In the

United States Court of Appeals

For the Seventh Circuit

No. 21-2751

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

FERNELLY LLANOS,

Defendant-Appellant.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.
No. 09 CR 373 — **Ronald A. Guzmán**, *Judge*.

ARGUED NOVEMBER 30, 2022 — DECIDED MARCH 9, 2023

Before WOOD, JACKSON-AKIWUMI, and LEE, *Circuit Judges*.

WOOD, *Circuit Judge*. This case requires us to unravel the complications that ensued as a result of Fernelly Llanos's repeated episodes of heroin dealing. First, in case 07 CR 473 (the 2007 case, before Judge Coar), Llanos was convicted for possessing heroin with intent to distribute it between March and July 2007. While he was serving his sentence in that matter, he was indicted on charges of dealing heroin between 2006 and April 2007, in case 09 CR 373 (the 2009 case, before Judge

Guzmán). He pleaded guilty to those charges and received a sentence concurrent to the one imposed in the 2007 case. Finally, while he was on supervised release for the 2009 case, he again was caught distributing heroin, this time in September 2015. Charges and a guilty plea followed in case 17 CR 509 (the 2017 case, before Judge Wood). Two consequences flowed from the 2017 case: first, Judge Wood sentenced him to 120 months' imprisonment; and second, Judge Guzmán revoked his supervised release for the 2009 case and imposed a new term of 30 months in prison, to be served consecutively to the 120-month term in the 2017 case.

In this appeal, Llanos complains only about the sentence he received when his supervised release in the 2009 case was revoked. Llanos offers several reasons why the revocation sentence was procedurally flawed, but we find none of them persuasive, and thus we affirm the judgment of the district court.

I

As Llanos sees it, the government never should have brought the 2007 and 2009 charges as separate cases, because they involved the same conduct and the same conspiracy. By doing so, in Llanos's view, the prosecutor artificially inflated his criminal history for purposes of future calculations under the U.S. Sentencing Guidelines. But it is too late in the day to revisit either of those earlier convictions or sentences, and so we express no view on the scope of those indictments. They stand as two different convictions, and as a result, Llanos has "two prior felony convictions of … a controlled substance offense," U.S.S.G. § 4B1.1(a), and thus is subject to the "career offender" provisions of the Guidelines.

That designation pushed Llanos's advisory Guidelines range for purposes of the 2017 case up to 262 to 327 months' imprisonment. The statutory mandatory minimum sentence was 120 months' imprisonment, see 21 U.S.C. § 841(b)(1)(B), because of his prior serious drug felony conviction. At his sentencing hearing before Judge Wood, Llanos argued that the career offender enhancement should not apply, because his previous two offenses should be treated as a single offense for sentencing purposes (a variant on his earlier point about the government's charging decisions). Had they been so treated, Llanos's Guidelines range would have been trimmed to 70 to 87 months.

Judge Wood acknowledged Llanos's argument but declined to adopt his interpretation of the Guidelines. Nonetheless, she more than met Llanos halfway. Although she determined that Llanos technically qualified as a "career offender," she opted to exercise her discretion under 18 U.S.C. § 3553(a) to sentence him as if he were not a career offender. She explained, however, that Llanos was still subject to the *statutory* mandatory minimum, which would have been triggered by even a single prior serious drug conviction. See 21 U.S.C. § 841(b)(1)(B). Ultimately, she sentenced Llanos to the mandatory minimum of 120 months' imprisonment.

Because the 2017 drug offense, apart from being a standalone crime, constituted a violation of the terms of Llanos's supervised release imposed in the 2009 case, the government initiated steps to revoke that release in separate proceedings before Judge Guzmán. The policy statements in Chapter 7 of the Guidelines advised a new imprisonment term of 30 to 37 months. At the revocation hearing, Llanos did not dispute the Guidelines calculation. He argued instead that no additional

prison time was appropriate because Judge Wood already had taken into account the fact that Llanos was on supervised release for an earlier conviction when she sentenced him in the 2017 case. He also repeated his belief that the government had wrongfully prosecuted his first two heroin convictions separately and that his latest 120-month sentence was overly harsh. Finally, he asked Judge Guzmán to consider in mitigation the fact that difficult economic circumstances resulting from his parents' terminal illnesses and deaths had contributed to his recidivism.

