

# 09-3291-cr

*To Be Argued By:*  
ELIZABETH A. LATIF

=====

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 09-3291-cr

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UNITED STATES OF AMERICA,  
*Appellee,*

-vs-

CHRISTOPHER GOINS, also known as Mad Ball,  
*Defendant,*

TERRENCE STEELE, also known as TEE-FUR,  
also known as T, also known as T-FUR,  
*Defendant-Appellant.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

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**BRIEF FOR THE UNITED STATES OF AMERICA**

=====

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## TABLE OF CONTENTS

Table of Authorities.....	iii
Statement of Jurisdiction.....	vi
Statement of Issue Presented for Review.....	vii
Preliminary Statement.....	1
Statement of the Case.....	2
Statement of Facts and Proceedings	
Relevant to this Appeal.....	5
A. The offense conduct.....	5
B. The initial sentencing and appeal.....	5
C. The resentencing.....	6
Summary of Argument.....	10
Argument.....	11
I. The district court's sentence was reasonable.....	11
A. Governing law and standard of review.....	11
B. Discussion.....	14
1. The sentence of 151 months' imprisonment was procedurally reasonable.....	14

b. The district court did not apply a presumption of reasonableness to the Guidelines. . . . .	14
2. The sentence of 151 months' imprisonment was substantively reasonable. . . . .	17
3. The supervised release sentence was procedurally and substantively reasonable. . . . .	19
Conclusion. . . . .	21
Addendum	

## TABLE OF AUTHORITIES

### CASES

PURSUANT TO “BLUE BOOK” RULE 10.7, THE GOVERNMENT’S CITATION OF CASES DOES NOT INCLUDE “CERTIORARI DENIED” DISPOSITIONS THAT ARE MORE THAN TWO YEARS OLD.

<i>Gall v. United States</i> , 552 U.S. 38 (2007).....	11, 12
<i>United States v. Avello-Alvarez</i> , 430 F.3d 543 (2d Cir. 2005).....	12
<i>United States v. Booker</i> , 543 U.S. 220 (2005).....	12
<i>United States v. Cavera</i> , 550 F.3d 180 (2d Cir. 2008) (en banc).....	11, 12, 19
<i>United States v. Crosby</i> , 397 F.3d 103 (2d Cir. 2005).....	12
<i>United States v. Fernandez</i> , 443 F.3d 19 (2d Cir. 2006).....	11, 13, 15, 16, 20
<i>United States v. Frady</i> , 456 U.S. 152 (1982).....	14
<i>United States v. Regalado</i> , 518 F.3d 143 (2d Cir. 2008) (per curiam).....	2, 3, 6

<i>United States v. Rigas</i> , 583 F.3d 108 (2d Cir. 2009), <i>pet'n for cert. filed</i> , No. 09-1456 (May 28, 2010).....	13, 19
<i>United States v. Rubenstein</i> , 403 F.3d 93 (2d Cir. 2004).....	15
<i>United States v. Verkhoglyad</i> , 516 F.3d 122 (2d Cir. 2008).....	12, 13, 14, 16, 19
<i>United States v. Villafuerte</i> , 502 F.3d 204 (2d Cir. 2007).....	13, 14, 17

## STATUTES

18 U.S.C. § 3231.....	vi
18 U.S.C. § 3553.....	<i>passim</i>
18 U.S.C. § 3583.....	2, 10, 11, 19
18 U.S.C. § 3742.....	vi
21 U.S.C. § 841.....	3, 6, 20
21 U.S.C. § 846.....	3
21 U.S.C. § 851.....	3, 6, 10

**RULES**

Fed. R. App. P. 4. . . . . vi, 4

**GUIDELINES**

U.S.S.G. § 5D1.2. . . . . 20

## **Statement of Jurisdiction**

The district court (Ellen Bree Burns, J.) had subject matter jurisdiction over this federal criminal prosecution under 18 U.S.C. § 3231. A resentencing hearing on remand was held on July 31, 2009. Appendix (“A”) 18. Final judgment entered on August 3, 2009, A 18, and the defendant filed a timely notice of appeal pursuant to Fed. R. App. P. 4(b) on July 31, 2009. A 18. This Court has appellate jurisdiction pursuant to 18 U.S.C. § 3742(a).

