

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

United States Court of Appeals
Fifth Circuit

FILED

February 11, 2020

Lyle W. Cayce
Clerk

No. 19-10379
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff–Appellee,

v.

DENNIS EDWARD LOVETT,

Defendant–Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:18-CR-265-1

Before OWEN, Chief Judge, and SOUTHWICK and WILLETT, Circuit Judges.

PER CURIAM:*

Dennis Edward Lovett appeals the sentence imposed for his conviction of planting a hoax bomb. The district court sentenced Lovett above his guidelines range to eighteen months of imprisonment and three years of supervised release. Lovett contends that the district court committed procedural error by failing to consider valid grounds for a lesser sentence and

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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failing to adequately explain its reasons for the sentence. He also challenges the substantive reasonableness of the sentence.

In the district court, Lovett did not object to his sentence based on procedural error. He acknowledges that our precedent requires a specific objection to preserve procedural sentencing errors, but he argues that no such objection was necessary to preserve the procedural errors he raises here. In accordance with our precedent, plain-error review applies to Lovett's claims of procedural error. *See United States v. Whitelaw*, 580 F.3d 256, 259 (5th Cir. 2009); *United States v. Mondragon-Santiago*, 564 F.3d 357, 361-62 (5th Cir. 2009). However, even had Lovett objected, we conclude that the district court did not procedurally err.

The record shows that the district court was aware of the information in the presentence report (PSR) and PSR addendum, which were adopted by the district court at sentencing, including the information about Lovett's personal background and mental health issues and the possibility of a downward departure based on his mental health. The district court also heard and considered the grounds for leniency presented by Lovett and his witness at the sentencing hearing, as shown by the court's observations that Lovett had a mental health disorder and that the sentence imposed was not as high as the court originally thought would be appropriate.

Additionally, the district court provided adequate reasons for the above-guidelines sentence, as the district court recounted Lovett's extensive criminal history and characterized it as "terrible," found that the details of his instant offense were "very disturbing," and found that he had "a violent tendency." Lovett has not shown that the district court committed any error, much less plain error, with respect to the adequacy of its consideration of the grounds for

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a lesser sentence and its explanation of the sentence. *See United States v. Diaz Sanchez*, 714 F.3d 289, 294-95 (5th Cir. 2013).

Regarding substantive reasonableness, the district court's imposition of an eighteen-month prison term constituted a six-month upward variance from the top of Lovett's guidelines range. With all the evidence before it, the district court determined that the eighteen-month sentence was appropriate based on the sentencing factors under 18 U.S.C. § 3553(a). "[O]ur review for substantive reasonableness is highly deferential, because the sentencing court is in a better position to find facts and judge their import under the § 3553(a) factors with respect to a particular defendant." *United States v. Diehl*, 775 F.3d 714, 724 (5th Cir. 2015) (internal quotation marks omitted) (quoting *United States v. Hernandez*, 633 F.3d 370, 375 (5th Cir. 2011)). Giving due deference to the district court's sentencing decision, we conclude with respect to substantive reasonableness that the district court did not abuse its discretion in sentencing Lovett.

AFFIRMED.