

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 06-2463

UNITED STATES OF AMERICA

v.

JEAN DORRAMIL,

Appellant

Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Criminal Action No. 04-cr-00405-19)
District Judge: Honorable William W. Caldwell

Submitted Under Third Circuit LAR 34.1(a)
September 28, 2007

Before: AMBRO, JORDAN and ROTH, Circuit Judges

(Opinion filed: October 26, 2007)

OPINION

AMBRO, Circuit Judge

Appellant Jean Dorramil pled guilty to distributing crack-cocaine in violation of 21 U.S.C. § 841(a)(1). His sentence was 34 months of imprisonment, 36 months of

supervised release, plus payment of an assessment. He raises a single issue on appeal: whether the District Court acted unreasonably by failing to exercise its discretion while considering the sentencing factors in 18 U.S.C. § 3553(a).¹

Dorramil was born in Haiti and immigrated to the United States in 1995. For reasons that are unclear from the record, the Bureau of Immigration and Customs Enforcement issued an administrative warrant for his removal in April 2003 that is

¹ These factors include:

- (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 issued by the Sentencing Commission...;
- (5) any pertinent policy statement issued by the Sentencing Commission...[;]
- (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.

currently pending. Dorramil argues that because of the warrant and his conviction he will be deported to Haiti upon completion of his prison sentence. He further argues that once he returns to Haiti, per the policy of the Haitian government, he will be incarcerated in a Haitian prison for the same crime and subjected to “brutal and harsh conditions.” See *Auguste v. Ridge*, 395 F.3d 123, 129 (3d Cir. 2005) (referring to evidence presented in that case that described the Haitian re-incarceration policy and the deplorable conditions that exist in Haitian prisons).

In Dorramil’s sentencing memorandum he requested a 15-month non-Guideline sentence, while the advisory Guideline called for an imprisonment range of 30 to 37 months. Dorramil argued that, due to the likelihood of his removal and subsequent re-incarceration in Haiti, the 15-month sentence would sufficiently serve as a deterrence to himself and others, would protect the public from future crimes, would reflect the seriousness of the offense, and would provide a just punishment. Concurrently, the Government advised the District Court that, pursuant to its plea agreement with Dorramil, it was recommending that he be sentenced at the low end of the Guideline imprisonment range.

In reaching its sentencing decision, the District Court addressed Dorramil’s prior firearm and felony drug offenses, the failure of prior sentences to deter Dorramil from engaging in criminal conduct, and concluded that “I just don’t think that any downward departure at this point can be based upon what he may be facing in the future, and I think that we have to treat this as a serious offense.” App. at 18a. Dorramil contends that the

factual support for his sentencing consideration, namely the treatment he would likely face if he was removed and re-incarcerated in Haiti, was not addressed by the District Court, thereby evidencing that the Court failed to exercise its discretion in sentencing. He also argues that the Court was required to provide more than “a rote statement of the § 3553(a) factors” in making its sentencing decision. *United States v. Cooper*, 437 F.3d 324, 329 (3d Cir. 2006).

We have jurisdiction to review the sentencing judgment of the District Court under 18 U.S.C. §3742(a)(1). We review that sentence for reasonableness. *Cooper*, 437 F.3d at 327. We ask, essentially, whether the District Court abused its discretion. *United States v. Goff*, __F.3d__, 2007 WL 2445637, *2 (Aug. 30, 2007)(quoting *Rita v. United States*, 127 S. Ct. 2456, 2465 (2007)). Additionally, we review “deferentially a district court’s application of the § 3553(a) factors to the facts of a case, and must ensure only that ‘the district judge imposed the sentence that he or she did for reasons that are logical and consistent with the factors set forth in section 3553(a).’” *United States v. Severino*, 454 F.3d 206, 210 (3d Cir. 2006) (quoting *United States v. Williams*, 425 F.3d 478, 481 (7th Cir. 2005)).

“The touchstone of ‘reasonableness’ 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. Grier*, 475 F.3d 556, 571 (3d Cir. 2006)(en banc). If the sentence falls within the Guideline range, it creates a permissible, although not mandatory, rebuttable presumption of reasonableness. *Rita*, 127 S. Ct. at 2462. Since Dorramil is challenging

his sentence, he “has the burden to demonstrate unreasonableness.” *United States v. King*, 454 F.3d 187, 194 (3d Cir. 2006).

Dorramil’s primary argument is that the District Court failed to exercise its discretion and never considered the § 3553(a) factors, rendering its decision unreasonable.² A district court has much deference in making its sentencing decision. “The appropriateness of brevity or length, conciseness or detail, when to write, what to say[,] depend[] upon the circumstances.” *Rita*, 127 S. Ct. at 2468. Here, the District Court stated that it considered Dorramil’s criminal history, his failure to be deterred from criminal activity, and the seriousness of the offense with which he was charged. Furthermore, when the Court stated that “I don’t think that any downward departure at this point can be based upon what he may be facing in the future...,” it signaled that it had considered Dorramil’s potential re-incarceration in Haiti, but that it was not going to base its decision on some event that is conjectural.

The record makes clear that the District Court did consider Dorramil’s argument and the § 3553(a) factors in making its decision. Furthermore, the sentence imposed by the Court was within the advisory Guideline range. Its decision was “logical and consistent with the factors set forth in section 3553(a).” *Severino*, 454 F.3d at 210. We conclude the District Court did not abuse its discretion, its decision was reasonable, and

² He makes a secondary argument that the District Court erroneously conflated a downward departure from the Guidelines with his requested non-Guideline sentence, thereby demonstrating no exercise of discretion. We find this argument unpersuasive.

we therefore affirm the sentence imposed.
