

**NOT PRECEDENTIAL**

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 05-2740

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UNITED STATES OF AMERICA

v.

RONALD LEE EISWERTH,

Appellant

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On Appeal from the United States District Court  
for the Middle District of Pennsylvania  
(D.C. Criminal No. 04-cr-00026-2)  
District Judge: Hon. Malcolm Muir

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Submitted under Third Circuit LAR 34.1(a)  
on March 7, 2006

BEFORE: ROTH and GREENBERG, Circuit Judges  
and BUCKWALTER\*, District Judge

(Opinion Filed: May 31, 2006)

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OPINION

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\*The Honorable Ronald L. Buckwalter, Senior United States District Court Judge  
for the Eastern District of Pennsylvania, sitting by designation.

**ROTH, Circuit Judge:**

Ronald Lee Eiswerth appeals the judgment imposed by the District Court. He requests that his sentence be vacated and that this case be remanded for resentencing. He asserts that the District Court failed to fully articulate its consideration of the 18 U.S.C. § 3553(a) sentencing factors. Because the District Court orally explained its consideration of the § 3553(a) sentencing factors, we will affirm.

### **I. Facts**

Because the parties are familiar with the facts and procedural posture, we will provide only a brief synopsis of the events leading up to the appeal.

For several years Eiswerth was involved in distributing heroin in central Pennsylvania. Police executed a search warrant at a self-storage facility rented by Eiswerth and found 19 bricks of heroin. Eiswerth pleaded guilty to conspiracy to distribute heroin in violation of 21 U.S.C. § 846. The Presentence Report calculated Eiswerth's recommended sentence under the Federal Sentencing Guidelines, yielding a Guidelines range of 97 to 121 months. The government moved for and was granted a four-level downward departure as a result of substantial assistance provided by Eiswerth. As a result the District Court determined that the Guidelines range was 46 to 57 months. Eiswerth did not object to the Presentence Report but argued that he should be sentenced to no more than time served, 15 months. The District Judge imposed a prison term of 46 months, a four year term of supervised release, and a special assessment of \$100. Eiswerth timely appealed.

## **II. Jurisdiction and Standard of Review**

We have jurisdiction over this appeal pursuant to 18 U.S.C. § 3742(a)(1). *United States v. Cooper*, 437 F.3d 324, 327 (3d Cir. 2006). We review the sentencing decision for reasonableness. *United States v. Booker*, 543 U.S. 220, 261-63 (2005).

## **III. Discussion**

“[D]istrict courts, while not bound to apply the Guidelines, must consult those Guidelines and take them into account when sentencing.” *Booker*, 543 U.S. at 264. District courts must also consider the sentencing goals listed in 18 U.S.C. § 3553(a). *Id.* at 259-60. A sentence that falls within the Guidelines range is more likely to be reasonable than one greater than the Guidelines range, but appellants have the burden of demonstrating unreasonableness in light of the record as a whole and the factors in § 3553(a). *Cooper*, 437 F.3d at 332.

Eiswerth argues that the District Court’s failure to articulate its consideration of the § 3553(a) factors makes his sentence unreviewable and, therefore, unreasonable.

The record demonstrates, however, that the court took the factors into account in sentencing. The District Court orally explained the sentence. The District Court set out the facts relating to the factors, including Eiswerth’s age, family, educational and employment background, prior criminal record, history of substance abuse and the Guidelines range, which had been reduced to 46 to 57 months. The District Court also explicitly stated that it had considered carefully all of the factors set forth in 18 U.S.C. § 3553(a). The court then explained that the sentence was imposed to “reflect the

seriousness of the offense, to promote respect for the law, to provide just punishment for the offense and to deter Mr. Eiswerth and other persons similarly situated.”

Eiswerth is not arguing that the District Court failed to consider the § 3553(a) factors when it sentenced him, and he does not identify any §3553(a) factor that would make his sentence unreasonable. Because it is clear that the District Court considered the Guidelines along with all the relevant factors, the sentence imposed was reasonable.

#### **IV. Conclusion**

For the foregoing reasons, we will affirm the District Court.