

12-1987(L)

To Be Argued By:
CHRISTOPHER M. MATTEI

United States Court of Appeals

FOR THE SECOND CIRCUIT

**Docket Nos. 12-1987(L)
12-2582(Con), 12-3986(Con)**

UNITED STATES OF AMERICA,
Appellee,

-vs-

JOSEPH JACKSON, aka M.I., aka Mighty,
JAYQUIS BROCK, aka Pook, aka Pooka,

(For continuation of Caption, See Inside Cover)

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

BRIEF FOR THE UNITED STATES OF AMERICA

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Defendants.

SHAMINE HOBBY, ROGER SULLIVAN, aka Manny O, GEMINI NAPOLEON, aka Poe, aka I.G., aka Gemi,

Defendants-Appellants.

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Statement of Jurisdiction

This is an appeal from the judgment entered in the United States District Court for the District of Connecticut (Ellen B. Burns, J.). The district court had subject matter jurisdiction over this federal criminal prosecution under 18 U.S.C. § 3231. Judgment entered on June 22, 2012. Appellant's Appendix ("A__") 5, A128. On June 25, 2012, the defendant filed a timely notice of appeal pursuant to Fed. R. App. P. 4(b). A5, A131. This Court has appellate jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a).

**Statement of Issue
Presented for Review**

Whether the district court abused its discretion and imposed an unreasonable sentence when it correctly considered and applied the sentencing factors as required by 18 U.S.C. § 3553 and sentenced the defendant to 84 months' imprisonment, a term below the advisory Guidelines range.

United States Court of Appeals

FOR THE SECOND CIRCUIT

**Docket Nos. 12-1987 (L)
12-2582(Con), 12-3986(Con)**

UNITED STATES OF AMERICA,
Appellee,

-vs-

ROGER SULLIVAN,
Defendant-Appellant.

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

BRIEF FOR THE UNITED STATES OF AMERICA

Preliminary Statement

The defendant, Roger Sullivan, is responsible for distributing multiple ounces of crack cocaine over a period of several months in 2010. As part of his long course of criminal conduct, Sullivan repeatedly obtained and resold redistribution quantities of cocaine base from Joseph Jackson and others involved in Jackson's drug trafficking organization.

At the time of his arrest, officers seized several small baggies of crack cocaine, narcotics

packaging materials, and a loaded firearm from the apartment where Sullivan was located.

Sullivan ultimately pleaded guilty to possession with the intent to distribute and distribution of cocaine base. At Sullivan's sentencing hearing, the district court heard from Sullivan himself, his counsel, and members of his family, and carefully considered the defendant's history and personal characteristics. Sullivan was sentenced to 84 months' imprisonment, a downward departure from the Guidelines range of 100 to 125 months. On appeal, Sullivan argues that the district court abused its discretion by failing to consider his "history and characteristics." But as set forth below, the district court appropriately and thoughtfully considered Sullivan's history and characteristics—including his lengthy criminal history—and imposed a reasonable sentence. The district court's judgment should be affirmed.

Statement of the Case

On November 10, 2010, a federal grand jury returned a 20-count indictment charging Sullivan, as relevant here, in Count Twelve with distribution of cocaine base, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C). A1, A14. Sullivan was arrested on the afternoon of November 17, 2010. A1, A27. On June 30, 2011, Sullivan pleaded guilty to Count Twelve of the Indict-

ment pursuant to a written plea agreement. A3, A20. The parties did not enter a guideline stipulation. A21.

On June 21, 2012, the district court sentenced Sullivan to 84 months of imprisonment, and judgment entered the next day. A5, A128. On June 25, 2012, Sullivan filed a timely notice of appeal. A5, A131.

Sullivan is currently serving his prison sentence.

A. The offense conduct

1. The R2 drug trafficking organization

The defendant's charges stem from a 12-month investigation, dubbed "Operation Crip Keeper," which focused on narcotics trafficking activity and illegal firearms possession in the Newhallville neighborhood of New Haven and Hamden. Pre-Sentence Report ("PSR") ¶9. The investigation identified a violent local street gang, referred to as the R2 Black Flag Crips ("R2"), as the main source of drug distribution activity in Newhallville. PSR ¶10.

