

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

United States v. Olando Earl Harris, Jr.

No. 18-15055, United States Court of Appeals for the Eleventh Circuit (July 1, 2020)

SUMMARY

The Eleventh Circuit affirmed a 92-month sentence for felon in possession of a firearm under 18 U.S.C. § 922(g)(1), which was an upward variance from the 33–41 month Guidelines range. The district court procedurally adequately explained the variance by citing the defendant's criminal history and his role in starting a confrontation that led to a death, and it considered his post-offense conduct. The sentence was substantively reasonable because the court did not abuse its discretion in weighing the § 3553(a) factors, and the defendant failed to show the sentence was greater than necessary.

CASE DETAILS

COURT	United States Court of Appeals for the Eleventh Circuit
WRITING FOR THE COURT	Grant; William Pryor; William Jung
JURISDICTION	Federal
DECIDED	July 1, 2020
DOCKET	18-15055
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the United States District Court for the Middle District of Alabama
STANDARD OF REVIEW	We review the reasonableness of sentencing decisions for abuse of discretion. See <i>United States v. Irey</i> , 612 F.3d 1160, 1188 (11th Cir. 2010) (en banc).
PRECEDENTIAL VALUE	Published
PARTIES	Olando Earl Harris, Jr. v. United States of America

TOPICS

- criminal procedure
- sentencing
- appellate procedure
- standard of review

PRACTICE AREAS

- Criminal Law
- Sentencing
- Firearms

QUESTIONS PRESENTED

1. Whether the district court adequately explained its deviation from the Sentencing Guidelines (procedural reasonableness).
2. Whether the sentence was substantively unreasonable in light of Harris's post-offense behavior.

HOLDINGS

1. The district court adequately explained its chosen sentence by taking into account Harris's extensive criminal record, that he started the violent confrontation that led to a death, and that it considered his post-offense conduct.
2. The sentence was not substantively unreasonable because the district court did not commit a clear error of judgment in weighing the § 3553(a) factors.

KEY QUOTATIONS

"We review the reasonableness of sentencing decisions for abuse of discretion. See United States v. Irej, 612 F.3d 1160, 1188 (11th Cir. 2010) (en banc)." (at 2)

"A sentence is procedurally unreasonable if the district court commits a significant procedural error, such as 'failing to consider the § 3553(a) factors' or 'failing to adequately explain the chosen sentence.' Gall v. United States, 552 U.S. 38, 51 (2007)." (at 4)

"The district court adequately explained its chosen sentence. First, the court took into account Harris's 'extensive record,' which included multiple convictions for violent crimes. The court also emphasized that Harris started a violent confrontation that led to a death: 'he was the one who pulled out the firearm.' Finally, the court acknowledged that it had considered Harris's salutary post-offense conduct." (at 4-5)

"To find a district court's sentence substantively unreasonable, we must be 'left with the definite and firm conviction that the district court committed a clear error of judgment in weighing the § 3553(a) factors by arriving at a sentence that lies outside the range of reasonable sentences dictated by the facts of the case.' Irej, 612 F.3d at 1190." (at 5)

FACTUAL BACKGROUND

Harris had a confrontation with Terius Gillum in Montgomery, Alabama. Harris pulled out a .357 magnum revolver and fired at Gillum's feet. Gillum returned fire as he retreated. The gunfight drew the attention of rival gangs, who began shooting. In the ensuing gunfire, four people were injured and one, Rodriquez Lamar Smith, was killed. There is no reliable evidence that one of Harris's bullets killed Smith.

PROCEDURAL HISTORY

Harris was charged with being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). He entered into a plea agreement with the government, which agreed that the offense conduct was most analogous to aggravated assault, resulting in a Guidelines range of 33–41 months. The probation officer calculated a higher range based on voluntary manslaughter. The district court accepted the plea agreement but imposed a 92-month

sentence, above the agreed range. Harris appealed, arguing the sentence was procedurally and substantively unreasonable.

DISPOSITION

affirmed

CASES CITED

- United States v. Irey, 612 F.3d 1160 (11th Cir. 2010) (en banc)
- Gall v. United States, 552 U.S. 38 (2007)
- United States v. Docampo, 573 F.3d 1091 (11th Cir. 2009)
- United States v. Tome, 611 F.3d 1371 (11th Cir. 2010)
- United States v. Covington, 565 F.3d 1336 (11th Cir. 2009)
- United States v. Croteau, 819 F.3d 1293 (11th Cir. 2016)