

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

August 4, 2023

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DEANDRE ANTONIO HOPKINS,

Defendant - Appellant.

No. 22-5090
(D.C. No. 4:12-CR-00050-GKF-3)
(N.D. Okla.)

ORDER AND JUDGMENT*

Before **BACHARACH, KELLY, AND MORITZ**, Circuit Judges.

This appeal involves Mr. Deandre Antonio Hopkins’s motion to reduce his sentence. In his motion, Mr. Hopkins relied on a statute allowing modification of a prison term. *See* 18 U.S.C. § 3582(c)(1)(A)(i)

* Oral argument would not help us decide the appeal, so we have decided the appeal based on the record and the parties’ briefs. *See* Fed. R. App. P. 34(a)(2)(C); 10th Cir. R. 34.1(G).

Our order and judgment does not constitute binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. But the order and judgment may be cited for its persuasive value if otherwise appropriate. *See* Fed. R. App. P. 32.1(a); 10th Cir. R. 32.1(A).

(2018). The district court granted Mr. Hopkins’s motion, but didn’t reduce the sentence as low as he wanted.

District courts generally have considerable discretion when selecting a sentence. *United States v. Basnett*, 735 F.3d 1255, 1263 (10th Cir. 2013). But limits exist. For example, courts must consider the need to avoid unwarranted sentencing disparities among similarly situated defendants across the country. *See* 18 U.S.C. § 3553(a)(6) (2018).

The district court initially exercised its discretion by selecting a prison sentence of 544 months. This sentence included prison terms for two firearm offenses. On the second firearm offense, the court imposed a 300-month term for using, carrying, brandishing, and discharging a firearm during and in relation to a crime of violence. The district court later reduced this term to 180 months, and Mr. Hopkins challenges this sentence.

In considering this challenge, we apply the abuse-of-discretion standard. *See United States v. Hemmelgarn*, 15 F.4th 1027, 1031 (10th Cir. 2021). Under this standard, we give substantial deference to the district court and overturn a sentence only when it’s “arbitrary, capricious, whimsical, or manifestly unreasonable.” *United States v. Peña*, 963 F.3d 1016, 1024 (10th Cir. 2020) (quoting *United States v. Sayad*, 589 F.3d 1110, 1116 (10th Cir. 2009)).

Mr. Hopkins argues that the district court abused its discretion by failing to

- resentence him to the statutory minimum on the firearm count and
- consider the disparity with a codefendant's sentence.

We reject these arguments.

When the initial sentencing took place, federal law required a prison term of at least 300 months for the second firearm offense even if the first firearm offense had been charged in the same indictment. 18 U.S.C. § 924(c)(1)(C) (2006); *see United States v. Davis*, 139 S. Ct. 2319, 2324 n.1 (2019) (explaining that before the First Step Act, “a defendant convicted of two § 924(c) violations in a single prosecution [would have] faced a [300-month] minimum for the second violation”). After the sentencing, Congress changed the law, providing that the 300-month minimum would no longer apply to a second firearm conviction until the first firearm conviction had become final. First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194, 5221–22 (2018); *see United States v. Davis*, 139 S. Ct. 2319, 2324 n.1 (2019) (explaining that in the First Step Act, “Congress changed the law so that, going forward, only a second § 924(c) violation committed ‘after a prior [§ 924(c)] conviction . . . has become final’ will trigger the 25-year minimum”) (quoting Pub. L. 115-391, § 403(a), 132 Stat. 5221).

With the change, the mandatory minimum for the second conviction dropped from 300 months to 120 months. So Mr. Hopkins requested a sentence reduction. The district court granted the request and resentenced Mr. Hopkins to 180 months for that conviction. Mr. Hopkins insists that the court should have dropped his sentence to the new mandatory minimum (120 months). But the court had no obligation to drop the sentence to the new statutory minimum. *See United States v. Jackson*, 952 F.3d 492, 501–02 (4th Cir. 2020) (rejecting an argument that a district court abused its discretion by declining to reduce a sentence to a new statutory minimum).

Mr. Hopkins also challenges his sentence based on a failure to consider unwarranted sentencing disparities. Under federal law, sentencing courts must consider the possibility of unwarranted sentencing disparities across the nation. 18 U.S.C. § 3553(a)(6) (2018). Courts may (but need not) also consider the sentences of codefendants. *See United States v. Zapata*, 546 F.3d 1179, 1194 (10th Cir. 2008) (“A district court may consider sentencing disparities between co-defendants.”); *United States v. Verdin-Garcia*, 516 F.3d 884, 889 (10th Cir. 2008) (“[Section] 3553(a)(6) requires a judge to take into account only disparities *nationwide* among defendants with similar records and Guideline calculations.”) (emphasis in original).

Invoking the federal law, Mr. Hopkins relies on an apparent disparity between his sentence reduction and the reduction given to a codefendant,

Mr. Vernon James Hill. Like Mr. Hopkins, Mr. Hill was convicted after a jury trial of similar firearm violations; and the court initially imposed a sentence of 300 months on Mr. Hill’s second firearm offense.

Mr. Hill later moved for resentencing, and the district court granted his motion, resentencing him to 84 months—the new mandatory minimum sentence for his offense (brandishing a firearm in relation to a crime of violence). 18 U.S.C. § 924(c)(1)(A)(ii) (2018). Mr. Hopkins complains that he was resentenced above the new statutory minimum and Mr. Hill wasn’t. Given this difference, Mr. Hopkins argues that the district court failed to consider “the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.” 18 U.S.C. § 3553(a)(6) (2018).

Mr. Hopkins is mistaken about the type of disparities that the district court had to consider. The law is not designed “to eliminate disparities among co-defendants, but rather to eliminate disparities among sentences nationwide.” *United States v. Peña*, 963 F.3d 1016, 1026 (10th Cir. 2020) (quoting *United States v. Zapata*, 546 F.3d 1179, 1194 (10th Cir. 2008)). The difference between Mr. Hopkins’s and Mr. Hill’s sentences does not involve a national disparity. So that difference alone can’t require reversal.

Granted, the court could consider Mr. Hill’s sentence when deciding Mr. Hopkins’s new sentence. But even then, the court could reasonably differentiate between the defendants. For example, a difference existed

between the offenses triggering the statutory minimums: Mr. Hill was found guilty of brandishing a firearm, while Mr. Hopkins was convicted of discharging one. These offenses not only differed, but entailed different mandatory minimums: Mr. Hopkins's minimum was 120 months; Mr. Hill's was 84 months. *See* 18 U.S.C. §§ 924(c)(1)(A)(ii) (2018) (brandishing); 924(c)(1)(A)(iii) (2018) (discharging). And the two defendants had different criminal histories: Mr. Hopkins had 9 criminal history points; Mr. Hill had no criminal history points. Based on these differences, a court could reasonably decide to lower Mr. Hill's sentence to the new statutory minimum and to impose a harsher sentence on Mr. Hopkins. That decision lay within the district court's discretion.

* * *

We conclude that the district court acted within its discretion when resentencing Mr. Hopkins to 180 months for his second firearm offense.¹

Entered for the Court

Robert E. Bacharach
Circuit Judge

¹ We grant Mr. Hopkins's motion for leave to proceed in forma pauperis.