**Statement of Issue  
Presented for Review**

Did the district court act reasonably in resentencing the defendant to 151 months' imprisonment, which was at the bottom of the applicable Guidelines range, and to ten years of supervised release, which was well within the applicable statutory and Guidelines ranges?

# United States Court of Appeals

**FOR THE SECOND CIRCUIT**

**Docket No. 09-3291-cr**

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UNITED STATES OF AMERICA,

*Appellee,*

-vs-

CHRISTOPHER GOINS, also known as Mad Ball,

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*Defendant-Appellant.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

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**BRIEF FOR THE UNITED STATES OF AMERICA**

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## **Preliminary Statement**

The defendant Terrence Steele, who has a lengthy criminal history, including a weapons offense and several felony narcotics crimes, was found guilty by a jury of (1) having conspired to possess with intent to distribute and to

distribute 50 grams or more of cocaine base and (2) having possessed with the intent to distribute and distributing 50 grams or more of cocaine base. The district court sentenced the defendant principally to 324 months' imprisonment and ten years' supervised release. He appealed his sentence, and this Court, although noting that the sentence was not otherwise unreasonable, remanded the case for resentencing pursuant to *United States v. Regalado*, 518 F.3d 143 (2d Cir. 2008) (per curiam).

On July 31, 2009, the district court conducted a resentencing hearing and reduced the defendant's term of incarceration to 151 months' imprisonment, which was at the bottom of the applicable Guidelines range. The district court also resentenced the defendant to ten years of supervised release, as it had at his initial sentencing.

The defendant has now appealed a second time, again arguing that his sentence is unreasonable. The record establishes, however, that the district court carefully considered the cocaine base disparity, as ordered by this Court, as well as the other Guidelines and the factors enumerated in 18 U.S.C. §§ 3553(a) and 3583(c), including the defendant's significant criminal history and the significant weight of the drugs he distributed. The district court's sound sentencing decision should not be disturbed.

## Statement of the Case

On March 9, 2006, a federal grand jury in Connecticut returned a superseding indictment charging the defendant with one count of conspiring to possess with intent to distribute and to distribute 50 grams or more of cocaine base, in violation of Title 21, United States Code, Sections 846, 841(a)(1) and 841(b)(1)(A) (Count One), and one count of possessing with intent to distribute and distributing 50 grams or more of cocaine base, in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(A) (Count Three). A 7, 20.

On November 14, 2006, the Government filed an information pursuant to Title 21, United States Code, Section 851, establishing the fact of the defendant's prior conviction for a felony drug offense. A 10.

On December 11, 2006, at the conclusion of a four-day trial, a jury convicted the defendant of both counts in the superseding indictment. A 13. On April 5, 2007, the district court sentenced the defendant principally to 324 months' imprisonment and ten years of supervised release on both counts, with the sentences to run concurrently. A 14-15.

The defendant appealed his conviction and sentence. On July 1, 2008, in a summary order, this Court affirmed the defendant's conviction, but remanded to the district court for resentencing in accordance with *United States v. Regalado*, 518 F.3d 143 (2d Cir. 2008) (per curiam). A 23-25.

On July 31, 2009, after a resentencing hearing, the district court resentenced the defendant principally to 151 months' imprisonment and ten years of supervised release. A 46-72. The amended judgment was entered on August 3, 2009. A 18, 73-75.

The defendant filed a timely notice of appeal pursuant to Fed. R. App. P. 4(b) on July 31, 2009. A 18. The defendant is currently in custody serving the sentence imposed by the district court.

**Statement of Facts and Proceedings  
Relevant to this Appeal**

**A. The offense conduct<sup>1</sup>**

In January 2005, the Federal Bureau of Investigation (“FBI”) began a narcotics investigation into an individual named Christopher Goins, who was reportedly selling quantities of cocaine base in the New Haven area. PSR ¶ 5. A cooperating witness began working with agents and attempted to arrange purchases of cocaine base from Goins in March 2005. PSR ¶ 6. When the witness initially attempted to contact Goins, Goins’s voicemail indicated that callers should contact a different telephone number. PSR ¶ 6. When the witness called that number, the defendant Terrence Steele answered. PSR ¶ 6. The FBI then coordinated several controlled purchases of cocaine base from the defendant. PSR ¶ 7-8. During the FBI’s monitored communications with Goins, he indicated that he and the defendant worked together. PSR ¶ 10.

