United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18-3075 **September Term, 2019**

FILED ON: NOVEMBER 5, 2019

UNITED STATES OF AMERICA,
APPELLEE

v.

DIRK TERRANCE JAMES, ALSO KNOWN AS DJ,
APPELLANT

Appeal from the United States District Court
for the District of Columbia
(No. 1:13-cr-00171-1)

Before: PILLARD, WILKINS and KATSAS, *Circuit Judges*

J U D G M E N T

This case was considered on the record from the United States District Court for the District of Columbia, and on the briefs and oral arguments[1] of the parties. The Court has afforded the issues full consideration and has determined they do not warrant a published opinion. *See* FED. R. APP. P. 36; D.C. CIR. R. 36(d).

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

While on federal supervised release in the District of Columbia, Dirk Terrance James pleaded guilty to a separate federal crime in the District of Maryland and was sentenced to time served (about ten months), plus 60 months' supervised release, including 24 months' home detention. As a result, the D.C. District Court revoked his supervised release and sentenced him to 46 months' imprisonment and 48 months' supervised release.

James appeals his sentence, raising one statutory challenge and various reasonableness challenges. We review purely legal questions de novo, *United States v. Jones*, 744 F.3d 1362, 1366 (D.C. Cir. 2014), and we review the reasonableness of a sentence for abuse of discretion, *In re Sealed Case*, 809 F.3d 672, 675-76 (D.C. Cir. 2016).

[1] With the exception of his statutory challenge under 18 U.S.C. § 3583, which was argued in open court, James submitted his case on the briefs in accordance with Rule 34(f) of the Federal Rules of Appellate Procedure.

James first raises a statutory challenge to his supervised release term. He acknowledges that the statute he was convicted of violating, 21 U.S.C. § 841(b), contains no maximum term for supervised release and, in fact, mandates a *minimum* term of supervised release of five years. *See id.* § 841(b)(1)(A). Still, he argues that 18 U.S.C. § 3583, which applies to federal crimes generally, controls here. That statute outlines the maximum permissible term of supervised release upon revocation:

> When a term of supervised release is revoked and the defendant is required to serve a term of imprisonment, the court may include a requirement that the defendant be placed on a term of supervised release after imprisonment. The length of such a term of supervised release shall not exceed the term of supervised release authorized by statute for the offense that resulted in the original term of supervised release, less any term of imprisonment that was imposed upon revocation of supervised release.

18 U.S.C. § 3583(h). A separate provision of § 3583 further provides that, "[e]xcept as otherwise provided," the maximum term of supervised release for a Class A felony is five years. *Id.* § 3583(b)(1).

In his briefing, James argues that together these provisions dictate a maximum term of supervised release of 14 months – that is, § 3583(b)'s 60 months, less his 46-month term of imprisonment imposed upon revocation.[2] James conceded at oral argument, however, that 18 U.S.C. § 3583(b)(1)'s five-year maximum for Class A felonies does not apply here, because Congress amended 21 U.S.C. § 841 after a circuit split arose to clarify that it governs "[n]otwithstanding section 3583 of Title 18." *See United States v. Epps*, 707 F.3d 337, 342 (D.C. Cir. 2013); *United States v. Johnson*, 331 F.3d 962, 967 n.4 (D.C. Cir. 2003).

Therefore, we conclude that the District Court's sentence of 48 months' supervised release accords with 18 U.S.C. § 3583(h)'s required calculation because the statutory maximum under 21 U.S.C. § 841(b)(1)(A)—the "offense that resulted in the original term of supervised release"—is life. And the District Court's failure to spell out that James was eligible for "life minus 46 months" was not error, because "life minus 46 months" really just amounts to "life." *See United States v. Cassesse*, 685 F.3d 186, 187 (2d Cir. 2012) (concluding that, even assuming § 3583(h)'s subtraction requirement applies to 21 U.S.C. § 841(b), Congress did not intend for courts to engage in the "almost metaphysical" exercise of determining "how, if at all, a lifetime term of supervised release, imposed for a supervised release violation, should be reduced by the number of months of a prison term imposed for that same violation"); *United States v. Rausch*, 638 F.3d 1296, 1302–03 (10th Cir. 2011), *overruled on other grounds by United States v. Bustamante-Conchas*, 850 F.3d 1130 (10th Cir. 2017) ("Because it is impossible to predict the precise length of any individual's life, a sentence of 'life less two years' has only conceptual—not practical—meaning."). Nor did the District Court err, as James argues, by failing to provide notice and a statement of reasons for an upward departure, because the guidelines explicitly incorporate 18 U.S.C. § 3583(h)'s calculation, meaning that the District Court did not depart upward. USSG § 7B1.3(g)(2).

