United States Court of Appeals
For the Eighth Circuit

No. 22-3462

United States of America

Plaintiff - Appellee

v.

Carney Turner, also known as Tez

Defendant - Appellant

No. 22-3463

United States of America

Plaintiff - Appellee

v.

Sidney Marker

Defendant - Appellant

Appeals from United States District Court
for the District of Nebraska - Omaha

Submitted: November 14, 2023
Filed: February 29, 2024

Before COLLOTON, WOLLMAN, and BENTON, Circuit Judges.

WOLLMAN, Circuit Judge.

Carney Turner pleaded guilty to one count of conspiracy to engage in sex trafficking of a minor, in violation of 18 U.S.C. § 1594(c), three counts of sex trafficking of a minor, in violation of 18 U.S.C. § 1591(a), and two counts of enticement of a minor, in violation of 18 U.S.C. § 2422(b). He admitted that co-defendant Julisha Biggs and three minor victims had engaged in prostitution under his direction and for his financial benefit. Turner used text and electronic messaging to recruit two of the minor victims to his prostitution ring. He posted online advertisements that included provocative photos of the girls, arranged commercial sex sales, and transported the girls to the hotels he booked for commercial sex acts. The district court[1] sentenced Turner to life imprisonment on each count.

Turner's former girlfriend, Sidney Marker, pleaded guilty to the conspiracy count. Marker admitted that she had allowed Turner to use her vehicles, that she had helped rent hotel rooms for commercial sex acts, and that she had permitted commercial sex acts to occur at the apartment she shared with Turner. She was sentenced to 180 months' imprisonment.

On appeal, Turner challenges his convictions for conspiracy and sex trafficking, arguing that the indictment failed to state these offenses. Both Turner and Marker argue that the district court miscalculated their offense levels under the U.S. Sentencing Guidelines and that their sentences are substantively unreasonable. We affirm.

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[1]The Honorable Robert F. Rossiter, Jr., Chief Judge, United States District Court for the District of Nebraska.

I. The Indictment

Turner challenges his convictions for conspiracy and sex trafficking of a minor, arguing that the superseding indictment failed to state any offense under 18 U.S.C. § 1591(a). See 18 U.S.C. § 1591 (sex trafficking of children); 1594(c) (conspiracy to violate § 1591). Specifically, Turner argues that § 1591(a)(1) and (a)(2) set forth at least two offenses and that § 1591(c) relieves the government of proving knowledge in prosecutions under subsection (a)(1). Turner argues that because the superseding indictment alleged the standard set forth in subsection (c), as well as acts that are prohibited under subsections (a)(1) and (a)(2), it "alleged conduct not proscribed by either § 1591(a)(1) or § 1591(a)(2)." Turner Br. 13.

We need not and do not decide the merits of Turner's argument, however, because he waived his challenge to the superseding indictment by pleading guilty. "A guilty plea waives all defects except those that are 'jurisdictional.'" United States v. Todd, 521 F.3d 891, 895 (8th Cir. 2008). "[A] defective indictment does not deprive a court of jurisdiction," even if the indictment conflates two alternative offenses defined in a statute. Id. (citing United States v. Cotton, 535 U.S. 625, 632 (2002)). Turner thus has not raised a jurisdictional defect, and his failure-to-state-an-offense claim is waived.

II. Sentencing Guidelines

Marker and Turner challenge the district court's application of the sentencing guidelines. They do not challenge its factual findings. We review *de novo* the district court's interpretation and application of the guidelines. United States v. Carter, 960 F.3d 1007, 1010 (8th Cir. 2020).

A. Calculation of Marker's Sentencing Range

In determining Marker's base offense level for conspiracy, see U.S.S.G. § 2X1.1(a), the district court applied the base offense level of 30 for sex trafficking

of a minor in violation of § 1591(b)(2), see U.S.S.G. § 2G1.3(a)(2), and the 2-level increase for an offense involving the commission of a sex act, see U.S.S.G. § 2G1.3(b)(4)(A). After applying multiple offense-level adjustments not challenged in this appeal, Marker's total offense level was 35. With a criminal history category of I, Marker's advisory guidelines sentencing range was 168 to 210 months' imprisonment.

