

United States Court of Appeals
for the Fifth Circuit

No. 23-30101
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED
September 1, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ALFRED STEWART, III,

Defendant—Appellant.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:22-CR-65-2

Before BARKSDALE, ENGELHARDT, and WILSON, *Circuit Judges.*

PER CURIAM:*

Alfred Stewart, III, challenges the sentence imposed following his convictions for: conspiracy to distribute and possess with intent to distribute cocaine, in violation of 21 U.S.C. § 846; possession with intent to distribute cocaine, cocaine base, and methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(C); felon in possession of firearm and ammunition, in

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

No. 23-30101

violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2); and possession of a firearm in furtherance of a drug-trafficking crime, in violation of 18 U.S.C. § 924(c)(1)(A). He contends his within-Guidelines 97-months' sentence, imposed after denial of his downward-variance motion, is substantively unreasonable.

Although post-*Booker*, the Sentencing Guidelines are advisory only, the district court must avoid significant procedural error, such as improperly calculating the Guidelines sentencing range. *Gall v. United States*, 552 U.S. 38, 46, 51 (2007). If no such procedural error exists, a properly preserved objection to an ultimate sentence is reviewed for substantive reasonableness under an abuse-of-discretion standard. *Id.* at 51; *United States v. Delgado-Martinez*, 564 F.3d 750, 751–53 (5th Cir. 2009). In that respect, for issues preserved in district court, as in this instance, its application of the Guidelines is reviewed *de novo*; its factual findings, only for clear error. *E.g.*, *United States v. Cisneros-Gutierrez*, 517 F.3d 751, 764 (5th Cir. 2008).

Stewart fails to show his sentence does not account for a factor that should receive significant weight, gives significant weight to an irrelevant or improper factor, or represents a clear error of judgment in balancing sentencing factors. *E.g.*, *United States v. Jenkins*, 712 F.3d 209, 214 (5th Cir. 2013) (outlining abuse of discretion for within-Guidelines sentence). The record reflects the district court considered Stewart's contentions in support of a below-Guidelines sentence but rejected them. Ultimately, Stewart disagrees with the sentence imposed by the district court and fails to overcome the presumption that the court imposed a reasonable sentence. *See United States v. Ruiz*, 621 F.3d 390, 398 (5th Cir. 2010). He has not shown his sentence is substantively unreasonable.

To the extent Stewart might present a Second Amendment challenge to 18 U.S.C. § 922(g)(1) (felon in possession), he has abandoned it by failing

No. 23-30101

to adequately brief it. *E.g.*, *United States v. Scroggins*, 599 F.3d 433, 446–47 (5th Cir. 2010) (“It is not enough to merely mention or allude to a legal theory.” (citation omitted)).

AFFIRMED.