

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

United States v. DeRusse

859 F.3d 1232 (10th Cir. 2017) · No. 15-3302 · Decided June 20, 2017

SUMMARY

The Tenth Circuit affirmed Joseph DeRusse’s time-served sentence, followed by five years of supervised release, for kidnapping. The court held that the district court did not abuse its discretion in imposing a substantial downward variance based on the aberrational nature of the conduct, DeRusse’s mental illness, and the unusual circumstances of the offense.

CASE DETAILS

COURT	United States Court of Appeals for the Tenth Circuit
WRITING FOR THE COURT	McKay, Circuit Judge; Tymkovich, Chief Judge; Baldock, Circuit Judge
JURISDICTION	Federal
DECIDED	June 20, 2017
DOCKET	15-3302
DISPOSITION	affirmed
PROCEDURAL POSTURE	The United States appealed the substantive reasonableness of the defendant's sentence following his guilty plea to kidnapping.
STANDARD OF REVIEW	Substantive sentencing reasonableness is reviewed for abuse of discretion. Reversal is warranted only when the sentence is arbitrary, capricious, whimsical, manifestly unreasonable, based on clearly erroneous facts, or rests on an erroneous conclusion of law. Unpreserved procedural sentencing objections are reviewed, if at all, for plain error.
PRECEDENTIAL VALUE	Published precedential federal appellate opinion
PARTIES	United States of America v. Joseph Andrew DeRusse

TOPICS

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

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the district court abused its discretion by imposing a sentence of time served followed by five years of supervised release.
2. Whether a downward variance under 18 U.S.C. § 3553(a) based on aberrant conduct is subject to the specific requirements governing a Guidelines departure under U.S.S.G. § 5K2.20.
3. Whether any error in the district court's application of the aberrant-behavior departure provision was preserved and, alternatively, harmless.
4. Whether the district court improperly weighed DeRusse's mental illness, the seriousness of the offense, victim harm, and general deterrence.

HOLDINGS

1. A downward variance under 18 U.S.C. § 3553(a) is distinct from a Guidelines departure and is not constrained by the specific requirements of U.S.S.G. § 5K2.20. In considering aberrant conduct for a variance, the district court may focus on how far the conduct deviated from the defendant's otherwise law-abiding character rather than on the departure provision's requirements concerning planning, duration, or discrete acts.
2. The district court did not abuse its discretion by imposing a sentence of time served followed by five years of supervised release. The sentence fell within the range of rationally permissible choices after the court considered the unusual circumstances of the offense, DeRusse's aberrant conduct and mental illness, the victim's harm, and the statutory sentencing factors.
3. The government's challenge to the § 5K2.20 downward departure was not sufficiently preserved because the government did not make a specific objection below or argue for plain-error review on appeal. In any event, any error was harmless because the downward variance independently supported the sentence and the record gave no reason to think the district court would impose a different sentence on remand.

KEY QUOTATIONS

"A variance can be imposed without compliance with the rigorous requirements for departures." (859 F.3d at 1237)

"We accordingly AFFIRM Defendant's conviction and sentence." (859 F.3d at 1241)

FACTUAL BACKGROUND

Joseph DeRusse kidnapped his twenty-four-year-old ex-girlfriend with a BB gun, forced her into her car, concealed her eyes, and drove her from Austin, Texas, toward Kansas, intending to keep her at a bed-and-breakfast for three weeks. He was apprehended approximately eight hours later and had no prior criminal history. The victim suffered significant psychological injuries, while DeRusse was diagnosed with serious mental-health conditions, including major depressive disorder and obsessive-compulsive disorder, that the district court found contributed to his delusional and aberrational conduct.

PROCEDURAL HISTORY

DeRusse pleaded guilty to one count of kidnapping in the United States District Court for the District of Kansas. The presentence report calculated an advisory Guidelines range of 108 to 135 months. The district court imposed approximately seventy days of time served followed by five years of supervised release, relying on aberrant behavior, mental illness, and the circumstances of the offense. The government appealed, arguing that the sentence was substantively unreasonable and challenging the downward departure and variance.

DISPOSITION

affirmed

CASES CITED

- United States v. Gantt, 679 F.3d 1240, 1247, 1249 (10th Cir. 2012)
- United States v. McComb, 519 F.3d 1049, 1053-54 (10th Cir. 2007)
- United States v. Garcia, 182 F.3d 1165, 1176 (10th Cir. 1999)
- Gall v. United States, 552 U.S. 38, 51 (2007)
- United States v. Winder, 557 F.3d 1129, 1136 (10th Cir. 2009)
- United States v. Lamirand, 669 F.3d 1091, 1099 n.7 (10th Cir. 2012)
- United States v. Arrevalo-Olvera, 495 F.3d 1211, 1214 (10th Cir. 2007)
- United States v. Walker, 844 F.3d 1253, 1255, 1257 n.2, 1259 (10th Cir. 2017)
- United States v. Brown, 164 F.3d 518, 521 n.3 (10th Cir. 1998)
- United States v. Craig, 808 F.3d 1249, 1261 (10th Cir. 2015)
- United States v. Alapizco-Valenzuela, 546 F.3d 1208, 1214 (10th Cir. 2008)
- United States v. Sanchez-Leon, 764 F.3d 1248, 1267 (10th Cir. 2014)
- United States v. Friedman, 554 F.3d 1301, 1310 (10th Cir. 2009)
- United States v. Ortiz, 804 F.2d 1161, 1164 n.2 (10th Cir. 1986)