Marker first argues that the district court erred in applying § 2G1.3(a)(2) for her conspiracy conviction under 18 U.S.C. § 1594(c). Section 1594(c) provides that "[w]hoever conspires with another to violate section 1591 shall be fined under this title, imprisoned for any term of years or for life, or both." Section 1591(a) sets forth the offense of sex trafficking of children, and § 1591(b) provides "[t]he punishment for an offense under subsection (a)." Subsection (b)(1) applies if the offense was effected by means of force, threats of force, fraud, or coercion or if the victim was not yet fourteen when trafficked. Subsection (b)(2) applies if the offense was not so effected and the victim was between the ages of fourteen and eighteen. The superseding indictment alleged that the Marker violated § 1594(c) by conspiring to violate § 1591(a). Although the superseding indictment did not cite a specific punishment subsection, § 1591(b)(2) applied to the alleged § 1591(a) offense because there were no allegations of force, threats, fraud, coercion, or victims under the age of 14.

Guidelines § 2X1.1(a) provides the base offense level for conspiracies not covered by a specific offense guideline, including those under 18 U.S.C. § 1594(c). See Carter, 960 F.3d at 1013 ("Conspiracies punished under § 1594(c) are not covered by a specific offense Guideline, so we begin with the catch-all provision at U.S.S.G. § 2X1.1."). It instructs that the base offense level for such a conspiracy is "[t]he base offense level from the guideline for the substantive offense," plus certain adjustments for specific offense characteristics. U.S.S.G. § 2X1.1(a); see U.S.S.G. § 2X1.1(a) cmt. n.2 (defining "substantive offense" as "the offense that the defendant was convicted of . . . conspiring to commit."). Section 2G1.3(a) is the guideline for

the substantive offense of sex trafficking of children and provides the following base offense levels:

> (1) 34, if the defendant was convicted under 18 U.S.C. § 1591(b)(1);
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> (2) 30, if the defendant was convicted under 18 U.S.C. § 1591(b)(2);
>
> (3) 28, if the defendant was convicted under 18 U.S.C. § 2422(b) or § 2423(a); or
>
> (4) 24, otherwise.

Marker argues that because she was convicted under 18 U.S.C. § 1594(c), her base offense level is 24 under the "otherwise" category set forth in § 2G1.3(a)(4). We must, however, consider § 2G1.3(a) in light of § 2X1.1(a)'s directive that the conspiracy's base offense level is the base offense level for the underlying substantive offense. See Carter, 960 F.3d at 1014; United States v. Sims, 957 F.3d 362, 363 (3d Cir. 2020). Marker pleaded guilty to conspiring to commit sex trafficking of children in violation of § 1591(a), and the superseding indictment alleged acts punishable under § 1591(b)(2). See Sims, 957 F.3d at 365 (explaining that § 1591(b) "is not a standalone offense; rather, it's the punishment for violating § 1591(a)"). Because the base offense level for the underlying substantive offense is thus 30, the base offense level for Marker's conspiracy conviction is 30, plus the adjustment discussed below. We thus conclude that the district court did not err in applying § 2G1.3(a)(2).

Despite Marker's contention to the contrary, the commentary to § 1B1.3 supports this conclusion. Application note 7 explains that when a guideline directs that a particular factor apply only if the defendant is convicted of a certain statute, that direction "includes the determination of the offense level where the defendant was convicted of conspiracy . . . in respect to that particular statute." Marker was convicted of conspiracy in respect to § 1591(b)(2). See Carter, 960 F.3d at 1014.