**B. The initial sentencing and appeal**

Based on his status as a career offender, the Probation Office calculated the defendant’s adjusted offense level to be 37 and his Criminal History Category to be VI. PSR ¶¶ 14, 20, 35. This resulted in a Guidelines range of imprisonment of 360 months to life. PSR ¶ 57.

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<sup>1</sup> The following facts are not in dispute and are taken from the defendant’s Pre-Sentence Report (“PSR”).

At the sentencing hearing, the defendant requested, and received, a one-level downward departure in his Criminal History Category. A 40. This resulted in an adjusted range of 324 to 405 months of imprisonment. A 40. The district court then sentenced the defendant to 324 months' imprisonment to be followed by ten years of supervised release, which, at the time, was the mandatory minimum term of supervised release. A 15.

The defendant subsequently appealed his conviction and also appealed his sentence as being procedurally and substantively unreasonable. A 24. On July 1, 2008, by summary order, this Court affirmed the defendant's conviction and noted that the defendant's 324-month sentence was "not otherwise procedurally unreasonable." A 23-25. The Court remanded to the district court for resentencing, however, in accordance with *United States v. Regalado*, 518 F.3d 143 (2d Cir. 2008) (per curiam). A 23-25.

### **C. The resentencing**

On remand, the Government filed a motion to withdraw its previously filed Section 851 information, stating that, in light of recent developments in the law, it could no longer establish the basis for the enhanced penalty in this case. A 44-45. As a result, the defendant's statutory mandatory minimum term imprisonment was reduced to ten years, with a maximum of life, and his statutory mandatory minimum term of supervised release was reduced to five years, with a maximum of life. 21 U.S.C. § 841(b)(1)(A).

The Government also noted that it could no longer prove that the defendant was a career offender under § 4B1.1 of the Guidelines. Second Addendum to PSR. All the parties agreed, therefore, that the defendant's adjusted base offense level was 30. A 41, 53, 57. The parties also agreed that the defendant's Criminal History Category was a VI, absent the district court's reinstatement of the downward departure it granted at the initial sentencing. A 53, 57, 66.

In his sentencing memorandum and arguments to the district court, the defendant argued that the district court should "adopt a 1-to-1 ratio" and eliminate the disparity between crack and powder cocaine under the Guidelines. A 40, 50-55. The defendant also argued that the district court should consider the defendant's "long-term addiction to drugs" and argued that the court should sentence him to the mandatory minimum term of ten years' imprisonment. A 42, 54-55.

In the Government's remarks to the court, counsel for the Government argued for a sentence within the Guidelines range of 151 to 188 months. A 57-63. The Government noted that the defendant's criminal history was long and deep and that, in the 15 years prior to the defendant's incarceration on the instant case, the defendant had only been out of court supervision for a total of three years. A 59. The Government also noted that the defendant's proposed sentence of ten years would create unwarranted sentencing disparities among other similarly-situated defendants, and the Government cited several examples of defendants who had committed

similar crimes and were convicted at trial and had received sentences in excess of ten years. A 61-62.

Before imposing sentence, the district court determined the defendant's adjusted offense level to be 30. A 66. As it had at the initial sentencing, the district court granted a downward departure to reduce the defendant's Criminal History Category from a VI to a V, although the court noted that the defendant had been arrested and convicted of assault since the district court's initial determination of his Criminal History Category. A 66. Using the above calculations, the district court found, and the parties agreed, that the defendant's range of imprisonment under the Guidelines was 151 to 188 months. A 66.

After calculating the Guidelines range, the district court outlined its rationale in determining the sentence to be imposed:

THE COURT: The Second Circuit has asked the Court to consider the disparity between cocaine and cocaine base, in terms of the sentences that are imposed. I do take that into consideration. Certainly I'm familiar with that.

I've also, as [counsel for the Government] has enumerated, the – I take into consideration the provisions of the statute with respect to the appropriate factors that go into the determination of a sentence, including the seriousness of the offense and, mind you, these are serious offenses.

The drug trafficking has wreaked such horrible effects on the citizens of the state, that I am very much convinced that they are a serious offense.

