

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

United States v. Milne

No. 18-1155, United States Court of Appeals for the Second Circuit (May 17, 2019)

SUMMARY

The Second Circuit affirmed a 24-month sentence for violation of supervised release, rejecting challenges to procedural and substantive reasonableness. The district court adequately explained the upward variance from the 3-9 month Guidelines range based on § 3553(a) factors, including the need for deterrence and the nature of the violation—specifically the defendant's failure to pay a \$6.25 million SEC disgorgement obligation while spending lavishly. The court held that the sentence was not procedurally erroneous and was within the district court's discretion, as the record supported the conclusion that the defendant's pattern of unfulfilled promises and high lifestyle justified the maximum term. Key topics: supervised release violation, sentencing reasonableness, upward variance, § 3553(a) factors, SEC disgorgement, deterrence.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	Per Curiam; Dennis Jacobs; Pierre N. Leval; Christopher F. Droney
JURISDICTION	Federal
DECIDED	May 17, 2019
DOCKET	18-1155
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a judgment of the United States District Court for the District of Connecticut sentencing him to 24 months' imprisonment following his violation of the terms of supervised release.
STANDARD OF REVIEW	Sentences for violations of supervised release are reviewed under the same standard as for sentencing generally: whether the sentence imposed is reasonable. Substantive reasonableness is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	unpublished
PARTIES	John N. Milne v. United States of America

TOPICS

sentencing

criminal procedure

appellate procedure

standard of review

PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the district court's sentence was procedurally unreasonable.
2. Whether the district court's sentence was substantively unreasonable.

HOLDINGS

1. The sentence was procedurally reasonable because the district court adequately explained the sentence based on the § 3553(a) factors, specifically deterrence and the nature and circumstances of the violation, and its analogy to armed robbery was not misleading.
2. The sentence was not substantively unreasonable; the district court did not abuse its discretion in imposing a 24-month sentence.

FACTUAL BACKGROUND

Milne was President and CFO of a publicly traded company and pleaded guilty to conspiracy to falsify its books and records. He was sentenced to 27 months' imprisonment and 36 months of supervised release, with a special condition to pay \$6.25 million to the SEC to satisfy a disgorgement order. After release, he failed to make required payments and left the district without permission. The district court continued the violation hearing multiple times, and ultimately sentenced him to 24 months' imprisonment.

PROCEDURAL HISTORY

Milne pleaded guilty in 2009 to conspiracy to falsify books and records of a publicly traded company. He was sentenced to 27 months' imprisonment and 36 months of supervised release with a special condition requiring payment of \$6,250,000 to the SEC. In March 2013, Milne admitted to violating supervised release by failing to make payments and leaving the district without permission. The violation hearing was continued numerous times, and in April 2018 the district court sentenced him to the maximum term of 24 months' imprisonment.

DISPOSITION

affirmed

CASES CITED

- United States v. Brooks, 889 F.3d 95, 100 (2d Cir. 2018)
- United States v. Robinson, 702 F.3d 22, 38 (2d Cir. 2012)
- Gall v. United States, 552 U.S. 38, 51 (2007)
- United States v. Cavera, 550 F.3d 180, 189 (2d Cir. 2008) (in banc)

- United States v. Desnoyers, 708 F.3d 378, 385 (2d Cir. 2013)
- United States v. Matta, 777 F.3d 116, 124 (2d Cir. 2015)
- United States v. Rigas, 583 F.3d 108, 123 (2d Cir. 2009)
- United States v. Jones, 531 F.3d 163, 172 (2d Cir. 2008)

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