NOT RECOMMENDED FOR PUBLICATION

No. 23-5143

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Nov 29, 2023
KELLY L. STEPHENS, Clerk

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Appellee,	)	
	)	ON APPEAL FROM THE UNITED
v.	)	STATES DISTRICT COURT FOR
	)	THE EASTERN DISTRICT OF
LESLIE DANIELLE BETHEA,	)	TENNESSEE
	)	
Defendant-Appellant.	)	

O R D E R

Before: NORRIS, MOORE, and COLE, Circuit Judges.

Leslie Danielle Bethea, a federal prisoner proceeding through counsel, appeals her sentence following the revocation of her supervised release. The government moves for us to take judicial notice that Eastern District of Tennessee Case No. 2:22-cr-00052 is related to this case. The parties have waived oral argument, and this panel unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a). Because the district court did not abuse its discretion, we affirm.

In 2019, Bethea pleaded guilty to conspiracy to commit wire fraud, in violation of 18 U.S.C. § 1349, and wire fraud, in violation of 18 U.S.C. § 1343. The district court sentenced her to 24 months' imprisonment followed by 36 months' supervised release. Her convictions arose from a conspiracy in which she collected thousands of dollars by stealing identities to create counterfeit credit accounts and fraudulent tax returns. Her supervised release began in October 2020.

In June 2022, the probation office petitioned the court for a warrant based on supervised release violations relating to pending criminal charges. In the new criminal case, Bethea pleaded guilty to wire fraud, in violation of § 1343, and making a false statement, in violation of 18 U.S.C.

§ 1001. The probation officer prepared a presentence report (PSR). According to the PSR, in March 2021, Bethea or an individual acting on her behalf applied online for a Personal Protection Program (PPP) Loan from Capital Plus Financial for $20,805. Capital approved the loan and deposited the funds into Bethea's account. The application stated that Bethea was the sole proprietor of a marketing business that grossed $99,865 in 2019. But in fact, the Tennessee Department of Labor showed no employment data for Bethea for 2019, and she was incarcerated for most of that year. Additionally, Bethea attached a fraudulent tax form to the application and falsely stated that she had not been convicted of fraud within the past five years.

Bethea immediately used the funds for personal and unauthorized reasons. Specifically, in April, she paid $2,834.22 to stay in a luxury resort in Florida and then she paid $5,500 for cosmetic surgery. She also misrepresented these facts in her monthly report to her probation officer. For example, in her April 2021 report, she stated that the only money she had received was $200 from her ex-husband, she had not made any purchases over $500, and she had not travelled out of the district without permission. Bethea was arrested in June 2022, and she admitted to the loan, the trip, and the personal expenses. She also admitted that she received around $5,000 per person for referring about 20 people to the friend who helped her submit her PPP loan application.

The district court held a joint sentencing for the criminal case and the revocation proceeding. After ruling on the government's objections to the PSR, it determined that Bethea's guidelines range for her new convictions was 57 to 71 months' imprisonment. The district court sentenced Bethea to 66 months' imprisonment. Then, the district court found that Bethea violated the terms of her supervised release and revoked her supervision. Bethea's guidelines range for the supervised release violation was 4 to 10 months imprisonment. The district court sentenced Bethea to 12 months' imprisonment for the violation, to run consecutive to her 66-month sentence. In this appeal, Bethea challenges her 12-month revocation sentence as substantively unreasonable.

