

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 06-1569

UNITED STATES OF AMERICA

v.

NATHANIEL MONTGOMERY,

Appellant.

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(No. 02-cr-00172-20)
District Judge: Hon. Stewart Dalzell

Submitted Under Third Circuit LAR 34.1(a)
October 23, 2007

Before: SLOVITER, CHAGARES, and HARDIMAN, Circuit Judges.

(Filed: October 26, 2007)

OPINION OF THE COURT

CHAGARES, *Circuit Judge*.

Nathaniel Montgomery appeals the order entered by the District Court following our remand of this case for resentencing in light of the Supreme Court’s decision in *United States v. Booker*, 543 U.S. 220 (2005). In this appeal, Montgomery’s sole challenge is to his sentence. Montgomery contends that the District Court failed to discharge its statutory obligation to consider the factors articulated in 18 U.S.C. § 3553(a) in imposing his sentence. He also argues that the District Court erred when it refused to consider the maximum potential sentence Montgomery could have received in state court. Because there is sufficient record evidence that the District Court considered the § 3553(a) factors and imposed a sentence that reflects a reasonable application of those factors, and because there is no merit in Montgomery’s argument that the District Court should have considered what his sentence would have been had he been convicted of a similar state-law offense, we will affirm the District Court’s decision.

I.

As we write only for the parties, our summary of the facts is brief. In 1997, Courtney Carter founded what became the Carter Organization, a massive drug dealing operation spanning the Commonwealth of Pennsylvania and Wilmington, Delaware. By February 2002, the Carter Organization had sold over a metric ton of cocaine and crack and engaged in numerous shootings, one of which resulted in murder. Nathaniel Montgomery joined the operation in 1999 as a member of the “I-Block,” who were drug dealers staffing the corner of Ithan and Locust Streets in Philadelphia. He eventually worked his way up to co-manage a corner operation at 54th and Sansom Streets in

Philadelphia. During his time as a dealer for the Carter Organization, Montgomery participated in disputes with other drug gangs and was severely wounded in January 2000, when a rival gang staged a drive-by shooting on Ithan Street. Nevertheless, Montgomery returned to drug sales and acts of violence, including a mass attack on a rival gang leader's residence in December 2001 that the District Court referred to as "the shooting gallery incident" and "downtown Fallujah." During this attack, Montgomery repeatedly fired a Taurus 9-millimeter semi-automatic weapon; police later seized the firearm in a traffic stop.

On October 24, 2002, a federal grand jury in the Eastern District of Pennsylvania returned a 135-count third superseding indictment charging Montgomery and 36 co-defendants in connection with the Carter Organization's activities. The indictment included a wide variety of drug, firearms, money laundering, and conspiracy charges. Montgomery himself was charged only with conspiracy to distribute cocaine and cocaine base ("crack"), in violation of 21 U.S.C. § 846 (Count I). He proceeded to trial with four co-defendants, and on January 30, 2004, the jury convicted Montgomery of conspiracy (Count I).

Following Montgomery's conviction, a probation officer prepared a Presentence Investigation Report (PSR). The PSR calculated the sentencing guideline range under the United States Sentencing Guidelines (U.S.S.G.) to be 235 to 293 months, based on Montgomery's total offense level of 38 and a criminal history category of I. The government objected to the PSR offense level on the grounds that there should be a two-

level increase under U.S.S.G. § 2D1.1(b)(1) for use of a firearm in furtherance of the conspiracy. At Montgomery’s sentencing hearing, the District Court agreed with the government and adjusted the offense level to 40, producing a (then mandatory) U.S.S.G. sentencing range of 292 to 365 months. The District Court then sentenced Montgomery to 292 months in prison, and, on appeal, we remanded for resentencing in light of the Supreme Court’s decision in *Booker*. On February 2, 2006, the District Court resentenced Montgomery to 280 months imprisonment. This appeal followed. We have jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742, and we will affirm.

II.

