

NONPRECEDENTIAL DISPOSITION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 November 15, 2023

Decided December 19, 2023

Before

DIANE S. SYKES, *Chief Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 23-1203

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

LAWRENCE M. W. LUSK,
Defendant-Appellant.

Appeal from the United States District
Court for the Northern District of
Indiana, South Bend Division.

No. 3:21-CR-100 DRL

Damon R. Leichty,
Judge.

ORDER

Lawrence Lusk pleaded guilty to possessing a firearm with a prior felony conviction. He received a sentence of 46 months' imprisonment—a term above the applicable range under the Sentencing Guidelines. On appeal, Lusk argues that his sentence is the product of procedural error and is substantively unreasonable. Because the district court relied on appropriate considerations and adequately explained the sentence in relation to the applicable sentencing factors, we affirm.

Background

Lusk brought a loaded firearm, concealed in a bag, to the factory where he worked in South Bend, Indiana. He placed the bag in the trash can at his workstation. His supervisor learned of the firearm and called the police. Before arriving, the officers confirmed that Lusk did not have a gun permit and that he had previously been convicted of a felony. After finding the weapon, officers arrested Lusk and found small amounts of marijuana and cocaine on his person. Lusk later pleaded guilty, without a plea agreement, to one count of possession of a firearm as a felon. 18 U.S.C. § 922(g)(1).

In the presentence investigation report (PSR), the probation officer calculated a total offense level of 12: a base offense level of 14 minus two levels for acceptance of responsibility. U.S.S.G. § 3E1.1(a). Lusk's criminal history category was VI based on his multiple previous firearm and drug convictions. The offense level and criminal history category yielded a guidelines range of 30 to 37 months' imprisonment.

Both parties also filed sentencing memoranda. Lusk argued for a below-guidelines sentence of 27 months because of mitigating factors: He suffered from post-traumatic stress disorder from two previous gunshot injuries, but he had successfully completed his GED, obtained employment, and was in a steady long-term relationship. Further, he did not use the firearm or threaten anyone during the offense of conviction, and he accepted responsibility. The government asked for an above-guidelines sentence of 51 months, highlighting Lusk's criminal history and high likelihood of reoffending. The government argued that a prior 34-month sentence for the same offense had "done little to correct his conduct."

At the sentencing hearing, the district court adopted the PSR without objection. After hearing argument and discussing the factors under 18 U.S.C. § 3553(a), the court sentenced Lusk to 46 months' imprisonment. The court explained that the guidelines range was too low for Lusk's conduct. It noted the inherent risks of bringing a loaded firearm into a workplace and the dangerous pairing of drugs and firearms. The court further emphasized the number of Lusk's previous convictions, which included multiple firearm offenses.

During its remarks, the court explained that Lusk's conduct was more dangerous than many other situations of firearm possession. The court cited, unprompted, statistics from the Department of Labor about violence in the workplace. It also referred to the United States Sentencing Commission's data on the recidivism rates of firearm offenders, and pointed out that Lusk was already ahead of the average. After the

hearing, the court issued a sentencing memorandum memorializing its explanation of the sentence and its consideration of the § 3553(a) factors.

Analysis

Lusk contends that the district court procedurally erred by considering, or giving undue weight to, certain factors. He also argues that the court imposed a substantively unreasonable sentence. In particular, Lusk claims the court (1) failed to account for the lack of harm Lusk caused; (2) improperly considered data on workplace violence and recidivism rates for firearm offenders; (3) overemphasized Lusk's criminal history, and (4) improperly cited the presence of drugs as an aggravating factor.

Lusk casts most of his challenges as procedural, but the government submits, and we agree, that most of them are substantive. Charitably reading his arguments, part of the second argument listed above could be considered procedural: that the court erroneously based the sentence on statistics about workplace violence, which were outside the record. Lusk does not rely on the line of cases holding that it is procedural error to rely on inaccurate information in selecting a prison sentence. *See, e.g., United States v. Tucker*, 404 U.S. 443, 447 (1972); *United States v. Pennington*, 908 F.3d 234, 239 (7th Cir. 2018). And Lusk's repeated references to the consideration of "extraneous" information seem to invoke a procedural error. We review matters of sentencing procedure de novo. *United States v. Morgan*, 987 F.3d 627, 632 (7th Cir. 2021).

Lusk maintains that the district court should not have considered national statistics on workplace violence because no such violence occurred here and because this court's precedent allows courts to contextualize a defendant's offenses with only local, not national, data. *See United States v. Saldana-Gonzalez*, 70 F.4th 981, 984 (7th Cir. 2023). To Lusk, the court's mention of these statistics "casts doubt on the validity" of the sentence. *See United States v. Figueroa*, 622 F.3d 739, 741 (7th Cir. 2010).

But the court did not err by mentioning workplace-violence statistics, even though Lusk did not commit any violence with the gun. By citing the statistics, the court simply illustrated the seriousness of Lusk's possession compared to other possible cases, such as possessing a gun within the home or hunting with a firearm. Lusk brought a gun to work—in violation of his employer's rules and of federal law, as the government emphasizes—and the court took care to mention that there was no evidence that Lusk intended to use the gun for violence. Bringing a loaded firearm into a heavily populated place, the court said, nevertheless presented potential danger. While this point could have been made without citing statistics, it stands to reason that

an unsecured gun in a workplace setting presents risks, and Lusk offered no benign purpose for his actions. This type of inference is permissible. *See United States v. Ramirez*, 783 F.3d 687, 689 (7th Cir. 2015).

