UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-4388

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

LAMAR KEITH GARVIN,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. John A. Gibney, Jr., Senior District Judge. (3:13-cr-00141-JAG-1)

Submitted: May 12, 2022 Decided: May 25, 2022

Before THACKER and QUATTLEBAUM, Circuit Judges, and FLOYD, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

ON BRIEF: Peter L. Goldman, SABOURA, GOLDMAN & COLOMBO, P.C., Alexandria, Virginia, for Appellant. Jessica D. Aber, United States Attorney, Jacqueline R. Bechara, Assistant United States Attorney, Mary Frances Richardson, Special Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Appellee.

PER CURIAM:

In 2014, Lamar Keith Garvin was sentenced to 30 years in prison plus one day after pleading guilty, without a plea agreement, to attempted Hobbs Act robbery (Count 1), in violation of 18 U.S.C. § 1951, and using and carrying a firearm during and in relation to a crime of violence (Count 2), in violation of 18 U.S.C. § 924(c); three counts of substantive Hobbs Act robbery (Counts 3, 5, and 6), in violation of 18 U.S.C. § 1951; brandishing a firearm during and in relation to a crime of violence (Count 4), in violation of 18 U.S.C. § 924(c); and conspiracy to commit Hobbs Act robbery (Count 7), in violation of 18 U.S.C. § 1951. This court affirmed the district court's judgment. *See United States v. Garvin*, 606 F. App'x 701 (4th Cir. 2015) (No. 14-4665).

Garvin then filed a motion under 28 U.S.C. § 2255, alleging that trial counsel was ineffective and that his § 924(c) convictions were invalid in light of *Johnson v. United States*, 576 U.S. 591, 602 (2015) (holding that the residual clause of the Armed Career Criminal Act, 18 U.S.C. § 924(e), is unconstitutionally vague). The district court denied habeas relief and Garvin timely appealed. This court affirmed the district court's habeas order, in part, as to the ineffective assistance of counsel claims on which this court granted a partial certificate of appealability; dismissed, in part, as to the claims on which this court denied a certificate of appealability; and reversed the district court's denial of Garvin's motion to vacate, in part, as to Garvin's challenge to Count 2, vacated the § 924(c) conviction on Count 2, and remanded the matter for resentencing. *United States v. Garvin*, 844 F. App'x 644 (4th Cir. 2021) (No. 19-6617).

On remand, Garvin's Sentencing Guidelines range was recalculated at 87 to 108 months for Counts 1, 3, and 5-7, and 84 months for Count 4, to run consecutively. Garvin filed a motion for a downward variant sentence and the Government filed a motion for an upward variant sentence, both of which were denied by the district court. After adopting the recalculated Guidelines range, the district court resentenced Garvin to 171 months in prison and Garvin has again appealed to this court. On appeal, Garvin asserts that the district court abused its discretion when it denied his motion for a downward variant sentence. According to Garvin, he presented the district court with factors justifying a downward variance and, thus, Garvin argues that the imposed 171-month sentence is disproportionate under the totality of circumstances. Finding no error, we affirm.

We "'review all sentences—whether inside, just outside, or significantly outside the Guidelines range—under a deferential abuse-of-discretion standard.'" *United States v. Torres-Reyes*, 952 F.3d 147, 151 (4th Cir. 2020) (quoting *Gall v. United States*, 552 U.S. 38, 41 (2007)) (alteration omitted). "First, we ensure that the district court committed no significant procedural error, such as failing to calculate (or improperly calculating) the Guidelines range, treating the Guidelines as mandatory, failing to consider the [18 U.S.C.] § 3553(a) factors, selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence—including an explanation for any deviation from the Guidelines range." *United States v. Fowler*, 948 F.3d 663, 668 (4th Cir. 2020) (internal quotation marks omitted)).

"If the sentence is procedurally sound, [we] should then consider the substantive reasonableness of the sentence, taking into account the totality of the circumstances."

United States v. Provance, 944 F.3d 213, 218 (4th Cir. 2019) (internal quotation marks omitted). A sentence must be "sufficient, but not greater than necessary," to accomplish the § 3553(a) sentencing goals. 18 U.S.C. § 3553(a). "That said, district courts have extremely broad discretion when determining the weight to be given each of the § 3553(a) factors." *United States v. Nance*, 957 F.3d 204, 215 (4th Cir.) (internal quotation marks omitted), *cert. denied*, 141 S. Ct. 687 (2020). Moreover, a sentence within a properly calculated Guidelines range is presumptively substantively reasonable. *United States v. Gillespie*, 27 F.4th 934, 945 (4th Cir. 2022). That "presumption can only be rebutted by showing that the sentence is unreasonable when measured against the 18 U.S.C. § 3553(a) factors." *United States v. Gutierrez*, 963 F.3d 320, 344 (4th Cir.), *cert. denied*, 141 S. Ct. 419 (2020).

We discern no procedural sentencing error by the district court. *See Provance*, 944 F.3d at 218. The district court correctly noted that Garvin's Guidelines range for Count 4 was a consecutive 84-month sentence, and that the recommended Guidelines range for the remaining counts was 87 to 108 months in prison. The court also expressly recognized that, other than the statutory mandatory minimum sentence applicable to Count 4, the Guidelines range for the other counts was advisory. The record establishes that the court engaged with the parties at sentencing, thoroughly explained its reasoning for imposing the chosen sentence in light of the § 3553(a) factors, and that it addressed the parties' arguments. And, when it imposed Garvin's supervised release, the district court expressly incorporated and detailed the Guidelines' standard conditions, as well as the three special conditions it later included in the written criminal judgment. *See United States v. Rogers*,

961 F.3d 291, 296-99 (4th Cir. 2020). We therefore conclude that Garvin's sentence is procedurally reasonable.

As Garvin's 171-month sentence is at the bottom of the applicable Guidelines range, which was 171 to 192 months in prison, Garvin's sentence is therefore presumptively reasonable. *See Gillespie*, 27 F.4th at 945. It is thus incumbent upon Garvin to rebut the presumption of reasonableness by showing that the 171-month sentence "is unreasonable when measured against the . . . § 3553(a) factors." *Gutierrez*, 963 F.3d at 344. Garvin has not met this burden.

Indeed, although Garvin challenges the appropriateness of the district court's reliance on the § 3553(a) factors the court discussed at sentencing, Garvin's arguments in support of his assertion that the district court abused its discretion when it imposed the 171-month sentence and denied his motion for a downward variance amount to little more than Garvin's disagreement with the district court's rationale for the imposed sentence. Contrary to the arguments Garvin makes on appeal, the record establishes that the district court thoroughly considered Garvin's arguments in support of a downward variant sentence, but disagreed with them, and—after expressly considering the § 3553(a) factors—provided the parties with a well-reasoned and thorough rationale for the sentence imposed. Because Garvin has failed to rebut the presumption of reasonableness we afford his within-Guidelines sentence, Garvin's sentence shall not be disturbed. *See Gall*, 552 U.S. at 51 (holding that mere disagreement with the sentence imposed "is insufficient to justify reversal of the district court"); *see also United States v. Friend*, 2 F.4th 369, 382 (4th Cir.) (holding that a district court does "not abuse its discretion by placing significant

weight on the seriousness of defendant's offense" and refusing to "reverse a sentence . . ., even if the sentence would not have been the choice of [this c]ourt"), *cert. denied*, 142 S. Ct. 724 (2021).

Accordingly, we affirm the amended criminal judgment. 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