

In the
United States Court of Appeals
For the Seventh Circuit

No. 22-2000

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JOSE OREGON,

Defendant-Appellant.

Appeal from the United States District Court for the
Northern District of Illinois, Western Division.
No. 19-cr-50020 — **Virginia M. Kendall**, *Judge*.

ARGUED DECEMBER 5, 2022 — DECIDED JANUARY 23, 2023

Before BRENNAN, SCUDDER, and ST. EVE, *Circuit Judges*.

ST. EVE, *Circuit Judge*. Jose Oregon owed the Internal Revenue Service (“IRS”) approximately \$60,000 in back taxes and penalties but could not afford to pay. To raise the money, Oregon agreed to launder \$100,000, which he understood to be the proceeds of illegal drug sales. What Oregon did not know, however, was that the person for whom he was laundering money was an undercover agent with the Federal Bureau of Investigation (“FBI”). Oregon was subsequently indicted and

pled guilty to one count of money laundering. The district court sentenced him to eighteen months in prison—six months below the range calculated under the Sentencing Guidelines.

Oregon timely appealed contending that his sentence was unreasonable because the district court failed to consider relevant mitigating factors, and improperly relied on the need for general deterrence and to avoid sentence disparities. We affirm.

I. Background

Oregon was married in 1997 and had two children from that marriage. In 2011, Oregon and his wife divorced, and his ex-wife retained custody over their children. After his divorce, Oregon failed to file and pay taxes for three years. When he ultimately filed his late tax returns, he mistakenly claimed his two children as dependents. Because of this mistake, Oregon owed the IRS approximately \$60,000 in back taxes and penalties.

A. The Offense

Looking for additional work to help earn money to pay the IRS, Oregon visited some friends who owned a ranch. While there, a ranch hand overheard Oregon asking for work. The ranch hand offered to introduce Oregon to a man who needed help laundering his proceeds from illegal drug sales and told Oregon that he could keep ten percent of everything he laundered. Oregon agreed, not knowing that the man for whom he would launder money was an undercover FBI agent.

Oregon later met with the agent, who gave him \$100,000 to launder. After laundering over \$85,000, Oregon had a

change of heart and stopped. Even after the agent tried to convince him to continue, Oregon refused to launder any more money.

On March 19, 2019, Oregon was indicted on nine counts of laundering money in violation of 18 U.S.C. § 1956(a)(3)(B). On July 12, 2021, Oregon pled guilty to count one of the indictment.

B. Sentencing

At sentencing, the district court found that Oregon had an offense level of seventeen, a criminal history category of I, and a corresponding Guidelines range of twenty-four to thirty months. The government requested a sentence at the low end of the range, and Oregon requested what is effectively a non-custodial sentence—a sentence of one day in prison, followed by a period of supervised release.

In assessing the factors under 18 U.S.C. § 3553(a), the district court considered Oregon's background and characteristics and found that there was no need for specific deterrence because Oregon was unlikely to recidivate. Understanding that the conduct arose out of an undercover operation, the court noted that "Oregon has no criminal history and has continuously been employed and promoted within his line of work. Oregon also only laundered money on one occasion and later denied additional requests to launder money." However, to "deter[] others from committing similar offenses, sanction[] Oregon for his conduct, and promote[] respect for the law," the court sentenced Oregon to eighteen months in prison—six months below the low end of the Guidelines range. The district court refused to impose a non-custodial sentence because, in its opinion, that would result in "too far

of a disparity in sentencing people with this amount of money laundering [and] would not be appropriate as far as sending the message of promoting respect for the law.”

On appeal, Oregon alleges that the district court imposed an unreasonable sentence because it failed to afford sufficient weight to relevant mitigating factors, and instead improperly focused on general deterrence and the need to avoid non-existent sentence disparities.

