199

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

CHRISTOPHER L. HALE,
Defendant-Appellant.

Appeal from the United States District
Court for the Northern District of
Indiana, Fort Wayne Division.

No. 1:22CR39-001

Holly A. Brady,
Chief Judge.

ORDER

After Christopher Hale pleaded guilty to federal drug offenses, the district judge designated Hale as a career offender and imposed a sentence below the enhanced range under the Sentencing Guidelines. Hale contends that the judge procedurally erred because she did not discuss the need to avoid unwarranted sentencing disparities and that the sentence is substantively unreasonable because it is longer than the average sentence for career offenders nationwide.

We affirm. Hale's procedural challenge is new on appeal. He did not mention disparities in his written or oral sentencing arguments; therefore, we review the procedural argument at most for plain error. And the judge did not plainly err because she necessarily accounted for disparities by considering the Guidelines range and explaining why the sentence was warranted. Also, Hale's below-range sentence is not substantively unreasonable.

I. Background

Federal and local law-enforcement officers arranged three controlled purchases of methamphetamine from Hale by a confidential informant and then searched Hale's home and found more methamphetamine and scales with drug residue. Hale was charged with one count of possession of methamphetamine with intent to distribute and three counts of distributing that drug. 21 U.S.C. § 841(a), (b)(1)(A). The judge accepted his guilty plea to all four counts without a plea agreement.

In the presentence investigation report, the probation officer determined that Hale qualified as a career offender under the Guidelines because he was at least 18 years old when he committed the current offenses, those offenses were felony controlled-substance offenses, and he had at least two prior felony convictions for crimes of violence or controlled-substance offenses. *See* U.S.S.G. §§ 4B1.1(a), 4B1.2. Under the guideline for career offenders, Hale's enhanced offense level was 37 because he faced a maximum sentence of life in prison. *See id.* § 4B1.1(b)(1); § 841(b)(1)(A). Three levels were subtracted for acceptance of responsibility, U.S.S.G. § 3E1.1, for a total offense level of 34. As a career offender, Hale was in criminal-history category VI regardless of his criminal-history points. *Id.* § 4B1.1(b). Thus, the Guidelines range was 262 to 327 months in prison. Neither party objected to the PSR. Had the career-offender guideline not applied, Hale's offense level would have been 27, his criminal-history category IV, and his sentencing range 100 to 125 months in prison. *Id.* Ch. 5, Pt. A (Sentencing Table).

The parties then filed sentencing memoranda. Hale asked the judge for "the minimally sufficient sentence that achieves the statutory purpose of sentencing as required by 18 U.S.C. § 3553(a)." He then focused on his history and characteristics: During his childhood, drugs and violence had been common, his family had been homeless occasionally, and he began using drugs as a child. Hale also emphasized that he had held down a lawful job from 2018 until 2020 and had accepted responsibility for his crimes. He did not discuss any statistics about sentences for career offenders or ask

for a sentence that reflected the national average. The government sought a 262-month sentence, the bottom of the Guidelines range.

At the sentencing hearing, the judge granted the government's motion for the extra one-level reduction for acceptance of responsibility and then adopted the undisputed PSR, including the applicable Guidelines range. § 3E1.1(b). The parties then offered arguments, with Hale highlighting the same ones from his memorandum. Again, he did not point to any information about the average sentences for career offenders or refer to that metric as an appropriate anchor for the sentence. The judge then sentenced Hale below the Guidelines range to 240 months in prison. She explained that the mitigating factors included Hale's difficult upbringing, work history, and acceptance of responsibility. But in aggravation, the judge noted, Hale had a "significant" criminal history of drug and violent crimes, this conviction was his third for drug dealing, his prior sentences had not deterred him, and the judge had a duty to protect the public from further crimes by Hale. Finally, the judge asked whether she had addressed Hale's principal arguments in mitigation, and Hale's lawyer replied in the affirmative.

II. Discussion

Hale contends that (1) the judge procedurally erred because she did not discuss the need to avoid unwarranted sentencing disparities, *see* 18 U.S.C. § 3553(a)(6), even though Hale's sentence is longer than the average one for career offenders; and (2) the sentence is substantively unreasonable because of the difference between Hale's sentence and the career-offender average. We review *de novo* whether the judge procedurally erred, and we review the reasonableness of the sentence for an abuse of discretion. *United States v. Oregon*, 58 F.4th 298, 301 (7th Cir. 2023).

A. Procedural Error

Hale argues that the judge procedurally erred at sentencing because she failed to discuss "the need to avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct." § 3553(a)(6). That omission prejudiced him, Hale says, because data from the United States Sentencing Commission show that his sentence is much longer than the national average for all career offenders (140 to 144 months between 2017 and 2021), career offenders with a record of drug and violent crimes (145 months in 2017), and career offenders with a record of only violent crimes (179 months in 2017).