[2] In his briefing, James states that this calculation results in a 12-month maximum, but this appears to be a mathematical error, perhaps caused by confusing the imprisonment sentence with the supervised release sentence. *See* Appellant's Opening Br. at 18.

James also lodges various reasonableness objections to his term of imprisonment. But he does not challenge the District Court's guidelines calculation, and a sentence like this one that is "within a properly calculated Guidelines range is entitled to a rebuttable presumption of reasonableness." *United States v. Mattea*, 895 F.3d 762, 765 (D.C. Cir. 2018) (quoting *United States v. Law*, 806 F.3d 1103, 1106 (D.C. Cir. 2015)). As explained below, James fails to overcome this presumption.

First, James acknowledges that the District Court was not bound by the Maryland federal court's sentence, but argues that the sentence is "so at odds with the [Maryland federal court's] sentence that there should be some convincing factual findings that justify this incongruence." Appellant's Opening Br. at 15. James cites no authority to support his argument that the District Court needed to give heavy weight to the Maryland federal court's sentence when sentencing James for the supervised release violation. To the contrary, the guidelines advise sentencing courts that "at revocation the court should sanction primarily the defendant's breach of trust, while taking into account, *to a limited degree*, the seriousness of the underlying violation and the criminal history of the violator." U.S. Sentencing Guidelines Manual ch. 7, pt. A, ¶ 3(b), introductory cmt. (U.S. SENTENCING COMM'N 2018) (emphasis added). With this principle in mind, we conclude that the District Court did not abuse its discretion in declining to follow the Maryland federal court's time-served sentence.

Second, James argues that the District Court "erred by insisting that any defense argument to reduce his sentence . . . be tied to 'mitigation' involving only his District of Columbia case." Appellant's Opening Br. at 16. He concedes that "it is appropriate for the court to make mitigation inquiries." Appellant's Reply Br. at 8. However, he argues that it was inappropriate to do so *in this case*, because it "set[] up an impossible goal," and that "[y]ears after a case is closed, there is no way [to] provide th[is] kind of mitigation." Appellant's Opening Br. at 16. We disagree. The district court reasonably inquired about mitigation of the trust breach caused by his re-offense during supervised release from a below-guidelines sentence. We therefore conclude that the District Court did not abuse its discretion by asking James for mitigation evidence or by relying, in part, on James's failure to produce such evidence.

Third, James contends that the District Court "ignored" his argument that his "life options" have materially changed in a way that makes it highly unlikely that he will reoffend. Appellant's Opening Br. at 15. Even reviewed for abuse of discretion, this argument is unsuccessful. In this Circuit, a district court is required to "*consider*" every non-frivolous argument in support of a departure, but it is "not require[d] . . . to *address expressly* each argument on the record when pronouncing the sentence." *United States v. Pyles*, 862 F.3d 82, 94 (D.C. Cir. 2017) (emphasis in original). And where, as here, "a judge listens to arguments for mitigation, considers the supporting evidence, and finds that the circumstances do not warrant a below-Guidelines sentence, then context and the record make clear that the judge considered each argument." *Id.* at 89 (internal quotations and citations omitted). In other words, "so long as the judge provides a 'reasoned basis for exercising his own legal decisionmaking authority,' we generally presume that he adequately considered the arguments and will uphold the sentence if it is otherwise reasonable." *United States v. Locke*, 664 F.3d 353, 358 (D.C. Cir. 2011) (quoting *Rita v. United States*, 551 U.S. 338, 356 (2007)). Here, the District Court provided a reasoned basis for its decision, and James has failed to rebut the presumption that it considered his "life options" argument. *See id.* Moreover, the

District Court reasonably explained that James's long criminal history makes him a danger to the community, and it reasonably explained why it was unpersuaded that he would be so much safer in the community than in prison that he will avoid reoffending.

Finally, James argues that the time-served sentence in the Maryland case, when compared to his 46-month sentence for his supervised release violation, presents "an unwarranted sentence disparity" under 18 U.S.C. § 3553(a)(6). Appellant's Opening Br. at 17. James's argument fails. Section 3553(a)(6) requires judges to consider "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." 18 U.S.C. § 3553(a)(6). But James was not "found guilty of similar conduct" in the two proceedings—one a federal narcotics felony, and the other a violation of the terms of his prior supervised release. We therefore conclude that the District Court did not abuse its discretion under § 3553(a)(6) in declining to follow the Maryland federal court's sentence.

Consistent with the foregoing, we affirm the judgment of the District Court.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Ken Meadows
Deputy Clerk