I've taken into consideration Mr. Steele and his personal history, and his characteristics, the factor of deterrence, both of Mr. Steele, for whom I think has suggested that his experience so far has persuaded him that he doesn't want to continue in a criminal path, but I – and I hope that's true, but I want to be certain that he is sufficiently deterred, as well as those persons who, in the public, are aware of the sentences that the Court is imposing with respect to this kind of crime; that is, the general deterrent factor that we've referred to before.

The unwarranted disparity among similar-situated defendants is a factor, and I know the sentences that I have given in past cases of this kind, and they were fairly substantial sentences.

I'm inclined to believe that a sentence within the guideline range is appropriate, not the mandatory minimum, I've given all of those consideration, but I am content to sentence Mr. Steele at the bottom of that guideline range, which is 151 months.

So, Mr. Steele is sentenced to the custody of the Bureau of Prisons for a period of 151 months on each count. The sentence is to run concurrent.

In the – All the other provisions of the original sentence remain in effect; that is, his supervised release provisions. He's going to be on supervised release for [a] period of ten years on each count,

concurrent, and the conditions of supervised release which were initially imposed are reimposed.

A 67-68.

The Government then reminded the court that it was entitled to impose a supervised release term of as little as five years, in light of the Government's withdrawal of its § 851 information. A 70. In response, the district court stated: "Given the defendant's criminal history, I think it will be to his benefit to have the guidance of probation for a longer period of time." A 70.

The defendant filed a timely notice of appeal on the same date the hearing was held. A 18.

### **Summary of Argument**

The defendant's claim that his sentence is procedurally and substantively unreasonable has no merit. Contrary to the defendant's arguments, the district court did not apply a presumption of reasonableness to the cocaine base Guidelines, did consider the defendant's drug dependency, and considered all of the relevant factors under 18 U.S.C. §§ 3553(a) and 3583(c). Given the defendant's lengthy criminal history and pattern of recidivism, as well as the large amount of drugs attributable to the defendant, the district court's bottom-of-the-Guidelines sentence of 151 months' imprisonment and ten years of supervised release was well within the range of permissible decisions.

## Argument

### I. The district court's sentence was reasonable.

#### A. Governing law and standard of review

At sentencing, a district court must begin by calculating the applicable Guidelines range. *See United States v. Cavera*, 550 F.3d 180, 189 (2d Cir. 2008) (en banc). “The Guidelines provide the ‘starting point and the initial benchmark’ for sentencing, and district courts must ‘remain cognizant of them throughout the sentencing process.’” *Id.* (internal citations omitted) (quoting *Gall v. United States*, 552 U.S. 38, 49, 50 & n.6 (2007)). After giving both parties an opportunity to be heard, the district court should then consider all of the factors under 18 U.S.C. § 3553(a). *See Gall*, 552 U.S. at 49-50. In determining the length of a term of supervised release, a district court must consider the specific factors enumerated at 18 U.S.C. § 3553(a) applicable to supervised release. *See* 18 U.S.C. § 3583(c) (listing the § 3553(a) factors to be considered). This Court “presume[s], in the absence of record evidence suggesting otherwise, that a sentencing judge has faithfully discharged her duty to consider the [§ 3553(a)] factors.” *United States v. Fernandez*, 443 F.3d 19, 30 (2d Cir. 2006).

Because the Guidelines are only advisory, district courts are “generally free to impose sentences outside the recommended range.” *Cavera*, 550 F.3d at 189. “When they do so, however, they ‘must consider the extent of the deviation and ensure that the justification is sufficiently

compelling to support the degree of the variance.” *Id.* (quoting *Gall*, 552 U.S. at 50).

On appeal, a district court’s sentencing decision is reviewed for reasonableness. *See United States v. Booker*, 543 U.S. 220, 260-62 (2005). In this context, reasonableness has both procedural and substantive dimensions. *See United States v. Avello-Alvarez*, 430 F.3d 543, 545 (2d Cir. 2005) (citing *United States v. Crosby*, 397 F.3d 103, 114-15 (2d Cir. 2005)). “A district court commits procedural error where it fails to calculate the Guidelines range (unless omission of the calculation is justified), makes a mistake in its Guidelines calculation, or treats the Guidelines as mandatory.” *Cavera*, 550 F.3d at 190 (citations omitted). A district court also commits procedural error “if it does not consider the § 3553(a) factors, or rests its sentence on a clearly erroneous finding of fact.” *Id.* Finally, a district court “errs if it fails adequately to explain its chosen sentence, and must include ‘an explanation for any deviation from the Guidelines range.’” *Id.* (quoting *Gall*, 552 U.S. at 51).