"Sentences imposed following the revocation of supervised release are reviewed for . . . substantive reasonableness under the same abuse-of-discretion standard that applies to post-conviction sentences." *United States v. Price*, 901 F.3d 746, 749 (6th Cir. 2018). Substantive

reasonableness focuses on whether a "sentence is too long (if a defendant appeals) or too short (if the government appeals)." *United States v. Rayyan*, 885 F.3d 436, 442 (6th Cir. 2018). Although a within-guidelines sentence is afforded a presumption of substantive reasonableness, "there is no presumption against a sentence that falls outside of this range." *United States v. Small*, 988 F.3d 241, 259 (6th Cir. 2021) (quoting *United States v. Herrera-Zuniga*, 571 F.3d 568, 590 (6th Cir. 2009)). When a sentence falls outside the guideline range, we "must consider the extent of the deviation and ensure that the justification is sufficiently compelling to support the degree of the variance." *United States v. Boucher*, 937 F.3d 702, 708 (6th Cir. 2019) (quoting *Gall v. United States*, 552 U.S. 38, 50 (2007)).

On appeal, Bethea argues that the two-month upward variance from the guidelines range was unreasonable. In giving "due deference" to the district court's decision that the § 3553(a) factors warranted a two-month upward variance, we find no abuse of discretion. *Gall*, 552 U.S. at 51. First, the two-month increase was a minor deviation from the guidelines. This is especially noteworthy because the probation officer recommended the statutory maximum of 24 months, and the court itself noted that it was difficult "to articulate a basis to impose something less than the statutory maximum."

Second, the district court sufficiently supported its decision for a minor deviation from the guidelines by relying on the § 3553(a) factors. *See Boucher*, 937 F.3d at 708. The court specifically noted that it varied upwards because Bethea's conduct was "so egregious, so blatant, [and] exhibit[ed] such a strong lack of respect for the law." Indeed, Bethea violated the terms of her supervised release early on, with no regard for her recent 24-month prison sentence for similar crimes. Even more egregious, Bethea requested early termination of her supervision for good behavior *after* committing these offenses. In addition to the fact that Bethea violated her supervised release, her underlying conduct was also reprehensible. As the court noted, Bethea stole funds intended "for people who had truly and legitimately been harmed by COVID" and was a "serial thief with repeated thefts of other people's property." The court justifiably determined that Bethea's "scheme [to] fleece the government" and "taxpayers" in violation of the terms of her

supervision was a serious offense and showed Bethea's lack of respect for the law, especially in light of her history of fraud offenses.

Bethea also argues that her 12-month sentence is unreasonable and unnecessary when considered in conjunction with her 66-month sentence. But a revocation sentence is not unreasonable just because it follows a criminal sentence imposed for the same conduct. *See United States v. King*, 914 F.3d 1021, 1025 (6th Cir. 2019). Rather, the guidelines recommend that revocation sentences run consecutively to any other sentence, "whether or not the sentence of imprisonment being served resulted from the conduct that is the basis of the revocation of probation or supervised release." USSG § 7B1.3(f). In reviewing a consecutive revocation sentence, we ask whether the court treated § 7B1.3(f) as advisory and whether the court adequately considered the § 3553(a) factors. *See King*, 914 F.3d at 1025-26.

The record establishes that the district court was aware of its discretion to impose consecutive or concurrent sentences. It did not need to be explicit about this discretion or the advisory nature of § 7B1.3. *See id.* Because the court ordered that Bethea's federal sentences should run concurrently to any forthcoming state sentences, it is clear that the court was aware of its discretion to run the revocation sentence concurrently or consecutively to the 66-month sentence in the criminal case.

Further, "the record does not demonstrate any error in the adequacy of the district judge's explanation for imposing a consecutive sentence." *Id.* at 1026. The record shows that the court explicitly mentioned various § 3553(a) factors in supporting its decision to impose a consecutive sentence. The court acknowledged that it had to impose a sentence for the supervision violation, because not doing so would "not promote respect for the law, it would not deter [Bethea, and] it would not deter others." Further, the court noted that not imposing an additional sentence on her supervision violation would "embolden others under supervision to violate their terms and conditions."

Overall, the court adequately reviewed the § 3553(a) factors and explained its reasoning for the sentence imposed. *See Boucher*, 937 F.3d at 708. We find no abuse of discretion in imposing the 12-month sentence.

We therefore **GRANT** the motion to take judicial notice and **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens, Clerk