After reviewing the record from Judge Wood, Judge Guzmán pointed out that Judge Wood had recognized that Llanos was on supervised release when he committed the 2017 heroin offense. Nevertheless, he concluded that Judge Wood had not "specific[ally] tak[en] into account the very fact that the defendant was on the court's supervision, having just committed—just finished another custodial sentence when he committed this offense." He rejected Llanos's justification for his actions, noting that Llanos was "equipped in terms of intelligence and education to find a place in the work place" and "had every reason not to commit such an offense." Judge Guzmán also commented that Llanos had shown "blatant disregard for the law" by reoffending while on supervised release so soon after his release from prison. In the end, he sentenced Llanos to 30 months' imprisonment, the bottom of the advisory Guidelines range, and he ordered that sentence to run consecutively to the one in the 2017 case.

II

Llanos raises two procedural challenges to his 30-month sentence: first, he argues that the district court failed to consider the factors set out in 18 U.S.C. § 3553(a) and the U.S.

Sentencing Commission policy statements; second, he contends that the district court ignored his principal argument in mitigation, which rested on his allegedly overstated criminal history.

We evaluate procedural challenges to criminal sentences *de novo*. *United States v. Ballard*, 12 F.4th 734, 740 (7th Cir. 2021). Absent any procedural error, "[o]ur review of a sentence imposed in a revocation proceeding is highly deferential" and we will affirm unless the sentence is "plainly unreasonable." *United States v. Childs*, 39 F.4th 941, 944 (7th Cir. 2022).

A

Under 18 U.S.C. § 3583(e), a district court imposing a term of imprisonment in a supervised release revocation proceeding must consider a subset of the section 3553(a) factors:

> the nature and circumstances of the offense; the defendant's history and characteristics; the need to deter criminal conduct, protect the public, and provide the defendant with training, medical care, or other correctional treatment; sentencing recommendations and policy statements from the Sentencing Commission; the need to avoid unwarranted sentencing disparities among similar defendants; and the need for victim restitution.

United States v. Dawson, 980 F.3d 1156, 1162–63 (7th Cir. 2020) (citing §§ 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), (a)(7)). Put another way, section 3583(e) directs courts to apply all of the section 3553(a) factors *except* "the need for the sentence imposed [ ] to reflect the seriousness of the offense, to promote respect for the law, and to provide just

punishment for the offense," § 3553(a)(2)(A), and "the kinds of sentences available," § 3553(a)(3). Nonetheless, "district courts *may* consider those factors too, as long as they focus primarily on the factors that § 3583(e) does mention." *Dawson*, 980 F.3d at 1163 (emphasis added).

The district court "need not march through every factor under § 3553(a) in a checklist manner." *United States v. Buncich*, 20 F.4th 1167, 1174 (7th Cir. 2021) (internal quotations omitted). But it must "say *something*" that demonstrates that it considered the statutory criteria in determining the sentence. *Childs*, 39 F.4th at 94.

Although Judge Guzmán did not specifically mention the relevant statutory factors at the revocation hearing, the record shows that as a matter of substance he took adequate account of sections 3583(e) and 3553(a). He discussed Llanos's "history and characteristics," including his educational background and his ability to earn a living lawfully. § 3553(a)(1). He considered the "nature and circumstances of the offense"—though perhaps not in the way Llanos had hoped for—when he rejected Llanos's economic justification for reoffending. § 3553(a)(1). The court pointed out Llanos's "blatant disregard for the law … while on the court's supervision" and the fact that he "simply was not prepared to make the commitment that it takes to forego criminality." See § 3553(a)(2)(B) ("to afford adequate deterrence to criminal conduct"); § 3553(a)(2)(C) ("to protect the public from further crimes of the defendant"). And Llanos's revocation sentence of 30 months' imprisonment sat at the lowest end of the Guidelines range. See § 3553(a)(4)(B) ("in the case of a violation of probation or supervised release, [consider] the applicable guidelines or policy statements").

