

NONPRECEDENTIAL DISPOSITION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 February 28, 2023

Decided March 2, 2023

Before

FRANK H. EASTERBROOK, *Circuit Judge*

DIANE P. WOOD, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

No. 22-1889

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

RICKY BROOKS,
Defendant-Appellant.

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

No. 17 CR 173-5

John Robert Blakey,
Judge.

ORDER

Ricky Brooks pleaded guilty to conspiring to distribute controlled substances and was sentenced to 140 months' imprisonment. Although this sentence is less than the lower end of the 188-to-235-month range that Brooks concedes was properly calculated under the Sentencing Guidelines, he contends that it is nonetheless unreasonably high.

Brooks principally relies on 18 U.S.C. §3553(a)(6), which says that a district judge must take into account "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct". He compares his situation with that of other defendants charged as part of the same conspiracy

(or charged with substantive crimes related to the conspiracy). He recognizes that the district judge discussed this statutory consideration but disputes the reasons the judge gave for thinking him in need of greater specific deterrence than some of his confederates.

For example, the judge observed that Brooks is the only defendant in this group who has been convicted of murder, while Brooks observes that the crime was committed when he was 15 and insists that it should have been discounted. The judge stressed that Brooks is the only one of the defendants in Criminal History Category VI; he responds that some of his criminal history points rest on convictions for distributing marijuana, which is no longer criminal under Illinois law (but remains criminal under federal law). The judge observed that Brooks amassed a lengthy criminal history even though he has spent all but seven years of his adult life in prison; Brooks replies that this shows that many of his convictions are old. And so on.

These were fair arguments for a sentencing judge, but they have little traction on appeal. Judges are entitled to give different sentences to different offenders who committed different crimes and have different criminal histories. See, e.g., *United States v. Turner*, 604 F.3d 381, 389 (7th Cir. 2010). We do not see any clear factual error or abuse of discretion by the judge, who evinced awareness of Brooks's contentions. Indeed, it is hard to square his position with the observation in *Gall v. United States*, 552 U.S. 38, 54 (2007), that a judge who "calculated and carefully reviewed the Guidelines range ... necessarily gave significant weight and consideration to the need to avoid unwarranted disparities." Brooks observes that the district judge departed from the recommended range and said that he would have imposed the same sentence even had the Guidelines recommended a different range, but this does not evade the point of *Gall* (and the many decisions in this circuit based on its observation). If a sentence of 188 or 210 or 235 months would not have been unreasonably high under §3553(a)(6), it is impossible to see how a sentence of 140 months could be unreasonably high under §3553(a)(6).

AFFIRMED