

**NONPRECEDENTIAL DISPOSITION**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 March 5, 2024  
Decided March 28, 2024

**Before**

DIANE S. SYKES, *Chief Judge*

JOHN Z. LEE, *Circuit Judge*

JOSHUA P. KOLAR, *Circuit Judge*

No. 23-2445

UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*

*v.*

CARLOS ESCOBAR ALZAMORA,  
*Defendant-Appellant.*

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

No. 3:22-CR-50043(1)

Phillip G. Reinhard,  
*Judge.*

**ORDER**

Carlos Escobar Alzamora pleaded guilty to possessing a machine gun. He was sentenced to 84 months in prison, 13 months above the advisory range under the Sentencing Guidelines. He challenges his sentence, arguing that the district judge committed a “double counting” error by relying on the same offense conduct to support a Guidelines enhancement and an above-Guidelines sentence. He also challenges the sentence as substantively unreasonable. We affirm.

## I. Background

In March 2022 Winnebago County sheriff's deputies stopped Escobar for traffic violations in Rockford, Illinois. (At his plea hearing, Escobar stated that he prefers to be referred to by his first surname.) During the traffic stop, the officers smelled marijuana and asked Escobar to step out of his car. As Escobar complied, the officers noticed that he kept his right hand on his right hip. Escobar immediately took off running, continuing to grip his right waistband as he ran. The officers pursued him on foot and saw him reach his right hand into his waistband multiple times. As Escobar turned a corner, the officers heard a gunshot. Escobar briefly fell to the ground, then discarded a gun and an extended magazine as he resumed his flight through a parking lot. The officers soon caught up with him. After subduing and arresting him, the officers noted a hole in his right front pants pocket consistent with a bullet hole.

The officers then returned to the parking lot and found a loaded pistol and an extended magazine with 21 rounds of ammunition. The firearm was an unserialized and privately manufactured "ghost gun," modified with a "Glock switch" to be fully automatic.

Escobar was charged with possessing a machine gun, 18 U.S.C. § 922(o), and possessing ammunition as a felon, *id.* § 922(g)(1). He pleaded guilty to the machine-gun charge pursuant to a written plea agreement in which he acknowledged that he fired his gun during the foot chase. He also agreed that the discharge of the firearm justified a two-level increase in his offense level under the Guidelines for creating a substantial risk of death or bodily injury. *See* U.S.S.G. § 3C1.2.

To calculate the advisory sentencing range, the probation office started with a base offense level of 20 because Escobar possessed a machine gun and extended magazine, *see id.* § 2K2.1(a)(4)(B), then added the agreed-upon two-level enhancement for creating a substantial risk of death or bodily injury. After applying a three-level reduction for timely acceptance of responsibility, *see id.* § 3E1(a)–(b), the presentence report ("PSR") arrived at a total offense level of 19. That level, together with Escobar's criminal history category of V, produced an advisory Guidelines range of 57–71 months in prison. *See id.* § 5A.

Both parties submitted sentencing memoranda, but neither objected to the PSR's Guidelines calculations. The government urged a sentence at the top of the Guidelines range because of Escobar's long criminal history, the dangerousness of the firearm he

possessed, and the lack of any deterrent effect from prior terms of probation and parole. Escobar requested a below-Guidelines sentence based on his desire to be with his family and the impact his absence would have on his children, along with his acceptance of responsibility. After receiving the parties' sentencing memoranda, the judge issued a minute order stating: "The attorneys are to be prepared to discuss at the sentencing hearing a sentence of imprisonment above the guideline range determination."

At the sentencing hearing, the judge adopted the PSR in full after confirming that neither side objected to it. Both the government and Escobar largely reiterated the arguments from their sentencing memoranda, with the government continuing to request a 71-month (top-of-range) sentence and Escobar now asking for a sentence within "the low part of the guidelines." Escobar spoke on his own behalf, detailing the effect of his actions on his family and emphasizing his desire to turn over a new leaf for the sake of his children. He also spoke about the rehabilitative services he hoped to use while in prison and expressed his understanding of and responsibility for his actions.

