

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12-3020

September Term, 2013

FILED ON: SEPTEMBER 30, 2013

No. 1:11-cr-0208

UNITED STATES OF AMERICA,

APPELLEE

v.

TAYVONNE LEWIS,

APPELLANT

On Appeal from the United States District Court
for the District of Columbia

Before: HENDERSON and GRIFFITH, *Circuit Judges*, and RANDOLPH, *Senior Circuit Judge*

JUDGMENT

This appeal was considered on the record from the United States District Court for the District of Columbia and the briefs and the oral arguments of the parties. The Court has accorded the issues full consideration and determined that they do not warrant a published opinion. *See* D.C. Cir. R. 36(d). For the reasons stated below, it is

ORDERED and **ADJUDGED** that the judgment of the District Court be affirmed.

Tayvonne Lewis pleaded guilty to possession of a firearm by a convicted felon in violation of 18 U.S.C. § 922(g)(1). Pursuant to a written plea agreement, Lewis agreed not to seek a downward departure from the applicable range under the United States Sentencing Guidelines, U.S.S.G. §§ 1A1.1 *et seq.* At the plea hearing and at sentencing, the parties agreed that the applicable Guidelines range was 77 to 96 months. The district court imposed a sentence at the bottom of that range—77 months. On appeal, Lewis claims the district court abused its discretion by imposing a substantively unreasonable sentence.

“The substantive reasonableness inquiry that we must conduct on appeal boils down to the following question: In light of the facts and circumstances of the offense and offender, is the sentence so unreasonably high or unreasonably low as to constitute an abuse of discretion by the district court?” *United States v. Gardellini*, 545 F.3d 1089, 1093 (D.C. Cir. 2008). We apply a

“presumption of reasonableness” to a within-Guidelines sentence like Lewis’s. *United States v. Washington*, 670 F.3d 1321, 1328 (D.C. Cir. 2012) (quoting *Rita v. United States*, 551 U.S. 338, 347 (2007)); accord *United States v. Dorcely*, 454 F.3d 366, 376 (D.C. Cir. 2006). “[A] within-Guidelines sentence will almost never be reversed on appeal as substantively unreasonable.” *Gardellini*, 545 F.3d at 1092.

Lewis argues that his sentence was substantively unreasonable because of his diminished mental capacity. As noted, his plea agreement prevented him from seeking a downward departure based on diminished capacity and the district court adequately and expressly considered Lewis’s history and characteristics, along with the other sentencing factors set forth in 18 U.S.C. § 3553(a), before imposing sentence. We must give “due deference to the District Court’s reasoned and reasonable decision that the § 3553(a) factors, on the whole, justified the sentence.” *Gall v. United States*, 552 U.S. 38, 59–60 (2007).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or rehearing en banc. *See* Fed. R. App. P. 41(b); D.C. Cir. R. 41.

PER CURIAM

FOR THE COURT:

Mark J. Langer, Clerk

BY: /s/

Jennifer M. Clark

Deputy Clerk