

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

March 30, 2022

Lyle W. Cayce
Clerk

No. 21-30590
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

DONDREA JOSEPH,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 1:20-CR-263-1

Before SMITH, STEWART, and GRAVES, *Circuit Judges.*

PER CURIAM:*

Dondrea Joseph challenges the substantive reasonableness of the 37-month, within-guidelines sentence that was imposed following his guilty plea conviction of receiving a firearm while under indictment, 18 U.S.C. § 922(n). According to Joseph, the district court “failed to give significant weight to

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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Joseph’s personal history and characteristics, and his family situation and gave too much weight to the advisory guideline sentencing range.” In addition, Joseph contends that the district court failed to recognize that the presentence report had already accounted for the facts that the seized weapon had an extended magazine, was fully automatic, and was stolen. Because Joseph argued during sentencing for a sentence below the guidelines range, we review for abuse of discretion. *See Holguin-Hernandez v. United States*, 140 S. Ct. 762, 766-67 (2020).

Nothing in the record reflects that the district court failed to account for a factor that should have received significant weight or that the district court gave “significant weight to an irrelevant or improper factor,” and the sentence does not represent a clear error of judgment in balancing the sentencing factors. *See United States v. Hernandez*, 876 F.3d 161, 166 (5th Cir. 2017). The district court acknowledged Joseph’s arguments and evidence in mitigation, particularly in regard to his family situation, but also expressed concern regarding Joseph’s repeated criminal violations and the serious nature of the instant offense. The district court specifically rejected the Government’s request for an upward departure from the guidelines range, agreeing with Joseph that the presentence report appropriately accounted for the details of the offense.

Joseph has failed to rebut the presumption that his within-guidelines sentence is reasonable. *See Hernandez*, 876 F.3d at 166-67. His arguments amount to a request for us to reweigh the sentencing factors and substitute our judgment for that of the district court, which we will not do. *Id.* at 167. The district court’s judgment is therefore AFFIRMED.