Court-authorized wiretap interceptions of ten different cellular telephones associated with the R2 gang began on June 8, 2010 and ended on October 28, 2010. PSR ¶11. The principal source of supply for the R2 drug trafficking operation was Joseph Jackson, who employed several mid-

level distributors. PSR ¶¶12, 14. The wiretap interceptions, in conjunction with controlled purchases of cocaine base, physical surveillance, and narcotics seizures, led to the indictment of thirty-seven defendants, including Sullivan. PSR ¶11.

2. Sullivan's drug transactions

During primarily September and October of 2010, Sullivan made several purchases of redistribution quantities of cocaine base from Jackson and Harry Diaz, a Jackson intermediary. PSR ¶¶20, 24. In particular, Sullivan purchased three to four "8-balls" (3.5 grams each) of crack cocaine from Diaz, and on a separate occasion, bought one ounce of cocaine base from Diaz. PSR ¶24. Additionally, Sullivan received between 14 to 15 "8-balls" directly from Jackson. PSR ¶24. Sullivan was responsible for at least 28 grams but less than 112 grams of cocaine base. PSR ¶¶25, 32.

On October 14, 2010, Sullivan sold approximately 1.4 grams of cocaine base to an undercover law enforcement officer. PSR ¶17.

Sullivan was arrested pursuant to a warrant on November 17, 2010. PSR ¶21. After entering the apartment where Sullivan was hiding, the arresting officers located Sullivan on a second floor landing. PSR ¶21. During a consensual search of the apartment following Sullivan's ar-

rest, officers seized two small ziplock baggies of crack cocaine on the kitchen counter. PSR ¶22. In a bedroom closet, officers discovered and seized a firearm and a loaded magazine. PSR ¶22.

B. The guilty plea

On June 30, 2011, Sullivan pleaded guilty, pursuant to a plea agreement, to Count Twelve of the Indictment charging him with distribution of cocaine base. A3, A20. The parties did not enter a guideline stipulation, or agree whether any enhancements should or should not be involved in the sentencing guidelines calculation. A21, A27. The plea agreement stipulated that the court was required to consider any applicable Sentencing Guidelines and § 3553(a) factors. A21.

C. The sentencing

1. The PSR

The PSR identified Sullivan's Guideline range as 100 to 125 months, accounting for a Criminal History Category V and acceptance of responsibility.¹ The PSR revealed that Sullivan

¹ The PSR originally calculated Sullivan's Guideline range as 110 to 137 months. However, that calculation failed to correctly classify Sullivan in criminal history category V based on his commission of the

has had continuous interactions with the criminal justice system since the age of 17, including prior terms of incarceration totaling over six years behind bars. PSR ¶99. He has eight prior felony convictions, including drug sale, firearms possession, and assault offenses. PSR ¶98.

Sullivan's criminal history began with convictions for breach of peace, failure to appear in the 2nd degree, and larceny in the 2nd degree. PSR ¶¶41-43. In 1996, Sullivan was convicted of two counts of possessing a pistol without a permit, larceny in the 3rd degree, and failure to appear in the 1st and 2nd degree. PSR ¶¶44-48. After serving over a year in prison, Sullivan recidivated in 1999 and was convicted for the sale of narcotics and escape in the 1st degree, and subsequently served over four years in prison. PSR ¶¶49, 50. Upon his discharge from parole in 2006, Sullivan was convicted for engaging in a police pursuit and sentenced to one year of im-

instant crime while serving a term of conditional discharge. Two additional addenda to the PSR clarified that Sullivan agreed to a two-level firearm enhancement and that Sullivan was responsible for 28 to 112 grams of cocaine base. After correcting for the criminal history category, the two addenda, and Sullivan's acceptance of responsibility, Sullivan's guideline range was 100 to 125 months.

prisonment, suspended, and two years of conditional discharge. PSR ¶51.

In 2007, Sullivan was convicted of possession of drugs and fined \$100. PSR ¶52. In 2008, Sullivan choked and repeatedly punched his girlfriend, and was sentenced to three years of imprisonment and three years of conditional discharge for strangulation in the 2nd degree and assault in the 3rd degree. PSR ¶53. Sullivan was also convicted of operating a motor vehicle under suspension. PSR ¶54. In addition to these convictions, at the time of sentencing, Sullivan had 14 criminal matters pending before state court. PSR ¶¶58-63.

During his various terms of imprisonment, Sullivan was sanctioned on 14 occasions for disciplinary infractions. PSR ¶55.

2. The sentencing hearing

On June 21, 2012, the district court held Sullivan's sentencing hearing. A104. The court confirmed that Sullivan had reviewed the PSR with counsel and that Sullivan had no corrections or objections to the PSR. A105. The court also established that Sullivan had reviewed the two addenda to the PSR stipulating Sullivan's agreement to a two-level firearm enhancement and that Sullivan was responsible for 28 to 112 grams of cocaine base. A109.

a. Sullivan's arguments

Sullivan offered several arguments for a downward departure or non-guidelines sentence. He argued that his upbringing in a poor environment and his children merited leniency from the court. A106, A112. He expressed his remorse and willingness to lead a more productive and fruitful life, which he contended eliminated any marginal benefit of specific deterrence. A107. The court read a statement Sullivan personally prepared in his defense. A106-07. Sullivan's brother addressed the court to express his belief in Sullivan's remorse and willingness to begin a lifestyle change. A108-09.

b. The government's arguments

The government argued for a substantial term of imprisonment near the top of the guideline range based on consideration of all of the § 3553(a) factors. A66, A110. In opposing Sullivan's request for leniency, the government highlighted Sullivan's offense conduct, including his close relationship with the primary source of cocaine for the R2 organization, Joseph Jackson. Very few individuals, the government stressed, inspired sufficient fear that they were able to acquire crack cocaine for free from Jackson. A111. The government additionally highlighted that Sullivan engaged in the offense while serving a term of conditional discharge. A111.

Most notably, the government contended that Sullivan's significant history of criminal violence, narcotics, and firearms use demonstrated a need for significant deterrence. A110. Sullivan's lengthy criminal history and lack of significant employment history, the government suggested, supported a sentence near the top of the guidelines range. A110-11.

c. The court's imposition of sentence

After hearing from the parties, the court imposed sentence. The court considered the § 3553(a) sentencing factors, including the gravity of the offense committed and Sullivan's characteristics and history. A114. The court paid particular respect to the § 3553(a) sentencing factors, noting that when "considering the appropriate sentence to be imposed, of course one takes into consideration the gravity of the offense committed and also the characteristics and history of the defendant." A114. The court noted, for example, that Sullivan had an extensive criminal history, including multiple disciplinary infractions in custody and multiple pending charges in state court. A112-13. Later, the court reiterated its focus on Sullivan's history, but also noted that his personal characteristics showed some promise, stating, "You've got a pretty bad history, sir. You've also got something going for you in the submission by the government. That

will be helpful to you.” A114. The court affirmed for a third time, in response to the government’s query, that Sullivan’s sentence had been imposed “in light of all of the sentencing factors.” A119.

The court repeatedly expressed its appreciation for Sullivan’s arguments concerning his history and characteristics. The court referred to Sullivan’s desire to be a good father to his children, noting “you have your family here. I know they are concerned about you and interested in you.” A118. The court also expressed awareness of specific details of Sullivan’s personal characteristics and experiences with the criminal justice system, noting that Sullivan had been “working on” his GED, and encouraging him to continue to do so in order to “lead a crime-free life.” A117-18. Moreover, the court personally read Sullivan’s written statement from the bench, and acknowledged having received his earlier letter submitted to the court prior to sentencing. A106-07.

The court considered the government’s sealed motion for a downward departure and departed below the guideline range based on information contained therein relating to Sullivan’s history and characteristics. A53, A119. The court then imposed a sentence of 84 months of imprisonment, below the 100-125 month Guideline range. A114.

Summary of Argument

The 84-month sentence imposed on Sullivan—a downward departure from the advisory Guidelines range—was reasonable. The district court correctly calculated the Guideline range and considered the relevant § 3553(a) factors in its decision. The court thoroughly weighed Sullivan’s submissions to the court, including counsel’s written submissions, Sullivan’s personal statement, statements of his counsel, letters submitted to the court, and statements by Sullivan’s family members at sentencing.

Sullivan contends that the district court failed to consider his personal history and characteristics in sentencing him. A review of the record belies this claim. The court not only considered Sullivan’s personal characteristics, but mentioned several of them on the record in sentencing. And to the extent the court did not mention specific characteristics, there was no error, much less plain error, because this Court does not require a district court to respond to every issue raised by counsel at sentencing.