After reviewing for procedural error, this Court reviews the sentence for substantive reasonableness under a “deferential abuse-of-discretion standard.” *Cavera*, 550 F.3d at 189. The Court “will not substitute [its] own judgment for the district court’s”; rather, a district court’s sentence may be set aside “only in exceptional cases where [its] decision cannot be located within the range of permissible decisions.” *Id.* (internal quotation marks omitted); *see also United States v. Verkhoglyad*, 516 F.3d 122, 134 (2d Cir. 2008) (“Our review of sentences for

reasonableness thus exhibits restraint, not micromanagement.”) (internal quotation marks omitted).

A sentence is substantively unreasonable only in the “rare case” where the sentence would “damage the administration of justice because the sentence imposed was shockingly high, shockingly low, or otherwise unsupportable as a matter of law.” *United States v. Rigas*, 583 F.3d 108, 123 (2d Cir. 2009), *pet’n for cert. filed*, No. 09-1456 (May 28, 2010). While the Court does not presume that a Guidelines sentence is reasonable, “in the overwhelming majority of cases, a Guidelines sentence will fall comfortably within the broad range of sentences that would be reasonable in the particular circumstances.” *Fernandez*, 443 F.3d at 27. Finally, no one fact or statutory factor may dictate a particular sentence; rather “a district judge must contemplate the interplay among the many facts in the record and the statutory guideposts.” *Id.* at 29.

When a defendant fails to preserve an objection to the procedural reasonableness of a sentence, this Court reviews for plain error. *See Verkhoglyad*, 516 F.3d at 128; *United States v. Villafuerte*, 502 F.3d 204, 208 (2d Cir. 2007). To show plain error, a defendant must demonstrate “(1) error (2) that is plain and (3) affects substantial rights.” *Villafuerte*, 502 F.3d at 209. Even then, the Court will exercise its discretion to correct the error “only if the error seriously affected the fairness, integrity, or public reputation of the judicial proceedings.” *Id.* (internal quotation marks omitted). Reversal for plain error should “be used sparingly, solely in those circumstances in which a miscarriage of justice would otherwise result.”

*Villafuerte*, 502 F.3d at 209 (quoting *United States v. Frady*, 456 U.S. 152, 163 n.14 (1982)). The Court has not yet decided whether the plain error standard applies when a defendant fails to preserve an objection to the substantive reasonableness of a sentence. *See Verkhoglyad*, 516 F.3d at 134.

## **B. Discussion**

### **1. The sentence of 151 months' imprisonment was procedurally reasonable.**

#### **a. The district court did not apply a presumption of reasonableness to the Guidelines.**

The defendant did not argue below that the district court “erred by presuming that the range selected was reasonable.” Defendant’s Brief (“Def.’s Br.”) at 12. Therefore, his claim is reviewed only for plain error. *See Verkhoglyad*, 516 F.3d at 128. The defendant cannot show any error, much less plain error, with respect to the district court’s consideration of the Guidelines.

The defendant admits that the district court correctly calculated the appropriate Guidelines range, Def.’s Br. at 12, but argues that the district court “did not consider” that in adopting the guidelines concerning cocaine base, the Sentencing Commission produced applicable ranges that are a “less reliable appraisal of a fair sentence.” Def.’s Br. at 12.

This claim finds no support in the record. In discussing its reasons for imposing sentence, the district court expressly stated that “[t]he Second Circuit has asked the Court to consider the disparity between cocaine and cocaine base, in terms of the sentences that are imposed. I do take that into consideration. Certainly I’m familiar with that.” A 67.

Indeed, the record reflects that the district court understood its authority to sentence outside the Guideline range and did not give undue weight or presumption to the Guidelines. The district court correctly used the Guideline range as “a benchmark or a point of reference or departure,” *Fernandez*, 443 F.3d at 28 (quoting *United States v. Rubenstein*, 403 F.3d 93, 98-99 (2d Cir. 2004)), and found that a sentence within the range was “appropriate,” A 68. The district court also expressly considered and rejected the defendant’s argument for a non-Guidelines mandatory minimum sentence. A 68. Finally, this Court presumes that a district court followed the law and understood its ability to impose a non-Guidelines sentence unless the record clearly reflects that the district court misapprehended its authority. *See Fernandez*, 443 F.3d at 29-33.

