

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

United States v. Pool

No. No. 19-6131, United States Court of Appeals for the Tenth Circuit (April 2, 2020)

SUMMARY

Defendant pleaded guilty to drug and firearm offenses, including possession with intent to distribute methamphetamine and possession of a machinegun. The district court varied upward from the advisory guideline range, imposing a 240-month sentence based on the 18 U.S.C. § 3553(a) factors, including the need to protect the public and defendant's extensive criminal history. On appeal, the Tenth Circuit granted counsel's motion to withdraw under **Anders v. California** and dismissed the appeal as wholly frivolous, holding that the upward variance was substantively reasonable and not an abuse of discretion. The case addresses substantive reasonableness review, upward variances, and the standard for frivolous appeals.

CASE DETAILS

COURT	United States Court of Appeals for the Tenth Circuit
WRITING FOR THE COURT	Bobby R. Baldock; BACHARACH; BALDOCK; MORITZ
JURISDICTION	Federal
DECIDED	April 2, 2020
DOCKET	No. 19-6131
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appeal from sentence after guilty plea
STANDARD OF REVIEW	Abuse of discretion for substantive reasonableness of sentence
PRECEDENTIAL VALUE	Unpublished
PARTIES	Christopher Chad Pool v. United States of America

TOPICS

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

PRACTICE AREAS

- criminal law
- sentencing
- appeals

QUESTIONS PRESENTED

1. Whether the sentence of 240 months is substantively unreasonable.

HOLDINGS

1. The sentence is substantively reasonable and the district court did not abuse its discretion.

KEY QUOTATIONS

“in recognition of the need to protect the public from further crimes, and given [Defendant’s] extensive criminal history, the stockpile of firearms found at his residence and the threats of violence against law enforcement officers and their families at the time of his initial arrest.” (ROA Vol. 4 at 60)

FACTUAL BACKGROUND

Defendant pleaded guilty to possession with intent to distribute methamphetamine, possession of a machinegun, possession of an unregistered firearm silencer, possession of an unregistered firearm made from a rifle, and being a felon in possession of a firearm. The PSR calculated a guideline range of 188-235 months, later adjusted to 180-223 months after downward departure. The district court varied upward to 240 months based on the need to protect the public, extensive criminal history, stockpile of firearms, and threats of violence.

PROCEDURAL HISTORY

Defendant pleaded guilty to five counts; PSR classified him as career offender and armed career criminal; district court departed downward then varied upward to 240 months; defendant appeals substantive reasonableness.

DISPOSITION

dismissed

CASES CITED

- United States v. DeRusse, 859 F.3d 1232 (10th Cir. 2017)
- United States v. Gantt, 679 F.3d 1240 (10th Cir. 2012)
- United States v. McComb, 519 F.3d 1049 (10th Cir. 2007)
- Anders v. California, 386 U.S. 738 (1967)

OPINION

PER CURIAM.

FILED United States Court of Appeals UNITED STATES COURT OF APPEALS Tenth Circuit
FOR THE TENTH CIRCUIT April 2, 2020 _____ Christopher
M. Wolpert Clerk of Court UNITED STATES OF AMERICA, Plaintiff - Appellee, No. 19-6131 v.
(D.C. No. 5:18-CR-00217-G-1) (W.D. Okla.) CHRISTOPHER CHAD POOL, a/k/a Christopher
C. Poole, a/k/a Cityboy, Defendant - Appellant. _____ ORDER

AND JUDGMENT* _____ Before BACHARACH,
BALDOCK, and MORITZ, Circuit Judges.** _____ On March
8, 2019, Defendant pleaded guilty to: (1) possession with intent to distribute methamphetamine, in
violation of 21 U.S.C. § 841(a)(1); (2) possession of a machinegun, in violation of 18 U.S.C. §
922(o); (3) possession of an unregistered firearm silencer, in violation of 26 U.S.C. § 5861(d); (4)
possession of an unregistered firearm made from a rifle, in violation of 26 U.S.C. § 5861(d); and
(5) being a felon in * This order and judgment is not binding precedent, except under the doctrines
of law of the case, res judicata, and collateral estoppel.

It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir.
R. 32.1. ** After examining the briefs and appellate record, this panel has determined
unanimously to honor the parties' request for a decision on the briefs without oral argument. See
Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G).

The case is therefore submitted without oral argument. possession of a firearm, in violation of 18
U.S.C. § 922(g)(1). Thereafter, the United States Probation Office prepared a Presentence
Investigation Report ("PSR").

The PSR classified Defendant as a career offender under U.S.S.G. § 4B1.1 and an armed career
criminal under U.S.S.G. § 4B1.4. Based on an offense level of 34 and a criminal history category
of VI, the PSR calculated an advisory guideline range of 188 to 235 months' imprisonment.

The district court departed downward pursuant to U.S.S.G. §.5G1.3 in order to account for the
time Defendant spent in official custody that would not be credited toward the sentence imposed.
Following the downward departure, Defendant's guideline range was 180 to 223 months'
imprisonment.

The district court then varied upward and sentenced Defendant to 240 months' imprisonment.
Defendant now appeals and argues his sentence is substantively unreasonable. Counsel for
Defendant filed an Anders brief and moved to withdraw as counsel. See *Anders v. California*, 386
U.S. 738 (1967). Defendant did not file a response to the Anders brief.

The Government declined to submit a brief. Exercising jurisdiction under 28 U.S.C. § 1291, we
grant counsel's motion to withdraw and dismiss this appeal as wholly frivolous. *** We review the
substantive reasonableness of a sentence for an abuse of discretion and will reverse only if the
sentence imposed is "arbitrary, capricious, whimsical, or manifestly unreasonable." *United States*
v. DeRusse, 859 F.3d 1232, 1236 (10th Cir.

2017) (citing *United States v. Gantt*, 679 F.3d 1240, 1249 (10th Cir. 2012)). "[I]n many cases there
will be a range of possible outcomes the facts and law 2 at issue can fairly support; rather than
pick and choose among them ourselves, we will defer to the district court's judgment so long as it

falls within the realm of these rationally available choices.” Id. (citing *United States v. McComb*, 519 F.3d 1049, 1053 (10th Cir.

2007)). Upon review of the record and counsel’s Anders brief, we find there is no non- frivolous basis for Defendant to argue the district court abused its discretion in varying upward. The district court explained it varied upward “in recognition of the need to protect the public from further crimes, and given [Defendant’s] extensive criminal history, the stockpile of firearms found at his residence and the threats of violence against law enforcement officers and their families at the time of his initial arrest.” ROA Vol.

4 at 60. Thus, the variance was based upon the district court’s assessment of the 18 U.S.C. § 3553(a) factors including the need to protect the public from further crimes, Defendant’s criminal history, and the need for the sentence to reflect the seriousness of the offense and promote respect for the law.

We see no basis to reverse the district court’s reasoned judgment. *** Accordingly, counsel’s motion to withdraw is GRANTED and this appeal is DISMISSED. Entered for the Court Bobby R. Baldock Circuit Judge 3