Marker also argues that "the district court erred by applying the two-point enhancement based upon the offense involving a 'commercial sex act.'" Marker's Br. 17. At the time of Marker's sentencing, § 2G1.3(b)(4) provided that "[i]f (A) the offense involved the commission of a sex act or sexual contact; or (B) subsection (a)(3) or (a)(4) applies and the offense involved a commercial sex act, increase by 2 levels." Marker's argument fails, however, because the district court applied subsection (b)(4)(A) for an offense involving commission of a sex act. As explained above, Marker's base offense level was set forth in subsection (a)(2). She did not satisfy subsection (b)(4)(B)'s requirement that subsection (a)(3) or (a)(4) apply. The district court simply did not apply the subsection (b)(4)(B) enhancement for an offense involving a commercial sex act. See Marker Sentencing Tr. 72–73.

We have previously rejected the argument that § 2G1.3(b)(4)(A) should not apply when the offense is under § 1591(b) and involved the commission of a sex act. Carter, 960 F.3d at 1011. Accordingly, to the extent Marker advances that argument, it is foreclosed by our precedent.

B. Calculation of Turner's Guidelines Sentence

The district court grouped Turner's conspiracy count with the substantive counts of sex trafficking related to each minor victim, see U.S.S.G. § 3D1.2(b), and applied § 2G1.3 to determine the base offense level for each group, see U.S.S.G. § 2X1.1(a).

Applying the guideline for sex trafficking of children, the district court determined that Turner's base offense level was 30 and increased by 2 for each of the following specific offense characteristics: unduly influencing a minor; using a computer to entice, encourage, offer, or solicit a person to engage in sexual conduct with the minor; and because the offense involved the commission of a sex act or sexual conduct. See U.S.S.G. § 2G1.3(a)(2), (b)(2)(B), (b)(3)(B), and (b)(4)(A). The district court also applied upward adjustments because Turner knew or should have known that the victim was vulnerable (2 levels), because he was an organizer of five

or more participants (4 levels), and because he obstructed justice (2 levels). See U.S.S.G. §§ 3A1.1(b)(1), 3B1.1(a), and 3C1.1.

The adjusted offense level for each group was 44, which was increased by 3 when the groups were combined and by 5 based on a pattern of activity or prohibited sexual conduct. U.S.S.G. §§ 3D1.4, 4B1.5(b)(1). After decreasing by 2 levels for acceptance of responsibility, Turner's total offense level was 50, which was treated as an offense level of 43. See U.S.S.G. § 3E1.1(a); Sentencing Table n.2. With a criminal history category of IV, Turner's guidelines sentence was life imprisonment.

Like Marker, Turner argues that the district court erred by applying the 2-level increase under § 2G1.3(b)(4)(A). He does not dispute that "the offense involved the commission of a sex act or sexual contact," as subsection (b)(4)(A) requires, but contends that the enhancement applies only when the defendant himself engaged in the sex act or sexual contact with a victim. He contends that, if not so limited, subsection (b)(4)(B) is rendered "wholly redundant." Turner's Br. 17. The plain language of subsection (b)(4)(A) does not limit its application to a defendant's conduct, however, and we have rejected the argument that this reading "render[s] § 2G1.3(b)(4)(B) 'mere surplusage.'" Carter, 960 F.3d at 1011. The district court thus properly applied subsection (b)(4)(A).

Turner also challenges the enhancement under § 3B1.1(a), which provides a 4-level increase if the defendant was an organizer or leader of a criminal activity that involved five or more participants. It is undisputed that Turner, Biggs, and Marker were participants or that he organized or led his co-defendants. Turner also does not challenge the district court's conclusion that two sex purchasers—both of whom were convicted of state offenses related to this conspiracy—were participants in the criminal activity. See United States v. Jungers, 702 F.3d 1066, 1069–75 (8th Cir. 2013) (holding that 18 U.S.C. § 1591 applies to consumers of commercial sex acts); U.S.S.G. § 3B1.1 cmt. n.1. (defining "participant" as "a person who is criminally responsible for the commission of the offense, but need not have been convicted"). He argues that he did not organize or lead these purchasers, but the guideline requires

only that he organize or lead at least one other participant, which Turner indisputably did. See U.S.S.G. § 3B1.1 cmt. n.2 ("To qualify for an adjustment under this section, the defendant must have been the organizer, leader, manager, or supervisor of one or more other participants."). The district court thus did not err in applying this 4-level increase.