The parties dispute whether Hale preserved this argument for appeal. We reject Hale's contention that simply asking for a sentence consistent with the § 3553(a) factors preserved his specific contentions on appeal that the judge needed to consider sentencing disparities and national sentencing data. Indeed, he arguably waived the issue by affirming that the judge had satisfactorily addressed his mitigation arguments. *See United States v. Perez*, 21 F.4th 490, 494 (7th Cir. 2021), *cert. denied*, 143 S. Ct. 257 (2022). But we need not decide whether Hale waived the argument because even if he merely forfeited it, he cannot demonstrate plain error on appeal. To do so, he must show that the judge made an error that is obvious at the time of appellate review, that affected Hale's substantial rights, and that seriously affects the fairness, integrity, or public reputation of judicial proceedings. *See Henderson v. United States*, 568 U.S. 266, 272–73 (2013). Hale has not met this steep standard for three reasons.

First, although sentencing judges must consider § 3553(a), they need not treat the factors in checklist fashion. *United States v. Barr*, 960 F.3d 906, 914 (7th Cir. 2020). A statement explaining why the sentence is appropriate under § 3553(a) for that defendant is enough. *Id.*; *United States v. Dean*, 414 F.3d 725, 729 (7th Cir. 2005). Here the judge sufficiently explained why the sentence was appropriate for Hale, citing multiple § 3553(a) factors: Hale's history and characteristics (including his "difficult upbringing," recent legal employment, and significant criminal record that included "multiple crimes of violence"); the need to deter Hale from committing future crimes given that shorter sentences had failed to do so; and the need "to protect the public from further crimes of the defendant." *See* § 3553(a)(1), (a)(2)(B)–(C).

Second, sentencing judges must discuss only the arguments that the defense develops and factually supports. *United States v. Lee*, 897 F.3d 870, 872 (7th Cir. 2018). The judge did not need to comment on sentencing disparities in this case because Hale did not mention them, much less offer a developed argument. *See id.* at 873 (rejecting the argument that the judge procedurally erred by failing to discuss disparities where the defendant did not raise them). Asking the judge to impose the minimum sufficient sentence under § 3553(a)—which includes § 3553(a)(6)—does not amount to a developed argument in mitigation, and the judge had no obligation to develop the argument for Hale. *See United States v. Sineneng-Smith*, 140 S. Ct. 1575, 1579 (2020).

Third and finally, judges necessarily consider sentencing disparities and need not expound on § 3553(a)(6) when they correctly calculate and review the Guidelines range. *United States v. Sanchez*, 989 F.3d 523, 540 (7th Cir. 2021) (citing *Gall v. United States*, 552 U.S. 38, 54 (2007)). The judge adopted the PSR's correct, undisputed Guidelines

range, and she treated it as the starting point for the sentence. She thus necessarily accounted for potential disparities and did not need to discuss that factor further. To support his argument to the contrary, Hale cites *United States v. Lockwood*, 789 F.3d 773 (7th Cir. 2015), and *United States v. Bartlett*, 567 F.3d 901, 908 (7th Cir. 2009). But these decisions are inapposite. *Lockwood* states that a judge imposing an *above*-range sentence must justify the size of the variance, and Hale's sentence was below the range. 789 F.3d at 782. And *Bartlett* merely states that a sentence within the Guidelines range necessarily accounts for § 3553(a)(6). 567 F.3d at 908.

B. Reasonableness of the Sentence

In a one-page argument, Hale contends that his sentence is substantively unreasonable because, on average, other career offenders received shorter sentences between 2017 and 2021. We review the sentence for an abuse of discretion and presume that a below-Guidelines sentence is reasonable. *Oregon*, 58 F.4th at 301–02. To rebut the presumption, Hale must show that the sentence contravenes the § 3553(a) factors. His cursory argument makes no effort to do so. Moreover, we have never concluded that a below-range sentence was unreasonably high. *Id.* at 302.

Nor will we do so here. Hale maintains that his sentence is unreasonable solely because it is higher than the average sentence for career offenders nationwide. But we have already rejected similar statistical challenges on the ground that a below-Guidelines sentence like Hale's cannot create an unwarranted disparity. *Id.* at 304; *United States v. Nania*, 724 F.3d 824, 840–41 (7th Cir. 2013). Moreover, Hale has not shown that his sentence creates an *unwarranted* disparity. Focusing on sentence length alone, as Hale does, ignores the factual differences among defendants that can justify differing sentences. *See Oregon*, 58 F.4th at 305. Indeed, the judge here cited multiple such facts: Hale's lengthy criminal record included violent crimes, this conviction was his third for dealing drugs, previous shorter sentences had not deterred him from recidivating, and the public needed protection from him.

AFFIRMED