

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 16-31004
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

May 2, 2017

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JAMES ARTHUR RUSSELL,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 2:14-CR-228-1

Before JOLLY, SMITH, and GRAVES, Circuit Judges.

PER CURIAM:*

James Arthur Russell appeals the within-guidelines sentence of 12 months in prison imposed following his guilty plea to assault. Russell argues that his sentence is substantively unreasonable because it is greater than necessary to achieve the goals of sentencing. More specifically, he contends that his sentence is excessive because the district court failed to take into account certain mental health conditions existing at the time of the assault

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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and the possibility that the Bureau of Prisons would not give him the proper credit for the time that he had already served for the assault.

Because Russell did not object to the substantive reasonableness of his sentence in the district court, our review is limited to plain error. *See United States v. Peltier*, 505 F.3d 389, 391-92 (5th Cir. 2007). To show plain error, the appellant must show a forfeited error that is clear or obvious and that affects his substantial rights. *Puckett v. United States*, 556 U.S. 129, 135 (2009). Russell's sentence falls within the properly-calculated guidelines range, and it is thus afforded a rebuttable presumption of reasonableness. *United States v. Cooks*, 589 F.3d 173, 186 (5th Cir. 2009).

Russell has not shown that his sentence does not account for a factor that should receive significant weight, gives significant weight to an irrelevant or improper factor, or reflects a clear error of judgment in balancing sentencing factors. *See Cooks*, 589 F.3d at 186. His mere disagreement with the district court's determination that a 12-month sentence is appropriate is insufficient to overcome the presumption of reasonableness afforded to his sentence. *See United States v. Alvarado*, 691 F.3d 592, 597 (5th Cir. 2012).

Accordingly, the judgment of the district court is AFFIRMED.