**b. The district court considered the defendant's drug dependency.**

The defendant also argues for the first time on appeal that the district court failed to take into account his “long-term dependency on cocaine and marijuana.” Def.’s Br. at 13. Again, this claim is reviewed only for plain error, *see Verkhoglyad*, 516 F.3d at 128, and, again, the defendant cannot show any error, much less plain error.

The district court stated that it had read the defendant’s sentencing memorandum in which the defendant raised that consideration. A 49. Defense counsel also raised that point during the resentencing hearing, both during his initial remarks and in his response to the Government’s statement. A 54-55, 63-64. Furthermore, the district court stated that it had “taken into consideration Mr. Steele and his personal history, and his characteristics.” A 67.

Although the court did not expressly mention drug dependency, a district court need not “expressly parse or address every argument relating to those [§ 3553(a)] factors that the defendant advanced.” *Fernandez*, 443 F.3d at 30. As this Court stated in *Fernandez*, the Court entertains “a strong presumption that the sentencing judge has considered all arguments presented to her, unless the record clearly suggests otherwise.” *Id.* at 29. “This presumption is especially forceful when, as was the case here, the sentencing judge makes abundantly clear that she has read the relevant submissions and that she has considered the § 3553(a) factors.” *Id.* Additionally, “[t]he district court imposed a sentence at the bottom of the

Guidelines range, and such sentences often will not require lengthy explanation.” *Villafuerte*, 502 F.3d at 212.

**2. The sentence of 151 months’ imprisonment was substantively reasonable.**

The defendant also argues that his sentence was substantively unreasonable because the district court did not impose a sentence that adopted a one-to-one ratio for cocaine base or sentence him to the mandatory minimum of ten years. *See* Def.’s Br. at 11 (citing district court decisions from outside the Circuit adopting a one-to-one ratio). But the mere fact that a sentencing court has the discretion to depart from a Guidelines range or impose a non-Guidelines sentence in a case involving cocaine base does not mean that it is an abuse of discretion not to do so, especially where, as here, the offense conduct and the defendant’s personal characteristics support the imposition of a Guidelines sentence. The record reflects that the district court considered the cocaine base disparity and understood its discretion in imposing a sentence under the cocaine base Guidelines. The fact that the defendant would have weighed the factors differently than the district court does not mean that the court’s sentence was unreasonable or an abuse of discretion.

Indeed, the district court’s balancing of the statutory factors was eminently reasonable. In addition to considering the disparity between cocaine and cocaine base sentences, A 67, the court addressed the seriousness of the defendant’s offense – conspiring, possessing with intent to distribute, and distributing more than 50 grams of

cocaine base – and recognized that “drug trafficking has wreaked such horrible effects on the citizens of the state, that I am very much convinced that they are a serious offense.” A 67. Furthermore, the relevant quantity of cocaine base attributable to the defendant in furtherance of the offenses for which he was convicted was 123.4 grams of cocaine base – more than twice the statutory threshold quantity of 50 grams. PSR ¶11.

Additionally, as the Government noted at the resentencing hearing, the defendant had a “significant” criminal history which “r[an] broad and deep.” A 67. Indeed, time and again, for over fifteen years, the defendant repeatedly engaged in criminal activity, including a weapons offense, several felony narcotics crimes, repeated convictions for interference or threatening, and convictions for crimes of deceit. Every time the defendant was released from jail under some type of supervision, he violated the conditions of his release and was re-incarcerated. PSR ¶¶ 4-6.

The district court also considered specific and general deterrence, noting that it “want[ed] to be certain that [the defendant] is sufficiently deterred, as well as those persons who, in the public, are aware of the sentences that the Court is imposing with respect to this kind of crime.” A 67. Finally, the district court noted that “[t]he unwarranted disparity among similar-situated defendants is a factor, and I know the sentences that I have given in past cases of this kind, and they were fairly substantial sentences.” A 68.

