

United States Court of Appeals for the Fifth Circuit

No. 25-30629
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

August 14, 2026

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JARMAR BUTLER,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 2:24-CR-123-1

Before HAYNES, GRAVES, and RAMIREZ, *Circuit Judges*.

PER CURIAM:*

Jarmar Butler pleaded guilty to possession of a firearm or ammunition by a convicted felon. The district court varied upwardly from the guidelines range and sentenced him to 92 months in prison.

Butler contends that the district court plainly erred by applying a base offense level of 20 pursuant to U.S.S.G. § 2K2.1(a)(4)(B) because the record

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

No. 25-30629

evidence did not establish that he possessed a semiautomatic firearm that is capable of accepting a large capacity magazine. Even if we assume for the sake of argument that Butler has shown clear or obvious error as to the application of § 2K2.1(a)(4)(B), he has failed to show a reasonable probability that, but for the error, his sentence would have been different. *See United States v. Hott*, 866 F.3d 618, 621 (5th Cir. 2017). The district court explained why the 18 U.S.C. § 3553(a) factors led it to select the 92-month sentence and stated that it thought the sentence imposed was proper regardless of the guidelines calculation. *See id.* Because the record reflects that Butler's sentence was based on factors independent of the guidelines range, his substantial rights were not affected. *See id.*

Also, Butler asserts that his non-guidelines sentence was substantively unreasonable because the district court gave significant weight to improper factors in deciding that an upward variance was merited—his criminal history and his possession of a semiautomatic firearm that is capable of accepting a large capacity magazine. The record reflects that the district court reviewed the facts of the case, considered the aggravating and mitigating factors, made an individualized assessment, and found that a specific sentence was proper in light of the § 3553(a) factors. The district court properly determined that Butler's criminal history was underrepresented and that his prior criminal conduct and the relevant conduct in this case warranted an above-guidelines sentence. *See United States v. Fraga*, 704 F.3d 432, 441 (5th Cir. 2013); *United States v. Smith*, 440 F.3d 704, 708 (5th Cir. 2006). The record does not support his contention that the district court varied based on the determination that he possessed a semiautomatic firearm that is capable of accepting a large capacity magazine. Under the totality of the circumstances, the degree of the variance was not so disproportionate so as to overcome the factors that supported its imposition. *See United States v. Brantley*, 537 F.3d 347, 350 (5th Cir. 2008).

No. 25-30629

Butler has filed an opposed motion to file a supplemental brief to argue for the first time that, in applying an adjustment under § 2K2.1(b)(6)(B), the district court wrongly deferred to the guideline commentary. Generally, an argument that has not been raised in appellant's original brief is waived. *See United States v. Ogle*, 415 F.3d 382, 383 (5th Cir. 2005); *United States v. Pompa*, 434 F.3d 800, 806 n.4 (5th Cir. 2005). Butler has failed to show extraordinary circumstances that would justify deviation from this rule. *See Ogle*, 415 F.3d at 383; *Pompa*, 434 F.3d at 806 n.4.

Accordingly, the judgment of the district court is AFFIRMED. The motion to file a supplemental brief is DENIED.