Finally, to the extent that Sullivan argues his sentence was substantively unreasonable, that claim fails on the merits. A below-guidelines sentence of 84 months for a defendant involved in a significant drug trafficking organization,

who also had a lengthy and violent criminal history was not an abuse of discretion.

Argument

I. Sullivan's sentence was procedurally and substantively reasonable.

A. Governing law and standard of review

1. Sentencing law

In *United States v. Booker*, 543 U.S. 220 (2005), the Supreme Court declared the United States Sentencing Guidelines “effectively advisory.” *Id.* at 245. After *Booker*, at sentencing, a sentencing judge is required to “(1) calculate[] the relevant Guidelines range, including any applicable departure under the Guidelines system; (2) consider[] the calculated Guidelines range, along with the other § 3553(a) factors; and (3) impose[] a reasonable sentence.” See *United States v. Fernandez*, 443 F.3d 19, 26 (2d Cir. 2006); *United States v. Crosby*, 397 F.3d 103, 113 (2d Cir. 2005).

The requirement that the district court consider the § 3553(a) factors does not require the judge to precisely identify the factors on the record or address specific arguments about how the factors should be implemented. *Crosby*, 397 F.3d at 113; *Rita v. United States*, 551 U.S. 338, 356-59 (2007) (affirming a brief statement of reasons

by a district judge who refused downward departures and then noted that the sentencing range was “not inappropriate”). There is no “rigorous requirement of specific articulation by the sentencing judge.” *Crosby*, 397 F.3d at 113. “As long as the judge is aware of both the statutory requirements and the sentencing range or ranges that are arguably applicable, and nothing in the record indicates misunderstanding about such materials or misperception about their relevance, [this Court] will accept that the requisite consideration has occurred.” *United States v. Fleming*, 397 F.3d 95, 100 (2d Cir. 2005). Indeed, this Court “presume[s], in the absence of record evidence suggesting otherwise, that a sentencing judge has faithfully discharged [his] duty to consider the [§ 3553(a)] factors.” *Fernandez*, 443 F.3d at 30.

On appeal, a district court’s sentencing decision is reviewed for reasonableness. *See Booker*, 543 U.S. at 260-62. The Supreme Court has reaffirmed that the reasonableness standard for sentencing challenges is essentially an abuse-of-discretion standard. *See Gall v. United States*, 552 U.S. 38, 46 (2007). 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 *Crosby*, 397 F.3d at 114-15).

“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.” *United States v. Cavera*, 550 F.3d 180, 190 (2d Cir. 2008) (en banc) (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). A district court need not specifically respond to all arguments made by a defendant at sentencing. *See United States v. Bonilla*, 618 F.3d 102, 111 (2d Cir. 2010) (“[W]e never have required a District Court to make specific responses to points argued by counsel in connection with sentencing . . .”).

With respect to substantive reasonableness, this Court has recognized that “[r]easonableness review does not entail the substitution of our judgment for that of the sentencing judge. Rather, the standard is akin to review for abuse of discretion. Thus, when we determine whether a sentence is reasonable, we ought to consider whether the sentencing judge ‘exceeded the bounds of allowable discretion[,] . . . committed

an error of law in the course of exercising discretion, or made a clearly erroneous finding of fact.” *Fernandez*, 443 F.3d at 27 (citations 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). Although this Court has declined to adopt a formal presumption that a within-Guideline sentence is reasonable, it has “recognize[d] that 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; see also *Rita*, 551 U.S. at 347-51 (holding that courts of appeals may apply presumption of reasonableness to a sentence within the applicable Sentencing Guidelines range); *United States v. Rattoballi*, 452 F.3d 127, 133 (2d Cir. 2006) (“In calibrating our review for reasonableness, we will continue to seek guidance from the considered judgment of the Sentencing Commission as expressed in the Sentencing Guidelines and authorized by Congress.”).

2. Plain error review

On appeal, Sullivan argues that the district court failed to consider certain statutory factors in sentencing. Because he did not raise this argument below, it is reviewed in this Court for plain error. *United States v. Villafuerte*, 502 F.3d 204, 207-209 (2d Cir. 2007). This Court has not yet decided whether unpreserved claims of substantive reasonableness should be reviewed for plain error as well. See *United States v. Thavaraja*, 740 F.3d 253, 258 n.4 (2d Cir. 2014).

