

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 19-4759

UNITED STATES OF AMERICA

Plaintiff - Appellee,

v.

CHRISTIAN DEAN CATARINO, a/k/a Christian Dean Serran Catarino, a/k/a Dean Serran Catarino, a/k/a Christian Dean-Serr Catarino, a/k/a Christian Dean Serr Catarino, a/k/a Christian Dean-Serrano Catarino,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Frank D. Whitney, Chief District Judge. (3:13-cr-00012-FDW-1)

Submitted: April 22, 2020

Decided: May 19, 2020

Before NIEMEYER, WYNN, and RICHARDSON, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Sandra Barrett, Hendersonville, North Carolina, for Appellant. R. Andrew Murray, United States Attorney, Anthony J. Enright, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Charlotte, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Christian Dean Catarino appeals from his 9-month sentence imposed pursuant to the revocation of his supervised release. On appeal, Catarino contends that his sentence is both procedurally and substantively plainly unreasonable. We affirm.

“A district court has broad discretion when imposing a sentence upon revocation of supervised release.” *United States v. Webb*, 738 F.3d 638, 640 (4th Cir. 2013). We “will affirm a revocation sentence if it is within the statutory maximum and is not plainly unreasonable.” *United States v. Slappy*, 872 F.3d 202, 207 (4th Cir. 2017) (internal quotation marks omitted). “To consider whether a revocation sentence is plainly unreasonable, we first must determine whether the sentence is . . . unreasonable.” *Id.* Only if the sentence is procedurally or substantively unreasonable must we determine whether it is plainly so. *Id.* at 208.

A revocation sentence is procedurally reasonable when the district court considers the Chapter Seven policy statements and applicable 18 U.S.C. § 3553(a) (2018) factors and adequately explains the sentence imposed. *Slappy*, 872 F.3d at 207; *see* 18 U.S.C. § 3583(d) (2018) (listing relevant factors). A revocation sentence is substantively reasonable if the court states a proper basis for concluding that the defendant should receive the sentence imposed, up to the statutory maximum. *Slappy*, 872 F.3d at 207. “A sentence within the policy statement range is presumed reasonable.” *United States v. Padgett*, 788 F.3d 370, 373 (4th Cir. 2015) (internal quotation marks omitted).

Catarino asserts first that his sentence is procedurally unreasonable because the district court did not adequately consider his arguments for a lower sentence. “[A] district

court, when imposing a revocation sentence, must address the parties' nonfrivolous arguments in favor of a particular sentence, and if the court rejects those arguments, it must explain why in a detailed-enough manner that this Court can meaningfully consider the procedural reasonableness of the revocation sentence imposed." *Slappy*, 872 F.3d at 208. An explanation is sufficient if we can determine "that the sentencing court considered the applicable sentencing factors with regard to the particular defendant before it and also considered any potentially meritorious arguments raised by the parties with regard to sentencing." *United States v. Gibbs*, 897 F.3d 199, 204 (4th Cir. 2018) (brackets and internal quotation marks omitted). When determining whether there has been an adequate explanation, we do not evaluate the district court's sentencing statements in a "vacuum" but also consider "[t]he context surrounding a district court's explanation." *United States v. Montes-Pineda*, 445 F.3d 375, 381 (4th Cir. 2006). The district court need not be as detailed or specific in its explanation as it must be when imposing a post-conviction sentence. *Slappy*, 872 F.3d at 208.

Here, the district court noted that Catarino had done some "positive things" in the past couple of years, and the court was "impressed." However, the court found these circumstances outweighed by Catarino lying to the probation officer, purchasing a device to mask his drug use, and abusing various drugs. Although the court spoke in generalities about "things" Catarino had accomplished, it appears that the court considered Catarino's efforts to get a truck driving license and job, his ability to obtain a mortgage, his business development, and the fact that he was taking care of his family. These were the circumstances Catarino's counsel described that occurred since Catarino was released.

However, the court admittedly did not explicitly address these facts, and further, the court did not explicitly consider that Catarino was already punished for some of the same violations of supervised release by earlier modifications of his release conditions. Nonetheless, the district court made clear that Catarino's mitigating circumstances were outweighed by his lies to his probation officer and his drug abuse. Further, the district court rejected the Government's request for a 12-month sentence, clearly finding that, despite Catarino's troubling breaches of trust, there were mitigating circumstances, as well.

In any event, any error was harmless because the district court's explicit consideration of Catarino's arguments would not have affected the sentence imposed. *See United States v. Boulware*, 604 F.3d 832, 838 (4th Cir. 2010). While Catarino's supervised release was previously modified based upon his drug use on supervision, his prior punishment was minimal. Moreover, this prior punishment actually cuts against Catarino's argument because, despite being given opportunities to improve, Catarino continued to abuse drugs. Further, Catarino was not previously punished for violations involving use of the urinalysis device and lying to his probation officer, violations about which the district court was appropriately troubled. Given the entire context of the court's explanation, Catarino has failed to show that his sentence was procedurally unreasonable, much less plainly so. *See Slappy*, 872 F.3d at 208 (noting that sentence is plainly unreasonable if the error is clear and obvious).

Turning to Catarino's argument regarding the substantive reasons for his sentence, Catarino asserts that revoking his supervised release in order to deter further drug abuse was tantamount to revoking supervision solely to promote respect for the law, an

impermissible factor. Similarly, Catarino argues that revoking supervised release for a “breach of trust” is essentially revoking supervision to promote respect for the law and to recognize the seriousness of the offense, both impermissible factors.

In fashioning an appropriate sentence, “the court should sanction primarily the defendant’s breach of trust, while taking into account, to a limited degree, the seriousness of the underlying violation and the criminal history of the violator.” U.S. Sentencing Guidelines Manual ch. 7, pt. A, intro. cmt. 3(b), p.s. The district court must also consider the § 3553 factors, but it may not rely “predominantly” on the § 3553(a)(2)(A) factors (reflect seriousness of the underlying offense, promote respect for the law, and provide just punishment) in selecting a revocation sentence. *See Webb*, 738 F.3d at 641-42. However, “mere reference to such considerations does not render a revocation sentence procedurally unreasonable when those factors are relevant to, and considered in conjunction with, the enumerated § 3553(a) factors.” *Id.* at 642.

Here, we find that the district court stated proper reasons for imposing the revocation sentence. The court primarily and appropriately focused on the significance of multiple breaches of trust stemming from Catarino’s lies to the probation officer. The court additionally cited other § 3553(a) factors, such as Catarino’s history and the need to deter him from additional criminal behavior. Contrary to Catarino’s argument, significant breaches of trust and a desire to deter the defendant are appropriate bases for a revocation sentence. Moreover, the revocation sentence did not exceed the statutory maximum and was within the presumptively reasonable range. Accordingly, the sentence was not substantively unreasonable.

As such, we affirm Catarino's sentence. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED