United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 16-3010 **September Term, 2016**

FILED ON: APRIL 18, 2017

UNITED STATES OF AMERICA,
APPELLEE

v.

LOWELL BRIAN LAMONT, ALSO KNOWN AS BRIAN, ALSO KNOWN AS B BIG, ALSO KNOWN AS B,
APPELLANT

Appeal from the United States District Court
for the District of Columbia
(No. 1:04-cr-00536-1)

Before: TATEL and WILKINS, *Circuit Judges*, and SENTELLE, *Senior Circuit Judge*.

J U D G M E N T

This appeal of a decision of the United States District Court for the District of Columbia was presented to the Court, and briefed and argued by counsel. The Court has accorded the issues full consideration and has 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 District Court's denial of a motion for a sentence reduction be affirmed.

Lowell Lamont pleaded guilty to one count of conspiracy to distribute, and to possess with intent to distribute, five kilograms or more of cocaine, in violation of 21 U.S.C. §§ 846, 841(a)(1) and (b)(1)(A)(iii). In support of his plea, Lamont admitted that in 2004, he and his co-defendants conspired to distribute cocaine, crack cocaine, and heroin in the Washington, D.C. metropolitan area. Lamont was responsible for distributing shipments of cocaine to local dealers (his co-conspirators) and collecting the proceeds from the sales. In the course of these activities, he personally distributed five kilograms or more of cocaine. At the time, he and the Government "agree[d] that a sentence of 180 months [was] the appropriate sentence for the offense to which [he] [was] pleading guilty." Plea Agreement at 2 (Oct. 3, 2005), J.A. 42.

Lamont was sentenced on January 20, 2006. At the sentencing hearing, Lamont's

counsel acknowledged that 180 months was "right smack almost in the middle" of the then-applicable Sentencing Guidelines range of 168 to 210 months, which counsel thought was "consistent with [his] client's behavior." Sentencing Hr'g Tr. at 2:18-24. The District Court discussed the harm that Lamont's conduct caused communities in the District of Columbia and noted that, "justifiably, with [Lamont's] history, [it] could [have] give[n] [him] even a bigger sentence." *Id.* at 7:23-24. But because "the Government ha[d] made an assessment as to what the appropriate sentence [was]," *id.* at 7:24-25, the District Court "reluctantly [went] along with the recommendation made by the Government," *id.* at 8:11-13. The District Court then noted that the 180-month sentence was within the then-applicable Guidelines range, *id.* at 10:8-9, and concluded that the sentence was "reasonable," *id.* at 10:9-12.

On November 5, 2014, Lamont filed a *pro se* motion for a sentence reduction pursuant to 18 U.S.C. § 3582(c)(2), advancing two arguments: (1) Amendment 782 to the Sentencing Guidelines retroactively reduced the base offense level for his convicted offense, causing his 180-month sentence to fall outside the now-applicable recommended range of 135 to 168 months; and (2) he "ha[d] made every effort to rehabilitate himself." Mot. for Reduction of Sentence (Nov. 5, 2014), J.A. 125-30. On October 2, 2015, through counsel, Lamont filed a motion advancing substantially the same arguments and elaborating further on his eligibility for the sentence reduction. The District Court disposed of both motions by memorandum opinion, confirming that Lamont was eligible for a sentence reduction because the District Court, "at least to some degree, [had] considered the Sentencing Guidelines when it contemplated accepting or rejecting the parties' agreement at [Lamont's] sentencing."[1] Mem. Op. 3-7 (Mar. 21, 2016), J.A. 145-49. However, upon consideration of the factors listed in 18 U.S.C. § 3553(a), the District Court denied Lamont's motions.

Lamont challenges the District Court's denial of his motions for a sentence reduction, arguing that its decision was substantively unreasonable. We review the decision under 28 U.S.C. § 1291. *See United States v. Jones*, 846 F.3d 366, 369-70 (D.C. Cir. 2017).

"Because section 3582(c)(2) unambiguously grants discretionary authority to the district court[,] . . . we follow the familiar standard for review of sentencing decisions: we 'first ensure that the district court committed no significant procedural error . . . .'" *United States v. Lafayette*, 585 F.3d 435, 439 (D.C. Cir. 2009) (quoting *Gall v. United States*, 552 U.S. 38, 51 (2007)). Lamont characterizes his appeal as a purely substantive challenge, but many of his arguments sound in procedure. For example, he contends that the District Court "overlooked" the rationale of Amendment 782 to the Sentencing Guidelines, Appellant's Br. 12, "did not address the unjustified disparity that denial of [his] motion would create between him and other

[1] When considering a motion for a sentence reduction, district courts conduct a two-step analysis: (1) "determine the prisoner's eligibility for a sentence modification and the extent of the reduction authorized," then (2) "consider any applicable § 3553(a) factors and determine whether, in [the district court's] discretion, the reduction . . . is warranted in whole or in part under the particular circumstances of the case." *Dillon v. United States*, 560 U.S. 817, 826-28 (2010). Before the District Court, the Government argued that Lamont's sentence was not based on the Guidelines and, therefore, Lamont was ineligible for a sentence reduction. On appeal, the Government "no longer presses [the] point." Appellee's Br. 18. Therefore, we do not review the District Court's determination that Lamont was eligible for a sentence reduction.