Requiring that procedural sentencing claims be raised before the sentencing judge “alerts the district court to a potential problem at the trial level and facilitates its remediation at little cost to the parties, avoiding the unnecessary expenditure of judicial time and energy in appeal and remand.” *Id.* at 208. Moreover, “[r]equiring the [sentencing] error to be preserved by an objection creates incentives for the parties to help the district court meet its obligations to the public and the parties.” *Id.* at 211.

Pursuant to Fed. R. Crim. P. 52(b), plain error review permits this Court to grant relief only where (1) there is error, (2) the error is plain, (3) the error affects substantial rights, and (4) the error seriously affects the fairness, integrity, or public reputation of judicial proceedings. See *United States v. Doe*, 741 F.3d 359, 364 (2d Cir.

2013) (citing *United States v. Marcus*, 628 F.3d 36, 42 (2d Cir. 2010)).

To “affect substantial rights,” an error must have been prejudicial and affected the outcome of the district court proceedings. *United States v. Olano*, 507 U.S. 725, 734 (1993). In plain error review, it is the defendant rather than the government who bears the burden of persuasion with respect to prejudice. *Id.* This Court has cautioned that reversal under the plain error standard of review should “be used sparingly, solely in those circumstances in which a miscarriage of justice would otherwise result.” *Villafuerte*, 502 F.3d at 209 (internal quotation marks omitted).

B. Discussion

As set forth in the Statement of the Case above, the district court carefully identified the § 3553(a) factors that it relied upon in sentencing Sullivan, focusing its attention on the seriousness of the offense conduct and Sullivan’s history and characteristics.

Nevertheless, Sullivan argues—for the first time on appeal—that the court abused its discretion by relying on the guideline range and failing to “giv[e] adequate weight to the Defendant’s personal history and characteristics.” Sullivan’s Brief at 5. Specifically, Sullivan contends that the court “impermissibly presumed that the Sen-

tencing Guidelines were reasonable” and (1) did not consider that the defendant had “limited education;” (2) “failed to account for the positives in the Defendant’s life . . . [m]ost notably . . . that the Defendant is a loving father of three children and that the Defendant has a strong desire to maintain and further develop his relationship with his children;” and (3) “made no mention of the Defendant’s troubled upbringing . . . fail[ing] to even note that the Defendant lost his father at a very young age . . . [and] that for several key developmental years of the Defendant’s life . . . he was completely without both of his parents.” Sullivan’s Brief at 8-9.

Sullivan’s claims, reviewed for plain error, are without merit. Sullivan cannot show that the court committed any error, much less plain error that meets the stringent standard for reversal under Rule 52(b).

First, the record plainly shows that the court considered Sullivan’s education. After confirming that Sullivan did not yet have his GED but “[was] working on it,” the court suggested that Sullivan “try to get that GED, [because] it will be very important to you,” and emphasized the importance of the “ability to do some work, legitimate work” after Sullivan served his sentence. A118. That the court did not explicitly link its sentence with Sullivan’s lack of education bears little relevance; 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.” *Fernandez*, 443 F.3d at 30. Further, a district court does not commit a procedural error by neglecting to utter a “robotic incantation” of each of the § 3553(a) factors. *Cavera*, 550 F.3d at 193; *see also Crosby*, 397 F.3d at 113 (noting that there is no “rigorous requirement of specific articulation by the sentencing judge”).

The record also belies Sullivan’s argument that the court failed to appreciate his desire to maintain his relationship with his children. The court first considered Sullivan’s family connections from Sullivan’s counsel, who emphasized Sullivan’s “four children” on two separate occasions.² A106, A112. Next, Sullivan’s brother addressed the court, testifying that Sullivan was a “great father to his children.” A108. Finally, the court “had a letter from [Sullivan]” submitted prior to sentencing in which Sullivan discussed his family, and also read a second letter from Sullivan during the sentencing hearing itself. A45, A106-07.

The court acknowledged Sullivan’s arguments, and noted the appearance of Sullivan’s family at the sentencing hearing. The court then

² The PSR indicates the defendant has three children. PSR ¶72.

expressly addressed Sullivan's desire to maintain his connection with his family, stating "I know they are concerned about you and interested in you. I want you to be where they can reach you and visit you from time to time..." and recommended that Sullivan be incarcerated as close to Connecticut as possible. A118.