We review a sentence imposed by a district court for reasonableness. *United States v. Cooper*, 437 F.3d 324, 327 (3d Cir. 2006). This inquiry has two steps, because, in the sentencing context, reasonableness has both procedural and substantive components. *See, e.g., United States v. Ferguson*, 456 F.3d 660, 664 (6th Cir. 2006). First, we must review the record to determine if the District Court exercised its discretion by considering the relevant factors enumerated in § 3553(a). *Cooper*, 437 F.3d at 329. A sentence is procedurally unreasonable if the District Court fails to consider the applicable Guideline range or neglects to consider the other factors listed in § 3553(a). *Id.* Imposition of a within-Guidelines sentence, without more, demonstrates only that the District Court “considered one of the § 3553(a) factors—namely, the guideline range itself, [but] it does not show the court considered the other standards reflected in that section” *Id.* at 330 (internal citations omitted); *see also* 18 U.S.C. § 3553(a)(4) (listing

Sentencing Guidelines as one of seven factors the District Court must consider in imposing sentence). While “[t]here are no magic words that a district judge must invoke when sentencing, . . . the record should demonstrate that the court considered the § 3553(a) factors [in fashioning the defendant’s sentence].” *Cooper*, 437 F.3d at 332. Thus, we must determine whether the District Court gave “meaningful consideration” to the § 3553(a) factors. *Id* at 329. If the record does not reflect adequate consideration of the § 3553(a) factors, remand is required, and our inquiry ends there. If, however, we determine that the District Court gave meaningful consideration to the § 3553(a) factors, our analysis must proceed to the substantive aspect of reasonableness: an evaluation of whether the sentence reflects a rational application of those factors. *Cooper*, 437 F.3d at 330.

III.

A.

Although there is no bright-line test to determine what depth of analysis qualifies as “meaningful consideration,” we have recently articulated certain principles that guide our review in this respect. On the one hand, the District Court “need not discuss every argument made by a litigant if an argument is clearly without merit. Nor must a court discuss and make findings as to each of the § 3553(a) factors if the record makes clear the court took the factors into account in sentencing.” *Cooper*, 437 F.3d at 329 (internal citations omitted). On the other hand, a “rote statement” that the Court has considered the § 3553(a) factors is insufficient. *Id*. This is so because “there is no way to review [a

court's] exercise of discretion if it does not articulate the reasons underlying its decision.” *United States v. Johnson*, 388 F.3d 96, 101 (3d Cir. 2004). The District Court need not recapitulate its consideration of the § 3553(a) factors during the plea colloquy, however, if the basis for the sentence imposed is “otherwise apparent from the record.” *Cooper*, 437 F.3d at 329 (quoting *Becker v. ARCO Chem. Co.*, 207 F.3d 176, 180-81) (3d Cir. 2000)). In view of these principles, the question is whether “the record as a whole reflects rational and meaningful consideration of the factors enumerated in 18 U.S.C. § 3553(a).” *United States v. Schweitzer*, 454 F.3d 197, 204 (3d Cir. 2006) (quoting *United States v. Grier*, 449 F.3d 558, 574 (3d Cir. 2006)).

In this case, there is ample evidence that the District Court considered the § 3553(a) factors in imposing Montgomery’s sentence. First, the District Court certainly considered § 3553(a)(4), because it made several references to the Guidelines before “recalibrat[ing]” the “precise term of incarceration” and sentencing Montgomery to a prison term twelve months below the Guidelines Range. Appendix (App.) 2. Next, the District Court adopted the findings and conclusions stated in Montgomery’s PSR. In addition to a lengthy description of the Carter Organization’s massive and brazen criminality, the PSR contained a detailed description of Montgomery’s specific participation in the operation’s illegal activities. Moreover, the PSR set forth substantial amounts of information regarding Montgomery’s history and characteristics, including his personal and family history, employment history, mental and emotional health, educational background, and criminal history. The District Court considered, at

significant length, these factors and others during Montgomery’s 2004 sentencing hearing and again at the resentencing hearing in 2006, where the Court wrestled with the implications of the § 3553(a) factors on Montgomery’s sentence.

1.

