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. 19-50314
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

BRIANE NICOLE WOODS,

Defendant - Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 7:07-CR-61-1

Before BARKSDALE, HAYNES, and ENGELHARDT, Circuit Judges.

PER CURIAM:*

Briane Nicole Woods challenges her statutory-maximum sentence of 36-months' imprisonment, imposed upon revocation of her term of supervised release. The supervised release was part of her sentence imposed following her conviction in 2007 for, *inter alia*, aiding and abetting possession with intent to distribute five grams or more of cocaine base, a Class B felony in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B). She contends the sentence is plainly

* Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

unreasonable because the district court: failed to consider that she had corrected her drug problem; erroneously found she had repeatedly violated the conditions of her supervised release; impermissibly punished her, pursuant to 18 U.S.C. § 3553(a)(2)(A), for having a drug problem; gave improper weight to the need to deter her; and should have sentenced her at the low end of the suggested Sentencing Guidelines policy-statement range, followed by treatment.

A revocation sentence is reviewed under the "plainly unreasonable" standard. *United States v. Miller*, 634 F.3d 841, 843 (5th Cir. 2011). Under that standard, we first assess "whether the district court committed a significant procedural error". *United States v. Fuentes*, 906 F.3d 322, 325 (5th Cir. 2018) (internal quotation marks and citation omitted), *cert. denied*, 139 S. Ct. 1363 (2019). The district court commits significant procedural error with respect to a revocation sentence if it "fail[s] to consider the [relevant] § 3553(a) [sentencing] factors, select[s] a sentence based on clearly erroneous facts, or fail[s] to adequately explain the chosen sentence". *United States v. Warren*, 720 F.3d 321, 326 (5th Cir. 2013) (citation omitted). Factual findings are reviewed for "clear error" and will not be disturbed unless "[im]plausible in [the] light of the record taken as a whole". *United States v. Alaniz-Alaniz*, 38 F.3d 788, 790 & n.3 (5th Cir. 1994) (citation omitted).

"If there is no procedural error, [our] court considers the substantive reasonableness of the sentence under an abuse of discretion standard, examining the totality of the circumstances." *Fuentes*, 906 F.3d at 325 (internal quotation marks and citation omitted). A revocation sentence is substantively unreasonable where the district court did "not account for a factor that should have received significant weight", the court gave "significant weight to an irrelevant or improper factor", or the sentence "represents a clear

error of judgment in balancing the sentencing factors". *Warren*, 720 F.3d at 332 (citation omitted).

Pursuant to 18 U.S.C. § 3583(e)(3), the court may revoke a term of supervised release and impose a term of imprisonment "after considering the factors set forth in [18 U.S.C. §] 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7)". The court may not, however, consider 18 U.S.C. § 3553(a)(2)(A): "the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense". *United States v. Rivera*, 784 F.3d 1012, 1016–17 (5th Cir. 2015) (citations omitted). Of particular importance in this instance, upon revocation of supervised release, "[t]he district court may impose any sentence that falls within the appropriate statutory maximum term of imprisonment allowed for the revocation sentence". *United States v. McKinney*, 520 F.3d 425, 427 (5th Cir. 2008).

At sentencing, the district court considered Woods' assertion that she had taken measures to address her cocaine use, but determined a sentence of 36-months' imprisonment was appropriate, based on the futility of previous treatment and Woods' repeated failure to comply with the conditions of her supervised release. These considerations align with proper § 3553(a) factors dealing with personal history, the need for deterrence, and the most effective manner of correctional treatment. *See* 18 U.S.C. §§ 3553(a)(1), (a)(2)(B), and (a)(2)(D). Further, the court's finding that Woods repeatedly violated the conditions of her supervised release is plausible in the light of the record as a whole. *See Alaniz-Alaniz*, 38 F.3d at 790 & n.3.

Woods' contention that the court impermissibly considered § 3553(a)(2)(A)'s factors is unfounded. As discussed above, the court properly

focused on Woods' prior failure to comply with conditions of supervised release and the exhibited failure of court-imposed treatment.

Regarding Woods' claiming she should have been sentenced at the low end of the advisory-Guidelines policy-statement range, although her sentence exceeded the range of eight to 14-months' imprisonment, it was within the statutory maximum. *See* 18 U.S.C. § 3583(e)(3) (providing three-year maximum for Class B felony offense). Our court has "routinely affirmed revocation sentences exceeding the advisory range, even where the sentence equals the statutory maximum". *Warren*, 720 F.3d at 332 (citation omitted); *see also United States v. Mathena*, 23 F.3d 87, 89, 93–94 (5th Cir. 1994) (concluding sentence of 36-months' imprisonment was not plainly unreasonable where policy-statement range was six-12-months' imprisonment).

AFFIRMED.