

NONPRECEDENTIAL DISPOSITION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**

Submitted July 7, 2026*

Decided July 17, 2026

Before

MICHAEL B. BRENNAN, *Chief Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 25-2572

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

TRAVIS L. WITHERS,
Defendant-Appellant.

Appeal from the United States District
Court for the Southern District of
Illinois.

No. 3:25-CR-30021-DWD

David W. Dugan,
Judge.

ORDER

In 2025, Travis Withers pleaded guilty to possessing a firearm as a convicted felon and received a sentence of 96 months' imprisonment, 33 months above the high end of the range advised by the U.S. Sentencing Guidelines. Withers now argues that the district court committed procedural error by failing to justify the above-guidelines sentence. He also contends that his sentence was substantively unreasonable because it was higher than the average firearm offender's sentence. Seeing no errors, we affirm.

* By prior order, we granted the parties' joint motion to waive oral argument.

Factual Background

In 2025, police officers in Brooklyn, Illinois, investigated a call about a suspect who had pulled a firearm on a woman. When the police arrived, the parties involved had left, but the officers recovered a wallet that belonged to Withers. The officers contacted Withers, who admitted not only that he had pulled a gun on the woman, but also that he had taken the gun to his house. The police then executed a search warrant and recovered a handgun from Withers's home.

Procedural History

At the time of this conduct, Withers had numerous prior criminal convictions, including battery, aggravated battery, and assault against a total of 15 different victims, threatening public officials, and possession of a firearm by a felon.

For his conduct in the case at hand, Withers pleaded guilty to possession of a firearm by a felon in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(8). The probation office prepared a Presentence Investigation Report that calculated an advisory guidelines range of 51 to 63 months' imprisonment, based on an offense level of 17 and a criminal history category of VI. At sentencing, neither party objected to the PSR, which the district court adopted.

The government also presented testimony at sentencing. A special agent from the Bureau of Alcohol, Tobacco, Firearms and Explosives testified and described two incidents involving Withers. One was an altercation in February 2020 between Withers and a man outside an apartment, after which the man heard two gunshots and ran inside. Illinois State Police recovered two bullet casings from a 40-caliber Smith & Wesson firearm and concluded that bullets hit the exterior of the apartment. In the second incident, video footage from outside of a convenience store in June 2020 showed Withers firing a gun approximately ten times in the air in the direction of buildings on the other side of the street. From the area outside the store, Illinois State Police recovered ten bullet casings from a 40-caliber Smith & Wesson firearm. The police then conducted an analysis of the casings from the two incidents and found an association between the casings without further specifying the nature of the association. It appears that Withers was not charged for his conduct in either incident. At sentencing Withers complained that he had no notice of this testimony from the ATF agent, though he never objected to any aspect of it.

The district court then heard from the parties. The government argued that 180 months' imprisonment, the statutory maximum, was necessary to protect the public, emphasizing Withers's extensive criminal history. For his part, Withers requested a

sentence within the guidelines range, contending that the offense conduct was comparatively less serious than other federal firearm cases and that the Guidelines had already accounted for his criminal history.

After considering the arguments, the district court turned to the factors enumerated in 18 U.S.C. § 3553(a), focusing primarily on Withers's history and characteristics. The court emphasized Withers's criminal history, observing "a tendency toward recklessness if not violence" that demonstrated a lack of respect for the law. Commenting on the video of the incident outside the convenience store, the court added Withers was "careless about firing or discharging a firearm around other people." All of this suggested that there was a "great need to deter this behavior."

From there the district court acknowledged the need to avoid unwarranted sentencing disparities. But reasoning that Withers's record suggested he was a danger to the public and that the criminal penalties he had previously received had been insufficient to deter him, the court concluded that Withers's case warranted an upward deviation from the advisory range. The court then imposed an above-guidelines sentence of 96 months.

Withers then appealed.

Analysis

Withers first contends that the district court committed procedural error by failing to explain adequately why it imposed a sentence that exceeded the upper limit of the guidelines range by 33 months. He maintains that the offense in this case was less serious than the average gun case, and that the court's reliance on his criminal history does not support such an upward variance.