II. Analysis

We review a district court’s sentencing decision in two steps. “First, we assess *de novo* whether the court followed proper procedures. If the decision below is procedurally sound, then we ask whether the resulting sentence is substantively reasonable. Whether the sentence imposed is inside or outside the Guidelines range, we review the sentence for an abuse of discretion.” *United States v. De La Torre*, 940 F.3d 938, 953 (7th Cir. 2019) (citations omitted).¹

¹ In his briefs, Oregon argues that the district court committed procedural error by failing to consider several mitigating factors. “Failure to consider the § 3553(a) factors or to adequately explain the choice of sentence can amount to procedural error.” *United States v. Warner*, 792 F.3d 847, 856 (7th Cir. 2015) (citing *Gall v. United States*, 552 U.S. 38, 51 (2007)).

Although he states that the court failed to consider these factors, Oregon’s real argument is that the court “gave short shrift to those factors....” A challenge to the district court’s weighing of sentencing factors is a substantive, not procedural, challenge. *See Warner*, 792 F.3d at 856 (alleging the court did not “adequately address [defendant’s] arguments ... goes to the substance of [defendant’s] sentence.”). Indeed, when asked at oral argument if his argument was procedural or substantive, Oregon’s counsel agreed that his argument is substantive. Thus, we evaluate only the substantive reasonableness of Oregon’s sentence.

“[T]here is a nearly irrebuttable presumption that a below-range sentence is reasonable.” *United States v. Miller*, 829 F.3d 519, 527 (7th Cir. 2016). “Indeed, we have never ‘deemed a below-range sentence to be unreasonably high.’” *United States v. Gibson*, 996 F.3d 451, 468 (7th Cir. 2021) (quoting *United States v. Brown*, 932 F.3d 1011, 1019 (7th Cir. 2019)). To prevail on appeal, Oregon must “show[] that the sentence does not comport with the factors outlined in 18 U.S.C. § 3553(a).” *De La Torre*, 940 F.3d at 953 (citations omitted). These factors include:

the nature and circumstances of the offense; the defendant’s history and characteristics; the need for the sentence to reflect the seriousness of the offense, promote respect for the law, provide just punishment, deter crime, [and] protect the public ...; the need to avoid unwarranted sentencing disparities among similar defendants; and the need for victim restitution.

United States v. Daoud, 980 F.3d 581, 591 (7th Cir. 2020) (citing § 3553(a)). When evaluating whether the district court’s sentence was reasonable, we recognize that “[t]he sentencing judge is in a superior position to find facts and judge their import under § 3553(a) in the individual case, because ‘[t]he sentencing judge has access to, and greater familiarity with, the individual case and the individual defendant before him than the Commission or the appeals court.’” *United States v. Reyes-Hernandez*, 624 F.3d 405, 415 (7th Cir. 2010) (quoting *Gall*, 552 U.S. at 51–52). “In general, a disagreement about how much weight to give each § 3553(a) factor does not warrant reversal.” *United States v. Warner*, 792 F.3d 847, 856 (7th Cir. 2015) (citations omitted).

Oregon alleges several reasons why his sentence is unreasonable and the district court should have imposed a lower sentence: (1) there is no need for specific or general deterrence; (2) the court failed to consider that Oregon was unable to provide substantial assistance under U.S.S.G. § 5K1.1; (3) Oregon has several family members who depend on him for support; (4) Oregon voluntarily paid restitution prior to sentencing; and (5) the court improperly relied on the need to avoid sentence disparities without any evidence that sentencing Oregon to a non-custodial sentence would create such disparities among similarly situated defendants. We address each of these issues in turn.

A. General and Specific Deterrence

Oregon argues that there is no need for specific deterrence because he is not likely to recidivate and poses no threat to the public. But the district court expressly recognized this fact: “Oregon demonstrates a very low risk of recidivism. At 44-years old, Oregon has no criminal history and has continuously been employed and promoted within his line of work. Oregon also only laundered money on one occasion and later denied additional requests to launder money.” The court further understood that Oregon was looking for honest work, he had never laundered money before, and that this offense arose from an undercover operation.² Indeed, Oregon’s background and characteristics are the primary reason the district court imposed a below-Guidelines sentence.

² Oregon stops short of alleging misconduct by law enforcement, acknowledging that “[i]t was not entrapment.”

