

United States Court of Appeals
For the Eighth Circuit

No. 22-1672

United States of America

Plaintiff - Appellee

v.

Anthony J. Bruzek

Defendant - Appellant

Appeal from United States District Court
for the Western District of Arkansas - Fayetteville

Submitted: January 9, 2023

Filed: February 7, 2023

[Unpublished]

Before GRUENDER, BENTON, and SHEPHERD, Circuit Judges.

PER CURIAM.

Anthony Bruzek appeals his sentence, claiming that the district court¹ substantively erred. The district court sentenced Bruzek to 51 months' imprisonment after he failed to register as a sex offender under the Sex Offender

¹The Honorable Timothy L. Brooks, United States District Judge for the Western District of Arkansas.

Registration and Notification Act (“SORNA”). In 2014, Bruzek was convicted of two offenses that required him to register as a sex offender. Specifically, Bruzek repeatedly raped one of his own daughters, A.B., when she was between the ages of fourteen and twenty-two.

In September 2020, H.C., another daughter of Bruzek’s, reported to the Mounds View, Minnesota police that Bruzek had recently raped her. H.C. informed the police that Bruzek had smoked methamphetamine prior to committing the rape. Police officers then executed a search warrant on the halfway house where Bruzek was residing. They found methamphetamine and related paraphernalia in his room and arrested him. Officers interviewed Bruzek about H.C.’s rape allegations while he was in custody. In March 2021, Minnesota prosecutors brought a sex-offense charge against Bruzek based on H.C.’s allegations.

In October 2020, Bruzek failed to appear in Minnesota state court for a revocation hearing, and the Minnesota court issued a warrant for Bruzek’s arrest. In February 2021, fugitive task officers found Bruzek living in Witter, Arkansas and arrested him. The officers discovered that Bruzek had been living there since November 2020. The Government charged Bruzek with knowingly failing to register as a sex offender and to update his sex-offender registration, as required by SORNA. *See* 18 U.S.C. § 2250. Bruzek pled guilty.

The United States Probation Office filed its final presentence investigation report (“PSR”) thereafter. Applying the advisory sentencing guidelines, the PSR calculated a total offense level of 13 and a criminal-history category of VI, yielding a guidelines range of 33 to 41 months’ imprisonment.

The Government asked the district court to sentence Bruzek to 96 months’ imprisonment. The Government emphasized that Minnesota officers were investigating Bruzek for sex offenses when he fled to Arkansas and that Bruzek likely attempted to evade the investigation by fleeing.

At the sentencing hearing, the Government reiterated its request for an upward variance. Bruzek's counsel argued that various mitigating factors, such as drug addiction, mental-health issues, and the fact that Bruzek had earned a GED and some college credits while previously incarcerated, favored a low-end guidelines sentence. Bruzek's counsel also noted that Bruzek did not commit any crimes or attempt to flee from law enforcement while in Arkansas.

The district court denied the Government's request to sentence Bruzek to 96 months' imprisonment, but it varied upward to a sentence of 51 months from the guidelines range of 33 to 41 months. The district court agreed with the Government that "[t]he context here is pretty much the furthest end of seriousness of a SORNA violation" because Bruzek left Minnesota during a pending sex-offense investigation. The district court also focused on Bruzek's criminal history, noting multiple drug and theft offenses in addition to the 2014 sex offense. The district court then reviewed the mitigating factors raised by Bruzek's counsel. The district court concluded that aggravating circumstances "so outweigh the mitigating circumstances that an upward variance is warranted."

Bruzek appeals his 51-month sentence, arguing that it is substantively unreasonable. We review the substantive reasonableness of a district court's sentence for abuse of discretion. *United States v. Godfrey*, 863 F.3d 1088, 1094 (8th Cir. 2017). "The district court has wide latitude to weigh the § 3553(a) factors in each case and assign some factors greater weight than others in determining an appropriate sentence." *United States v. Borromeo*, 657 F.3d 754, 757 (8th Cir. 2011). "[I]t will be the unusual case when we reverse a district court sentence—whether within, above, or below the applicable Guidelines range—as substantively unreasonable." *United States v. Feemster*, 572 F.3d 455, 464 (8th Cir. 2009) (en banc).

Bruzek claims that the district court abused its discretion by giving excessive weight to the pending Minnesota sex-offense charge and by giving insufficient weight to mitigating factors. We disagree. As the district court explained, the

underlying Minnesota rape investigation was relevant for considering the seriousness of the SORNA violation. *See* § 3553(a)(2)(A). The district court emphasized that it did not matter whether Bruzek was guilty or innocent of the conduct for which Minnesota officials investigated him. What mattered is that a preponderance of the evidence indicated that Bruzek fled in order to escape an ongoing investigation.

With respect to mitigating factors, the district court noted Bruzek’s drug addiction, mental-health issues, educational attainment, and that Bruzek did not commit crimes in Arkansas. The district court nevertheless found that the seriousness of the SORNA offense and Bruzek’s extensive and significant criminal history far outweighed these mitigating factors, justifying an upward variance from the guidelines range of 33 to 41 months’ imprisonment to a 51-month sentence. The district court did not abuse its “wide latitude” in weighing the § 3553(a) factors. *See United States v. Washington*, 893 F.3d 1076, 1080-81 (8th Cir. 2018). Thus, Bruzek’s sentence is not substantively unreasonable, and we affirm his sentence.
