

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17-3003

September Term, 2017

FILED ON: MARCH 14, 2018

UNITED STATES OF AMERICA,
APPELLEE

v.

TREVOR HOPKINS,
APPELLANT

Appeal from the United States District Court
for the District of Columbia
(No. 1:13-cr-00109-1)

Before: WILKINS, *Circuit Judge*, and EDWARDS and SILBERMAN, *Senior Circuit Judges*.

J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs filed by the parties. *See* FED. R. APP. P. 34(a)(2); D.C. CIR. R. 34(j). It is

ORDERED AND ADJUDGED that the District Court’s sentencing order, imposed January 4, 2017, be affirmed.

Through this appeal, Trevor Hopkins challenges his resentencing on remand. In *United States v. McKeever*, 824 F.3d 1113 (D.C. Cir. 2016), we remanded the case for the District Court to address Hopkins’s contention (and that of his co-conspirators who do not now appeal) that the District Court failed to consider whether police introduction of firearms into the conspiracy was sentencing entrapment. Hopkins now argues that the Court should again remand the case for three reasons: (1) the District Court misunderstood its sentencing discretion on remand; (2) the District Court did not properly explain its sentencing choice; and (3) the District Court’s view of the facts does not comport with the sentence actually imposed.

The parties dispute the standard of review we are to apply when considering Hopkins’s first claim. Because Hopkins’s claim is more akin to a contention that the District Court made a legal error, rather than a claim that the District Court failed to consider an argument, Hopkins was not necessarily required to make a contemporaneous objection. *See United States v. Rashad*, 396 F.3d 398, 401 (D.C. Cir. 2005) (“All a defendant need do to preserve a claim of error . . . is

inform the court and opposing counsel of the ruling he wants the court to make and the ground for so doing.”); *see also United States v. Tate*, 630 F.3d 194, 198 (D.C. Cir. 2011) (finding that defendant preserved his claim that the court mistakenly understood the amendments to the sentencing guideline by “stat[ing] the facts and the law regarding the [crack-to-powder cocaine] disparity and having requested that the district court exercise its discretion to sentence Tate based on a different [] ratio”). Accordingly, because Hopkins argued at the resentencing hearing and in his Motion for a Downward Variance that the District Court had the discretion to grant a downward variance that would eliminate the five-level Sentencing Guidelines enhancement (the “Gun Bump”) on the basis of sentencing entrapment, Hopkins preserved his objection. Having found the claim preserved, we review for abuse of discretion. *United States v. Pyles*, 862 F.3d 82, 86 (D.C. Cir. 2017). The record here, however, does not reflect that the District Court abused its discretion. Indeed, the District Court expressly considered sentencing entrapment, Appellant’s App. 75, and it also clearly understood the difference between sentencing entrapment and sentencing manipulation, Appellant’s App. 133. If the District Court had found sentencing entrapment, it would have been required to sentence Hopkins without the Gun Bump for possessing or brandishing a firearm during a robbery. *McKeever*, 824 F.3d at 1123. While the District Court ruled that Hopkins had failed to establish sentencing entrapment, Appellant’s App. 133, 138, it did find that the government’s conduct constituted sentencing manipulation, and accordingly granted Hopkins’s request for a variance by sentencing him as if his Guidelines range had been enhanced by three levels rather than five. Appellant’s App. 133-36, 138-39. In sum, the District Court complied with the instructions for the remand, and we reject Hopkins’s first claim.

Hopkins, however, did not preserve his second claim regarding the District Court’s explanation of its sentencing choice. Accordingly, we review the District Court’s determination for plain error, *see Pyles*, 862 F.3d at 86 (citing *United States v. Bigley*, 786 F.3d 11, 13 (D.C. Cir. 2015) (per curiam)), which Hopkins cannot show. At the sentencing hearing, the parties engaged in an extensive conversation about sentencing entrapment and general sentencing mitigation. *See* Appellant’s App. 81 (acknowledging that the court “must consider the argument of sentencing entrapment”); Appellant’s App. 82 (stating that the purpose of the hearing was for defense counsel to “argue to what effect, if any, [sentencing entrapment] ought to have on [the defendants’] sentences”). Hopkins’s attorney argued his position before the court, Appellant’s App. 95-105, and adopted the arguments made by counsel for one of Hopkins’s co-defendants. Appellant’s App. 96. Moreover, Hopkins himself addressed the court. Appellant’s App. 131-32. Nevertheless, the District Court highlighted significant countervailing reasons for rejecting a downward variance of more than 8 months from its previously imposed sentence: (1) Hopkins’s suggestion to use the curling iron, which fit within the definition of a dangerous weapon for a three-level enhancement for brandishing or possessing a dangerous weapon during a robbery, Appellant’s App. 87, 103, 133-34; (2) Hopkins’s predisposition to committing the crime, Appellant’s App. 90, 135; and (3) the fact that Hopkins was “perfectly comfortable with the idea of using weapons,” Appellant’s App. 133. Based on these facts, the District Court rejected the sentencing entrapment argument, but recognized that the police brought up and provided the weapons, and that the co-conspirators were likely incapable of supplying the weapons themselves. Accordingly, the judge determined that the appropriate sentencing range was between 63 and 78 months and sentenced Hopkins to 72 months. Because the District Court adequately explained its decision and imposed a sentence within or below the applicable

Guidelines range, the judgment is entitled to a presumption of reasonableness, *United States v. Lopesierra-Gutierrez*, 708 F.3d 193, 208 (D.C. Cir. 2013), which Hopkins has failed to rebut. Thus, Hopkins has not shown that the District Court erred – let alone plainly erred – in imposing a within-Guidelines sentence.

Finally, Hopkins’s final ground for remand – in short, that although certain of the court’s factual findings were correct, the sentence was not consistent with those findings – is also without merit. This Court’s review of criminal sentences for substantive reasonableness is “quite deferential.” *United States v. Knight*, 824 F.3d 1105, 1110-11 (D.C. Cir. 2016). Under this standard, “[i]t will be the unusual case when an appeals court can plausibly say that a sentence is so unreasonably high or low as to constitute an abuse of discretion.” *United States v. Gardellini*, 545 F.3d 1089, 1093 (D.C. Cir. 2008). This is not such a case for the reasons that the trial judge explained and we discussed above. Indeed, the District Court reasonably concluded that a 72-month sentence was appropriate for Hopkins’s own chance at reform, to protect the community, and to deter others from engaging in similar behavior. *See* 18 U.S.C. § 3553(a). Accordingly, we affirm.

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. *See* FED. R. APP. P. 41(b); D.C. CIR. R. 41(b).

PER CURIAM

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Ken Meadows
Deputy Clerk