For the same reasons, using national statistics instead of local data on workplace violence was permissible here. True, if a district court is situating a defendant's actions among statistical trends, it is better to focus on local rather than national data so as not to blame a defendant for social issues only tangentially related to the defendant's conduct. *United States v. Hendrix*, 74 F.4th 859, 869 (7th Cir. 2023). But the court was not saying that Lusk's offense contributed to a national trend. Nor was the court blaming Lusk for any social issues. The court mentioned the statistics to explain the dangerous nature of Lusk's conduct. Regardless, use of extraneous data is an error only in support of an irrelevant or inflammatory point, such as during a tirade about social ills unrelated to the defendant. *See Saldana-Gonzalez*, 70 F.4th at 985–86 (collecting cases); *United States v. Hatch*, 909 F.3d 872, 875 (7th Cir. 2018). Here, the court's citation data was only a footnote to its analysis. And Lusk has not argued, nor cited evidence to show, that the data were inaccurate or unreliable. *See Hendrix*, 74 F.4th at 870. Therefore, he has not demonstrated any procedural error.

Despite Lusk's characterizations, the rest of his arguments go to the substantive reasonableness of the sentence. Lusk contends that the court failed to adequately explain the sentence and the degree of the deviation from the guidelines range. These would be procedural errors under *Gall v. United States*, 552 U.S. 38, 51 (2007), because courts must provide enough reasoning to allow for meaningful appellate review, and greater deviations from the guidelines require more thorough justifications. *E.g., Hendrix*, 74 F.4th at 867; *Morgan*, 987 F.3d at 632. But behind Lusk's procedural label are arguments that the court inappropriately considered or gave undue weight to specific factors: the location of the offense, the involvement of drugs, his criminal history, and statistics about firearm-recidivism rates. What a court considered, and how a court weighed various factors, goes to the substantive reasonableness of the sentence, which we review for an abuse of discretion. *See United States v. Jerry*, 55 F.4th 1124, 1130–33 (7th Cir. 2022).

To Lusk, the district court unjustifiably determined that bringing the gun to work posed "extra risks" that the guidelines do not account for. But the location is part of the "nature and circumstances of the offense," 18 U.S.C. § 3553(a)(1); *see United States v. Mikulski*, 35 F.4th 1074, 1076 (7th Cir. 2022), and how a defendant possesses a firearm affects "the gravity of the offense." *United States v. Hill*, 563 F.3d 572, 579 (7th Cir. 2009);

see id. (collecting cases). The court drew a reasonable inference that it was more dangerous to bring a loaded gun into the factory and hide it than it would be to possess a gun in a more secure or private location.

Lusk also contends that the district court gave disproportionate weight to his criminal record, which the criminal history calculation already accounts for. But district courts may consider the “regularity and quality” of defendant’s criminal record separately from the Guidelines calculation (which looks only at the number of convictions). *United States v. Settles*, 43 F.4th 801, 807 (7th Cir. 2022). They may also consider recidivism risks and specific deterrence. 18 U.S.C. § 3553(a)(2)(B), (C); *Hatch*, 909 F.3d at 876. The court here justifiably found Lusk’s prior criminal record to be significant. His criminal history spanned 22 years and 7 felonies, and he easily fit within the highest criminal history category of VI. Lusk had repeatedly committed firearm-related offenses and served time for them, but he still recidivated. The court said it would not “work backwards” by imposing a lower sentence than Lusk had received for similar past offenses.

Lusk says further that the district court placed undue weight on the drugs Lusk possessed when he brought the firearm to work. Courts have recognized that the combination of weapons and drugs can increase the risk of danger. *See United States v. Long*, 79 F.4th 882 (7th Cir. 2023) (carrying a loaded handgun while possessing cocaine is a “very serious offense”); *United States v. Banks*, 764 F.3d 686, 690 (7th Cir. 2014) (defendant’s “continued involvement with guns and drugs” was “troubling”); *see generally United States v. Yancey*, 621 F.3d 681 (7th Cir. 2010). The court noted that Lusk’s last federal offense before this one also involved the “dangerous marriage” of drugs and firearms, and courts can consider the similarity of the current offense to prior ones during sentencing. *See United States v. Mansfield*, 21 F.4th 946, 956–59 (7th Cir. 2021).

Finally, Lusk asserts that the district court inappropriately relied on the recidivism rates of people convicted of firearms offenses, which say nothing about Lusk’s own risk of offending again. But the court specifically tied the statistics to Lusk’s risk of recidivism: It noted that Lusk, having previously committed numerous firearm-related offenses, already had exceeded the high recidivism rate for firearm offenders. Lusk’s “specific recidivism with firearms” required deterrence, the court explained, and a higher sentence would also protect the community. These are valid sentencing considerations. *See* 18 U.S.C. § 3553(a)(2)(b)–(c); *Hatch*, 909 F.3d at 876.

Lusk received a substantively reasonable sentence free from procedural error. Accordingly, we AFFIRM in all respects.