similarly situated defendants," *id.* at 12, and failed to consider "the fact that [he] had served over 13 years in prison and had successfully completed numerous rehabilitation programs while incarcerated," *id.* at 14. In other words, Lamont suggests that the District Court committed procedural errors, such as the purported failure to "consider the § 3553(a) factors . . . or . . . to adequately explain the chosen sentence." *Gall*, 552 U.S. at 51; *see also* 18 U.S.C. § 3582(c)(2) (providing that a district court's decision must be guided by "the factors set forth in section 3553(a) to the extent that they are applicable"). One of Lamont's arguments is plainly belied by the record. Contrary to his contention, the District Court *did* consider his time served and "participation in a number of rehabilitation programs," but was "not convinced that these endeavors or his current incarceration will deter further illicit conduct once he is released." Mem. Op. 9 (Mar. 21, 2016), J.A. 151. Lamont is correct, however, that in declining to exercise its discretion to reduce his sentence, the District Court did not explain in-depth its consideration of Amendment 782, *see* 18 U.S.C. § 3553(a)(4)(A) (advising courts to consider the applicable "sentencing range . . . subject to any amendments"), or any "unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct," *id.* § 3553(a)(6).

"Although the district court's explanation did not include each section 3553(a) factor, it 'need not consider every § 3553(a) factor in every case.'" *United States v. Brinson-Scott*, 714 F.3d 616, 627 (D.C. Cir. 2013) (quoting *In re Sealed Case*, 527 F.3d 188, 191 (D.C. Cir. 2008)). Rather, the District Court needed only to "set forth enough to satisfy [this Court] that [it] ha[d] considered the parties' arguments and ha[d] a reasoned basis for exercising [its] own legal decisionmaking authority." *Rita v. United States*, 551 U.S. 338, 356 (2007) (citation omitted). This principle applies even where, as here, the defendant receives an above-Guidelines sentence. *See United States v. Warren*, 700 F.3d 528, 533 (D.C. Cir. 2012). Although the District Court did not recite the rationale of Amendment 782 or address Lamont's passing reference to sentencing disparities, it explained how it reached its decision based on the factors articulated in § 3553(a)(1) and (2). The District Court denied Lamont's motion for the following reasons: Lamont was a leader of a conspiracy to distribute large amounts of cocaine; law enforcement authorities discovered a loaded firearm and $59,000 in cash at his two residences; this was his third conviction for a drug-related crime; and he was "of an advanced age – here age forty – and the offensive conduct [was] identical to prior conduct for which [he] had been convicted during his youth." Mem. Op. 7-9 (Mar. 21, 2016), J.A. 149-51. "After considering the Sentencing Guidelines, as well as the nature of [Lamont's] criminal conduct in this case coupled with his criminal history, the [District] Court [found] that the sentence it imposed remain[ed] necessary, despite the subsequent reduction in the Guidelines." *Id.* at 9, J.A. 151. This explanation demonstrates that the District Court "ha[d] considered the parties' arguments and ha[d] a reasoned basis for exercising [its] own legal decisionmaking authority," *Rita*, 551 U.S. at 356 (citation omitted), and we therefore conclude that the District Court "committed no significant procedural error," *Gall*, 552 U.S. at 51.

Having confirmed that the District Court's decision was "procedurally sound," *id.*, we next "consider the substantive reasonableness of the court's decision under an abuse-of-discretion standard," *Lafayette*, 585 F.3d at 439 (brackets omitted) (quoting *Gall*, 552 U.S. at

51). Lamont contends that his sentence is substantively unreasonable because it was partly based on a Guidelines range that "had not originally been set to account properly for § 3553 factors," Appellant's Br. 12, and because his sentence creates an "unjustified disparity . . . between him and other similarly situated defendants," such as individuals who "pled guilty to the same crime today" or who "actually received retroactive sentence reductions," *id.* at 12.

To the extent Lamont is arguing that a sentence is *per se* unreasonable if it is based on a subsequently revised sentencing range, his argument is a nonstarter. We cannot "apply a presumption of unreasonableness to sentences outside the Guidelines range . . . ." *Peugh v. United States*, 133 S. Ct. 2072, 2087 (2013) (citations omitted).

As for Lamont's contention that the District Court's weighing of the § 3553(a) factors was unreasonable, we disagree. Notwithstanding Amendment 782 and any potential sentencing disparities, the District Court determined that Lamont's 180-month sentence was warranted because, among other reasons, Lamont was the leader of a substantial drug conspiracy, he had been convicted of similar crimes over the course of his adult life, and the District Court was "not convinced" that he no longer posed a danger to the public. Mem. Op. 7-9 (Mar. 21, 2016), J.A. 149-51. In other words, the District Court emphasized two of the § 3553(a) factors: "the nature and circumstances of the offense and the history and characteristics of the defendant," 18 U.S.C. § 3553(a)(1), and the "need for the sentence imposed . . . to provide just punishment for the offense . . . [and] to protect the public from further crimes of the defendant," *id.* § 3553(a)(2). "This court must decide whether to defer to the district court's decision bearing in mind that . . . 'different district courts may have distinct sentencing philosophies and may emphasize and weigh the individual § 3553(a) factors differently . . . .'" *In re Sealed Case*, 809 F.3d 672, 676 (D.C. Cir. 2016) (quoting *United States v. Gardellini*, 545 F.3d 1089, 1093 (D.C. Cir. 2008)). Here, the District Court determined that, based on its sentencing philosophy and the facts before it, the § 3553(a)(1) and (2) factors outweighed the § 3553(a)(4) and (6) factors invoked by Lamont. We conclude that this determination was not substantively unreasonable and, therefore, the District Court did not abuse its discretion. Accordingly, we affirm the District Court's denial of Lamont's motion for a sentence reduction.

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 petition for 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/
Ken Meadows
Deputy Clerk