These contentions fall short, as our law is clear that a district court may impose a sentence above the advisory-guidelines range so long as the court "consider[s] the extent of the deviation and ensure[s] that the justification is sufficiently compelling to support the degree of variance." *United States v. Ballard*, 12 F.4th 734, 740 (7th Cir. 2021) (quoting *United States v. Miller*, 601 F.3d 734, 739 (7th Cir. 2010)). In situations where the court explained its rationale for deviating from the Guidelines by discussing the relevant factors in § 3553(a), we will uphold the sentence. See *United States v. Faulkner*, 885 F.3d 488, 498 (7th Cir. 2018).

That is precisely what transpired here. The district court repeatedly referred to Withers as reckless and articulated his tendency toward violence, as indicated by his lengthy criminal history involving assaults and batteries. The court further explained how it appeared that the punishment Withers had received prior to the instant case had

been inadequate to deter him from continuing to behave recklessly, pointing to the footage of Withers shooting a gun in the air outside the convenience store. Based on this analysis, the court concluded that an above-guidelines sentence of 96 months' imprisonment was sufficient but not greater than necessary to achieve the aims of sentencing under § 3553(a).

Withers further contends that the district court impermissibly underscored his criminal history despite the fact that the advisory range already accounted for his past crimes. "But disagreement as to how a court *weighs* the § 3553(a) factors cannot support a claim of procedural error." *United States v. Hendrix*, 74 F.4th 859, 868 (7th Cir. 2023) (emphasis in original). When considering Withers's crimes that the Guidelines had already accounted for, the court was not barred "from weighing the information differently than the Sentencing Commission." *United States v. Hayden*, 775 F.3d 847, 850 (7th Cir. 2014). And in the course of the sentencing proceeding the court adequately explained its rationale for this above-guidelines sentence.

Withers also asserts that the district court mischaracterized him as "regularly" carrying a firearm and having a "long history" of settling disputes with firearms, amounting to a reliance on clearly erroneous facts. But the court's characterization of Withers's past was not clearly erroneous. In 2021, Withers pleaded guilty to possession of a firearm by a felon. And, as Withers points out, the court also relied on testimony from the ATF agent about the conflict outside the apartment complex that resulted in shots fired and the incident outside the convenience store where surveillance footage showed Withers shooting a gun in the air approximately 10 times, both of which took place in 2020. Regardless, the court's precise word choice in characterizing Withers's background was not material because it was apparent that the court was relying on objective information in Withers's criminal history and the accounts of his past conduct, the veracity of which is not disputed. *Cf. United States v. Miller*, 900 F.3d 509, 512–14 (7th Cir. 2018) (finding procedural error where district court relied on mistaken understanding of defendant's number of prior convictions).

To the extent that Withers argues that the court procedurally erred by relying on uncharged conduct, he is incorrect. When fashioning a sentence, a district court "may consider a defendant's uncharged criminal conduct," *United States v. Mays*, 593 F.3d 603, 609–10 (7th Cir. 2010), and there is no limit on "the information concerning the background, character, and conduct of a person convicted of an offense" that a court may take into account, 18 U.S.C. § 3661. The government bears the burden of proving uncharged conduct by a preponderance of the evidence, but the district court need not make an explicit finding that the government met its burden as long as "it is clear from

the record that the judge determined that the defendant is responsible for it.” *United States v. Holton*, 873 F.3d 589, 592 (7th Cir. 2017) (internal quotation omitted).

At sentencing the district court explained that it had watched the video footage of the past conduct and from there observed that Withers’s “firing off ... around ten rounds up in the air in the direction under the building [was] incredibly reckless.” As for the incident outside the apartment building, the court noted that given Withers’s “discharge of [a] firearm, 40 caliber, into the wall of an apartment complex,” it was “very lucky someone didn’t get hurt” and that Withers’s behavior in this incident suggested he “cannot be in society for some time” because he is “an absolute danger to the public.” At no point during the sentencing hearing did Withers dispute the accuracy of the agent’s accounts. It is clear from the court’s comments about the agent’s testimony that it determined Withers was responsible for both uncharged incidents. In short, the court committed no error in considering this conduct as part of determining an appropriate sentence for Withers.

Turning to the substantive reasonableness of Withers’s sentence, he argues that the district court abused its discretion because the sentence differed too much from those given to comparable offenders. Withers is correct to observe that § 3553(a)(6) instructs courts to consider “the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.” But the word he discounts is “unwarranted.” The sentencing transcript shows that the court explained that a disparity was warranted because of Withers’s extensive criminal history and continued tendency toward recklessness and violence. We see no substantive unreasonableness with the imposed sentence.

AFFIRMED