The court also weighed Sullivan's upbringing. Defense counsel argued that Sullivan's rearing in a "poor environment in Connecticut" merited leniency "as far as possible." A106. The court itself read a statement Sullivan submitted during the sentencing hearing. A106. Additionally, Sullivan's sentencing memorandum specifically addressed his upbringing in detail. A32, A33.

Furthermore, the established law of this circuit forecloses Sullivan's argument that the district court was required to specifically address each of Sullivan's "unique characteristics." The sentencing court is not required to address specific arguments about how the sentencing factors should be implemented. *Fernandez*, 443 F.3d at 29; *Rita*, 551 U.S. at 356-59 (affirming a brief statement of reasons by a district judge who refused downward departures and then noted that the sentencing range was "not inappropriate"); see *Bonilla*, 618 F.3d at 111 ("[W]e never have required a District Court to make specific responses to points argued by counsel in connection with sentencing . . .").

There was no indication whatsoever that the district court misunderstood the requirements under § 3553(a) or failed to consider Sullivan's history and characteristics. *Fleming*, 397 F.3d at 100 (finding the requisite consideration to have occurred “[a]s long as the judge is aware of both the statutory requirements and the sentencing range or ranges that are arguably applicable, and nothing in the record indicates misunderstanding about such materials or misperception about their relevance”). The district court's consideration of Sullivan's family relationships, education, and upbringing was clearly sufficient and render hollow Sullivan's claim that the district court “impermissibly presumed that the Sentencing Guidelines were reasonable.” Sullivan's Brief at 8.

In addition, it is worth noting that the district court certainly considered other aspects of Sullivan's history and characteristics—such as his lengthy criminal history, his repeated disciplinary infractions while in custody, and his multiple pending state court charges—that suggested that a higher sentence was warranted. A112-14. Although Sullivan might have preferred that the court weigh his mitigating personal characteristics more significantly than these aggravating characteristics, the weight assigned to any particular factor is a decision firmly within the district court's discretion.

Sullivan argues that the court abused that discretion, in part, by relying on *United States v. Jones*, 352 F. Supp. 2d 22 (D. Me. 2005), a non-binding district court decision, but that argument is misplaced. The facts of *Jones* could not be farther from the instant case. The defendant in *Jones* had no prior criminal history, but rather a “documented and undisputed history of mental illness” requiring regular treatment. *Id.* at 25. The district court, citing *Booker*, did not issue a Guidelines sentence because “[a]ny break now in either [the defendant’s] treatment or his ability to support himself (for example, interruption of his disability benefits) would significantly undermine and compromise his future success upon release from prison.” *Id.* at 25. Thus, the court found that the “marginal protection to the public afforded by a few more months in prison is more than offset by the increased risk upon this defendant’s later release after the interruption of his treatment and other regimens,” and sentenced the defendant to 5 months’ home confinement. *Id.* at 26.

In contrast to *Jones*, Sullivan’s sustained violent criminal career demonstrates that his 84-month sentence is reasonable and necessary to protect the public from an individual with a history of repeated recidivism. Thus, Sullivan’s sentence does far more than “marginal[ly] protect the public” from a mentally ill defendant who

had no prior criminal history, like in *Jones*. Further, Sullivan's sentence will not interrupt any extant treatment programs or dramatically "undermine and compromise his future success upon release from prison. *Id.* Thus, *Jones* bears no application here.

Finally, to the extent that Sullivan argues that his sentence is substantively unreasonable, that argument fails on the merits. After carefully considering all relevant factors, the district court concluded that the aggravating factors, when balanced against those suggesting a shorter sentence, merited 84 months of imprisonment. Sullivan was responsible for the repeated acquisition and resale of redistribution quantities of cocaine over several months. He was intercepted on numerous occasions communicating with members of the R2 organization to arrange the purchase of several "8-balls" and other amounts of cocaine. He sold approximately 1.4 grams of cocaine to an undercover law enforcement officer. At the time of his arrest, Sullivan was found with several additional baggies of cocaine and a loaded firearm.

Moreover, Sullivan's prior criminal history is marked by violence, narcotics, and firearms—placing him squarely in Criminal History Category V. Since 1993, Sullivan has been arrested on 17 prior occasions and convicted 15 times, including eight felony convictions. Sullivan has

served approximately six and a half years in prison. Given these facts, an 84-month sentence was entirely reasonable.

Conclusion

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

Dated: August 8, 2014

Respectfully submitted,

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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.