

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

United States v. Zeilman

No. 18-1937-cr, United States Court of Appeals for the Second Circuit (June 28, 2019)

SUMMARY

Warren Zeilman appealed his 18-month below-Guidelines sentence for possession of pseudoephedrine to manufacture methamphetamine, arguing the district court should have imposed a non-custodial sentence. The Second Circuit affirmed, holding that the sentence was not substantively unreasonable given the seriousness of the offense, the court's already significant downward variance from the 70-87 month range, and Zeilman's ineligibility for probation under Zone D of the Sentencing Guidelines. The deferential standard of review requires reversal only if the sentence is "shockingly high, shockingly low, or otherwise unsupportable," which was not the case here.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	José A. Cabranes; Raymond J. Lohier, Jr.; Christopher F. Droney
JURISDICTION	Federal
DECIDED	June 28, 2019
DOCKET	18-1937-cr
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a judgment of conviction following a guilty plea.
STANDARD OF REVIEW	Our review of a sentence for substantive reasonableness is "particularly deferential." <i>United States v. Broxmeyer</i> , 699 F.3d 265, 289 (2d Cir. 2012). We will set aside a sentence as substantively unreasonable only if it "cannot be located within the range of permissible decisions." <i>United States v. Cavera</i> , 550 F.3d 180, 189 (2d Cir. 2008) (en banc) (internal quotation marks omitted). We identify as substantively unreasonable "only those sentences that are so shockingly high, shockingly low, or otherwise unsupportable as a matter of law that allowing them to stand would damage the administration of justice." <i>Broxmeyer</i> , 699 F.3d at 289 (internal quotation marks omitted).
PRECEDENTIAL VALUE	Unpublished

PARTIES

Warren Zeilman v. United States of America

TOPICS

sentencing

criminal procedure

standard of review

appellate procedure

PRACTICE AREAS

criminal law

QUESTIONS PRESENTED

1. Whether the sentence of 18 months imprisonment was substantively unreasonable.

HOLDINGS

1. The sentence of 18 months imprisonment is not substantively unreasonable.

KEY QUOTATIONS

"We identify as substantively reasonable 'only those sentences that are so shockingly high, shockingly low, or otherwise unsupportable as a matter of law that allowing them to stand would damage the administration of justice.'"

FACTUAL BACKGROUND

Zeilman was convicted of possession and attempted possession of pseudoephedrine knowing it would be used to manufacture methamphetamine. The Guidelines range was 70 to 87 months. He was sentenced to 18 months imprisonment. The district court originally announced a 24-month sentence but granted a further six-month downward variance upon request of Zeilman's counsel. His co-defendant (wife) received a lower sentence because she did not manufacture methamphetamine.

PROCEDURAL HISTORY

Zeilman pleaded guilty to possession and attempted possession of pseudoephedrine for methamphetamine manufacture. The district court sentenced him to 18 months imprisonment, well below the Guidelines range of 70-87 months. Zeilman appeals the sentence as substantively unreasonable.

DISPOSITION

affirmed

CASES CITED

- United States v. Broxmeyer, 699 F.3d 265, 289 (2d Cir. 2012)
- United States v. Cavera, 550 F.3d 180, 189 (2d Cir. 2008) (en banc)