In light of the district court's thorough consideration of the statutory factors and the reasonable sentence at the bottom of the Guidelines range, this is not the "rare case" where the sentence would "damage the administration of justice because the sentence imposed was shockingly high, shockingly low, or otherwise unsupportable as a matter of law." *Rigas*, 583 F.3d at 123. Even if this Court would have struck a different balance than the district court, the Court should not substitute its own judgment for the careful balancing undertaken by the district court. *See Cavera*, 550 F.3d at 189.

**3. The supervised release sentence was procedurally and substantively reasonable.**

As to his supervised release sentence, the defendant argues that "it does not appear that the district court considered any of the factors of § 3583(c)" in imposing a ten-year term of supervised release. Def.'s Br. 14. This claim was not argued below and is reviewed only for plain error. *See Verkhoglyad*, 516 F.3d at 128. The argument finds no support in the record.

In acknowledging that it was entitled to impose a term of supervised release as short as five years, the district court specifically stated that "[g]iven the defendant's criminal history, I think it will be to his benefit to have the guidance of probation for a longer period of time." A 70. Moreover, although the district court did not expressly reiterate its consideration of the factors under 18 U.S.C. § 3583(c) in imposing supervised release, the court had done so with regard to the sentence of imprisonment, and

this Court “[p]resumes, in the absence of record evidence suggesting otherwise, that a sentencing judge has faithfully discharged her duty to consider the [§ 3553(a)] factors.” *Fernandez*, 443 F.3d at 30 (citations omitted). The supervised release sentence, which is well within the statutory and Guidelines ranges of 5 years to life, *see* 21 U.S.C. § 841(b)(1)(A), U.S.S.G. § 5D1.2(c), is also substantively reasonable based upon the defendant’s lengthy criminal history and pattern of recidivism, as well as the gravity of the offenses for which the defendant was found guilty after trial.

**Conclusion**

For the foregoing reasons, the judgment of the district court should be affirmed.

Dated: September 27, 2010

Respectfully submitted,

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DISTRICT OF CONNECTICUT

A handwritten signature in black ink, appearing to read "David J. Sheldon", with a long horizontal flourish extending to the right.

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## **ADDENDUM**

**§ 3553. Imposition of a sentence**

**(a) Factors to be considered in imposing a sentence.**

The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider --

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) the need for the sentence imposed --
  - (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
  - (B) to afford adequate deterrence to criminal conduct;
  - (C) to protect the public from further crimes of the defendant; and
  - (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
- (3) the kinds of sentences available;

- (4)** the kinds of sentence and the sentencing range established for --
  - (A)** the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines --
    - (i)** issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and
    - (ii)** that, except as provided in section 3742(g), are in effect on the date the defendant is sentenced; or
  - (B)** in the case of a violation of probation, or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code, taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into

amendments issued under section 994(p) of title 28);

- (5) any pertinent policy statement–
  - (A) issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and
  - (B) that, except as provided in section 3742(g), is in effect on the date the defendant is sentenced.
- (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
- (7) the need to provide restitution to any victims of the offense.

\* \* \*

**(c) Statement of reasons for imposing a sentence.**  
The court, at the time of sentencing, shall state in open

court the reasons for its imposition of the particular sentence, and, if the sentence --

- (1) is of the kind, and within the range, described in subsection (a)(4) and that range exceeds 24 months, the reason for imposing a sentence at a particular point within the range; or
- (2) is not of the kind, or is outside the range, described in subsection (a)(4), the specific reason for the imposition of a sentence different from that described, which reasons must also be stated with specificity in the written order of judgment and commitment, except to the extent that the court relies upon statements received in camera in accordance with Federal Rule of Criminal Procedure 32. In the event that the court relies upon statements received in camera in accordance with Federal Rule of Criminal Procedure 32 the court shall state that such statements were so received and that it relied upon the content of such statements.

If the court does not order restitution, or orders only partial restitution, the court shall include in the statement the reason therefor. The court shall provide a transcription or other appropriate public record of the court's statement of reasons, together with the order of judgment and commitment, to the Probation System and to the

Sentencing Commission, and, if the sentence includes a term of imprisonment, to the Bureau of Prisons.

**§ 3583. Inclusion of a term of supervised release after imprisonment**

(c) Factors to be considered in including a term of supervised release.--The court, in determining whether to include a term of supervised release, and, if a term of supervised release is to be included, in determining the length of the term and the conditions of supervised release, shall consider the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7).