Our review is facilitated when district courts supply citations to section 3553(a) when explaining their sentencing decisions, but this is not an ironclad requirement. See, *e.g.*, *United States v. Millet*, 510 F.3d 668, 680 (7th Cir. 2007) (finding no procedural error where "it [was] evident that the court considered several of the § 3553(a) factors in arriving at [the defendant's] sentence," even though the court did not list the factors). Because Judge Guzmán's analysis reflects proper consideration of the statutory criteria and there is no evidence that the sentence was driven by other concerns, we find no reversible error.

Similarly, contrary to Llanos's argument, Judge Guzmán was not required to cite chapter and verse of any relevant Sentencing Commission policy statement. Especially when the defendant does not dispute the proposed calculation of the Guidelines range, it is sufficient for the district court to consider applicable policy statements implicitly as it reviews the probation officer's report. See *United States v. Boultinghouse*, 784 F.3d 1163, 1177–78 (7th Cir. 2015). Here, the probation officer's report relied on the Guidelines to provide a recommendation of 30 to 37 months' imprisonment. Judge Guzmán considered this information, to which no one objected, and ultimately sentenced Llanos to the bottom of the recommended range. In sum, we are satisfied that Judge Guzmán properly considered the relevant section 3553(a) factors and policy statements in the Guidelines in giving Llanos a within-Guidelines sentence of 30 months' imprisonment.

B

Next, Llanos argues that the district court erred by failing to consider his principal argument at the sentencing hearing. We have emphasized that a sentencing court should "address

a criminal defendant's 'principal' arguments in mitigation unless such arguments are 'so weak as not to merit discussion.'" *United States v. Sanchez*, 989 F.3d 523, 540 (7th Cir. 2021) (quoting *United States v. Cunningham*, 429 F.3d 673, 679 (7th Cir. 2005)). This does not mean, however, that the court must exhaustively canvas all of a defendant's arguments with "artificial thoroughness." *Id.* "So long as the record gives us confidence that the court meaningfully considered the defendant's mitigation arguments, 'even if implicitly and imprecisely,' that is enough." *United States v. Jones*, 798 F.3d 618 (7th Cir. 2015) (quoting *United States v. Diekemper*, 604 F.3d 345, 355 (7th Cir. 2010)).

On appeal, Llanos says that his principal argument at sentencing was his contention that the 120-month sentence in the 2017 case was the "unfair result" of the government's allegedly improper separate prosecutions of the 2007 and 2009 heroin charges. Judge Guzmán should have compensated for this unfair result, Llanos argues, by declining to impose additional time for the supervised release violation.

But this argument falls flat. The statute, 21 U.S.C. § 841(b)(1)(B), states that the 10-year mandatory minimum is triggered when someone reoffends "after a prior conviction for a serious drug felony." Judge Wood highlighted this at the sentencing hearing. Sensibly enough, Llanos has never suggested that Judge Wood erred in finding that the mandatory minimum applied. To the contrary, he characterized her decision as "extremely reasoned and balanced" during the subsequent revocation hearing. Nor does he argue that the separate-prosecution issue had any effect on the Guidelines recommendation of 30 to 37 months for his supervised release

violation. Thus, it is unclear what more Llanos would have liked Judge Guzmán to say on the issue.

Setting aside his confusing rhetoric about the effect of prior convictions on his most recent sentence, Llanos's principal arguments at the revocation stage boiled down to two points: (1) that Judge Wood already had accounted for the supervised release violation in her sentence for the 2017 offense, and (2) that the 10-year mandatory minimum for the underlying offense was too harsh given his individual circumstances. We cannot see how Judge Guzmán failed to give these arguments their due. He thoroughly considered whether Judge Wood had accounted for the supervised release violation. After reading the hearing transcripts and offering both parties a chance to present their view on the issue, he determined that she had not. He then explained why an additional, within-Guidelines sentence was appropriate in light of Llanos's criminal history and the specific circumstances of the supervised release violation. The fact that Judge Guzmán did not expressly state that he was rejecting Llanos's request for lenience does not amount to procedural error.

III

Because the district court committed no procedural error and Llanos does not challenge the substantive reasonableness of his sentence, we AFFIRM the judgment of the district court.