Montgomery first argues that the District Court erred in not decreasing his offense level by two points based upon Montgomery’s minor role in the conspiracy. At the 2004 sentencing hearing, the District Court noted that Montgomery was “not somebody who had a sporadic participation” in the Carter Organization, and that even after Montgomery’s grave injury in 2000, “his participation continued, notwithstanding his near-death experience.” App. 171. Moreover, the District Court deemed Montgomery’s participation in the 2001 “shooting gallery” incident an “escalation beyond street-selling” and denied the minor role reduction. App. 171. At the resentencing hearing, the District Court again denied the reduction, stating that Montgomery “was in the conspiracy for three years. He participated in one of the most violent episodes of the conspiracy; the ‘shooting gallery’ incident.” App. 121. The record makes clear that the District Court considered the minor role argument in depth and properly exercised its discretion in denying the two level departure.

2.

Montgomery next argues that the District Court gave unreasonable weight to the “shooting gallery” incident and unreasonably disregarded or discounted Montgomery’s age, immaturity, lack of criminal history, drug abuse, rehabilitative needs, and subsequent

remorse. He also asserts that the District Court failed to engage in a meaningful consideration of § 3553(a)(6), which mandates that “[t]he court, in determining the particular sentence to be imposed, shall consider . . . (6) the need to avoid unwarranted sentence disparities” among similarly-situated defendants. 18 U.S.C. § 3553(a)(6).

To the contrary, while the District Court rightly emphasized Montgomery’s participation in the 2001 shooting and the need to deter such activities, it also explicitly considered Montgomery’s age during the resentencing hearing, noting that the defendant “was barely 18” when he was shot and “at the time of the shooting gallery incident he was 19.” App. 96. The Court heard from Montgomery himself, as well as from his brother and father, regarding Montgomery’s remorse and rehabilitation and ultimately determined that “the defendant still doesn’t get it. . . . It’s not a bad choice. . . . It’s evil. It’s a crime.” App. 141. Furthermore, as stated above, the Court reimposed its 2004 judgment in all respects save for the imprisonment term, thereby readopting the PSR that detailed Montgomery’s legal and personal history. The District Court also sufficiently considered § 3553(a)(6). At the resentencing hearing, the court noted the longer sentences of Montgomery’s co-defendants and took a recess to review “a summary of all the sentences that I’ve given in this huge matter, wherein 36 people were sentenced.” App. 138. Thus, the Court reasonably considered Montgomery’s history and characteristics, as well as the need to avoid sentence disparities among similarly-situated defendants, before resentencing Montgomery to 280 months imprisonment.

Finally, Montgomery contends that the District Court erred when it refused to consider the maximum potential sentence Montgomery could have received in state court. There is no merit to this argument. *Booker* directs this Court’s reasonableness review to the factors established under federal law for federal criminal offenses. That a separate sovereign elects to administer its criminal sentencing scheme in a different way does not affect our analysis under § 3553(a)(6), which aims to avoid unwarranted disparities among sentences issued by federal courts for violations of federal law. *See, e.g., United States v. Snyder*, 136 F.3d 65, 68-70 (1st Cir. 1998) (explaining that the phrase regarding the need to avoid “unwarranted sentencing disparities” in the Sentencing Guidelines reflects a “concern with variations among federal courts across the nation, without reference to their state counterparts,” and that the “[G]uidelines seek to perform uniform sentencing among federal courts in respect to federal crimes”).

B.

The sole remaining issue is the substantive aspect of reasonableness; i.e., whether the sentence imposed by the District Court reflects a rational application of the § 3553(a) factors. *Cooper*, 437 F.3d at 330. In this case, the District Court imposed a sentence below the guidelines range—280 months. The Court considered factors such as Montgomery’s age and low level in the operation before deciding to “fine-tune the sentence only.” App. 141. In reaching this decision, the court stressed the length of Montgomery’s involvement in the conspiracy; the seriousness of his conduct, particularly the 2001 shooting incident; the need to provide general deterrence; and Montgomery’s

level of remorse. Therefore, the record demonstrates that the District Court considered adequately the § 3553(a) factors and reasonably applied them to the circumstances of Montgomery's particular case.

IV.

For the foregoing reasons, we will affirm the sentence imposed on Montgomery by the District Court.