The judge imposed an above-Guidelines sentence of 84 months in prison. He gave a detailed analysis of the sentencing factors in 18 U.S.C. § 3553(a), beginning with the dangerous nature and circumstances of the crime: Not only had Escobar fired his gun during a police chase, but the gun had been modified to fire continually with an extended clip, rendering it effectively a machine gun. Rapid refiring was prevented only when the gun jammed after the first discharge. The judge also reasoned that the Guidelines range did not account for Escobar's possession of both an extended magazine *and* a machine gun because possessing either one alone would have resulted in the same base offense level of 20.

The judge considered Escobar's criminal history—namely, that he had been convicted of other crimes in the past and had received relatively lenient sentences and then continued to offend, often while on probation. Finally, the judge discussed Escobar's desire to stay with his children, his remorse, and the courses he had completed while in custody awaiting trial. The judge concluded that the § 3553(a) factors, especially the mandate to protect the public and the pressing need for specific deterrence, justified an above-Guidelines sentence and could "easily" support a sentence as high as the ten-year statutory maximum. After imposing sentence, the judge granted the government's motion to dismiss the § 922(g)(1) count of possessing ammunition as a felon.

## II. Discussion

On appeal Escobar argues that the judge committed procedural error by imposing what he calls a “double enhancement” by using Escobar’s armed flight from police to increase the offense level under the Guidelines and as an aggravating factor in the § 3553(a) analysis. He also contends that the sentence is substantively unreasonable. We review the former argument *de novo* and the latter for an abuse of discretion. *United States v. Wood*, 31 F.4th 593, 597, 600 (7th Cir. 2022).

There was no procedural error. First, the Guidelines do not prescribe a general rule against “double counting.” The same conduct can support the application of more than one Guidelines provision unless specific language in a guideline prohibits it. *United States v. Tinsley*, 62 F.4th 376, 390 (7th Cir. 2023); *United States v. Prado*, 41 F.4th 951, 954 (7th Cir. 2022) (explaining that a double enhancement based on the same conduct is forbidden only when the Guidelines text says so). Moreover, what the judge did here is not “double counting” as that term is understood in the context of calculating a Guidelines sentencing range. Rather, the judge increased Escobar’s offense level under § 3C1.2 because his discharge of the gun created a substantial risk of death or bodily harm while fleeing police. The judge then considered that conduct as part of his § 3553(a) analysis of the nature and seriousness of Escobar’s offense. Judges may—indeed must—evaluate the defendant’s offense conduct when weighing the § 3553(a) factors; they are not disabled from doing so when a specific aspect of the offense conduct played a role in calculating the Guidelines range. *United States v. Gonzalez*, 3 F.4th 963, 967 (7th Cir. 2021). And here the judge considered a variety of other factors to justify the above-Guidelines sentence even in the absence of the contested factor. *See id.* Though he was not required to state why the Guidelines did not sufficiently account for the aggravating conduct, *see id.*, the judge in fact explained that the base offense level did not adequately account for the seriousness of an offense that involved possession of both an extended ammunition clip and a Glock switch.

The judge’s ample explanation for the above-Guidelines sentence also dooms Escobar’s argument that the sentence is substantively unreasonable. A judge must specifically explain an above-Guidelines sentence, but there is no presumption of unreasonableness for such a sentence. *Wood*, 31 F.4th at 600. And the judge extensively explained the sentence by reference to the § 3553(a) factors and the specifics of Escobar’s crime, criminal history, and personal characteristics. In addition to the concern that the base offense level understated the seriousness of the offense conduct, the judge discussed the highly dangerous nature of Escobar’s conduct and the need for the

sentence to reflect the seriousness of the offense, Escobar's extensive criminal history, and the need for specific deterrence. § 3553(a)(1), (2)(A)–(B). That explanation is sufficient to justify an above-Guidelines sentence. See *United States v. Hendrix*, 74 F.4th 859, 871–72 (7th Cir. 2023); *United States v. Fogle*, 825 F.3d 354, 359 (7th Cir. 2016).

Escobar offers no specific argument to the contrary. Instead he asks us to evaluate his 84-month sentence in light of his remorse, acceptance of responsibility, and attempt to better himself through classes. But that is not our role. The judge discussed all those factors and more; we will not reweigh the § 3553(a) factors. See *United States v. Arroyo*, 75 F.4th 705, 709 (7th Cir. 2023); *Fogle*, 825 F.3d at 359.

AFFIRMED