The court noted, however, that general deterrence requires looking beyond the defendant to see how a sentence would impact others considering committing the same offense. The court then found that money laundering was a serious offense because it allows drug dealers to remain in business, and determined that a custodial sentence was “appropriate under the money laundering laws in order to deter others.”

Oregon contends that a custodial sentence was unnecessary to promote general deterrence because “[t]he fact the Government charged [Oregon] ... should have been enough to convince like-minded individuals not to engage in money laundering activity.” Even if we believed that merely charging someone constituted adequate general deterrence (we do not), “[i]t is not our job to reweigh the § 3553(a) factors.” *De La Torre*, 940 F.3d at 954. The district court “was entitled to make that judgment focusing primarily on the seriousness of [Oregon’s] offenses and the need for general deterrence in the larger community.” *United States v. Buncich*, 20 F. 4th 1167, 1177 (7th Cir. 2021). In doing so, the court did not abuse its discretion.

B. Substantial Assistance Under U.S.S.G. § 5K1.1

Oregon next argues that the district court overlooked that he was unable to obtain a downward departure for providing substantial assistance to the government under U.S.S.G. § 5K1.1. Specifically, Oregon told the court that he “made extensive efforts to cooperate,” but the FBI never used him because “he just had never engaged in any illegal conduct” so there was nothing he could do to assist the FBI. While Oregon’s efforts did not amount to substantial assistance warranting a motion by the government for a downward

departure, he did receive credit for acceptance of responsibility. *See* U.S.S.G. § 3E1.1 cmt. n.1(c). Moreover, Oregon benefited from his lack of a criminal history in other ways—e.g., he was placed at criminal history category I with a lower corresponding Guidelines range. Oregon is not entitled to an even lower sentence for being *unable* to qualify for a downward departure under § 5K1.1.

C. Need to Support Dependents

Next, Oregon alleges that the district court ignored the impact a custodial sentence would have on his family. In support, Oregon cites *United States v. Johnson*, 964 F.2d 124, 129 (2d Cir. 1992), where the Second Circuit upheld a downward departure due to a defendant’s role in caring for her children: “The rationale for a downward departure here is not that Johnson’s family circumstances decrease her culpability, but that we are reluctant to wreak extraordinary destruction on dependents who rely solely on the defendant for their upbringing.”

Oregon’s reliance on a pre-*Booker* decision from the Second Circuit—which is not binding on us—is misplaced. Even if it were applicable, *Johnson* only serves to further support our deference to the district court’s determination here. *See id.* at 131 (“[T]he district court departed to a sentence that it considered more appropriate given the anomalous nature of the crime and the court’s concern for the defendant’s children and grandchild. ... [W]e are satisfied that the [court’s] departure was reasonable.”). Being the sole caretaker of dependents does not entitle a defendant to a non-custodial sentence.

Similarly, Oregon’s reliance on *United States v. Warner*, 792 F.3d 847 (7th Cir. 2015), does not warrant a different result. In

Warner, the district court weighed several “unique” factors against the seriousness of the tax offense and decided to impose a non-custodial sentence. *Id.* at 854. On appeal, this Court held that the court did not err in doing so. *Id.* at 863–64. We did not hold, however, that the district court was *required* to impose a non-custodial sentence due to those “unique” factors; we deferred to the district court’s decision. Thus, the reasoning underlying *Warner* supports our deference to the district court’s decision here as well. *See id.* at 860 (“The district court concluded that in Warner’s case a probationary sentence met [the § 3553(a)] standard. That conclusion was reasonable.”); *id.* at 858 (“Though we ourselves might have given [Warner’s character] less weight compared to others, the court did not abuse its discretion.”).

D. Restitution

Oregon also argues that he should be “reward[ed]” for “immediately offer[ing] restitution because that is likely to encourage other putative defendants to do the same.” Not so. Courts can appropriately consider a defendant’s payment of restitution when sentencing, *id.* at 859 (noting district court appropriately considered defendant “promptly pay[ed] ... full restitution”), and the “voluntary payment of restitution prior to adjudication of guilt” is relevant to whether the defendant receives credit for accepting responsibility, U.S.S.G. § 3E1.1 cmt. n.1(c)—which Oregon received—but paying restitution does not require a lower sentence, *see United States v. Corner*, 598 F.3d 411, 416 (7th Cir. 2010) (“No judge is *required* to sentence at variance with a Guideline, but every judge is at liberty to do so.” (emphasis in original)).

E. Avoiding Sentence Disparities

Finally, Oregon alleges that the district court abused its discretion when it relied on “the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct,” 18 U.S.C. § 3553(a)(6), because there is no evidence that sentencing Oregon to a non-custodial sentence would result in disparate sentences. Oregon’s argument fails because “a sentence *below* the applicable Sentencing Guidelines range cannot be an unwarranted disparity.” *United States v. Gonzalez*, 765 F.3d 732, 740 (7th Cir. 2014) (emphasis in original) (citing *United States v. Pape*, 601 F.3d 743, 750 (7th Cir. 2010); *United States v. Nania*, 724 F.3d 824, 840 (7th Cir. 2013)).

Oregon’s “brief discussion of statistics does not convince us otherwise.” *Nania*, 724 F.3d at 841. Oregon cites data from the Sentencing Commission indicating that twenty-five percent of individuals sentenced under U.S.S.G. § 2S1.1 for money laundering with the same offense level and criminal history category as Oregon—and who also did not receive downward departures for assisting law enforcement—received non-custodial sentences. Oregon argues that, in light of this data, granting his request for a non-custodial sentence would be consistent with these similarly situated individuals.

A sentencing judge is free to “reject[] a guideline as lacking a basis in data.” *United States v. Aguilar-Huerta*, 576 F.3d 365, 367–69 (7th Cir. 2009). But a judge is not required to consult data, or conduct an empirical analysis, to confirm that a sentence is in fact consistent with similarly situated defendants. “[T]he Sentencing Guidelines are themselves an anti-disparity formula ... [and] to base a sentence on a properly determined Guidelines range is to give adequate consideration

to the relation between the defendant's sentence and those of other persons." *United States v. Blagojevich*, 854 F.3d 918, 921 (7th Cir. 2017) (citing *Gall*, 552 U.S. at 38); see also *United States v. Brumley*, 217 F.3d 905, 914 (7th Cir. 2000) ("[A] sentencing court should consider unjustified disparities only in those cases where the disparity exists between the defendant's and all other similar sentences imposed nationwide."). Additionally, the Guidelines seek only to prevent *unwarranted* sentence disparities. See 18 U.S.C. § 3553(a)(6). By focusing strictly on numbers, Oregon fails to account for unique factual differences that may warrant a shorter sentence for one offender but not another. "The best way to curtail 'unwarranted' disparities is to follow the Guidelines, which are designed to treat similar offenses and offenders similarly." *United States v. Sanchez*, 989 F.3d 523, 541 (7th Cir. 2021) (citing *United States v. Bartlett*, 567 F.3d 901, 908 (7th Cir. 2009)).

Even were we to consider the data Oregon cites, it shows that Oregon's sentence is consistent with a vast majority of similarly situated defendants. Seventy-five percent of similarly situated offenders received a custodial sentence, and the average sentence for those offenders was fifteen months—only three months shorter than the sentence the district court imposed here. Further, the district court's sentence was imposed to prevent disparities among defendants who laundered the same amount of money as Oregon, but the statistics Oregon cites fails to distinguish offenders based on the amount of money laundered. While sentencing Oregon to a non-custodial sentence may not have been an anomaly, the district court did not abuse its discretion by relying on the Guidelines to prevent unwarranted sentence disparities.

III. Conclusion

In sum, although the factors Oregon identified may weigh in favor of a lower sentence, these were not the only factors relevant to the district court's decision under § 3553(a). The court found that money laundering is a serious offense because it enables the illegal drug trade and imposed a sentence that "deters others from committing similar offenses, sanctions Oregon for his conduct, and promotes respect for the law." The court balanced these considerations with Oregon's mitigating factors and imposed a sentence below the Guidelines range. The district court did not abuse its discretion.

For the foregoing reasons, the district court's sentence is

AFFIRMED.