We likewise reject Turner's challenge to the application of § 4B1.5(b)(1), which provides a 5-level increase when "the defendant's instant offense of conviction is a covered sex crime, neither § 4B1.1 nor subsection (a) of this guideline applies, and the defendant engaged in a pattern of activity involving prohibited sexual conduct." Turner contends that the district court gave too broad a definition to "prohibited sexual conduct," but the guideline defines the phrase to include offenses under 18 U.S.C. § 1591. See U.S.S.G. § 4B1.5 cmt. n.4(A)(i). Moreover, although Turner argues that § 2G1.3 and § 3D1.4 fully account for cases involving multiple victims, § 4B1.5 "specifically envisions a double counting result by imposing an increase of five levels 'plus' the offense level calculation arrived at from applying chapters two and three of the guidelines." United States v. West, 2022 WL 321136, at *1 (8th Cir. Feb. 3, 2022) (per curiam).

III. Substantive Reasonableness

We review the substantive reasonableness of a sentence under a deferential abuse-of-discretion standard and may apply a presumption of reasonableness to a sentence within the advisory guidelines range. Gall v. United States, 552 U.S. 38, 51 (2007).

A. Marker's Sentence

Marker holds a bachelor's degree in child, youth, and family services. She met Turner when she was a caseworker for the department of corrections and he was an inmate serving a lengthy prison sentence for manslaughter. After leaving the department of corrections, Marker was employed as a family support specialist and

as a foster care specialist. She had no criminal history prior to being convicted of conspiracy to commit sex trafficking.

At sentencing, the government presented evidence of Marker's knowing involvement in the conspiracy, as well as evidence of the training she had received during her employment as a foster care specialist, which included training on domestic violence, conflict resolution, and recognizing the signs of sex trafficking. Two victims spoke at Marker's sentencing, explaining how being sex trafficked destroyed their lives. They asked how Marker could fail to intervene in what one victim described as "a mess where vulnerable teenage girls are being deprived of their lives." Marker Sentencing Tr. 9. Marker presented evidence of her psychological evaluation and her therapy records, as well as several letters of support. After considering the evidence and the sentencing factors under 18 U.S.C. § 3553(a), the district court imposed the 180-month sentence.

Marker argues that her sentence is substantively unreasonable. She contends that the district court failed to assign adequate weight to the mitigating circumstances in her personal history—specifically, the control Turner exerted over her, his emotional abuse toward her, and her resultant post-traumatic stress disorder diagnosis. She also argues that district court should have given greater consideration to her vulnerable state at the time of the offense that resulted from her recently suffered miscarriage and her discovery of Turner's affair. Marker also argues that the district court committed a clear error in judgment by basing the sentence, in part, on Marker's education, employment, and training in family services and foster care.

We conclude that the district court did not abuse its discretion in sentencing Marker. It acknowledged Marker's psychological and mental health issues, but was skeptical that her participation in the conspiracy was a result of her having been manipulated by Turner.

> [Y]ou are an educated woman. Your background in corrections and foster care, along with the training . . . that you've received, really works

> against you here. . . . [Y]ou talk about the -- the wish to protect kids, but you did know better. And if you didn't know better, you should have known better.

Marker Sentencing Tr. 106. The record makes clear that the district court considered Marker's history and characteristics "on both sides of the ledger" and that it did not err in its consideration of Marker's education and training. Id. at 108. We conclude that the court did not exceed the substantial latitude it is accorded in weighing the sentencing factors and that Marker's sentence is not substantively unreasonable.

B. Turner's Sentence

Turner argues that the district court failed to adequately explain why his case merited life imprisonment. He contends that post-guilty plea discretionary life sentences are so rare that they warrant special scrutiny on appeal. Moreover, although the district court stated that it had considered the § 3553(a) factors, Turner contends that the record reveals that the court did not, in fact, consider those factors, particularly the need to avoid unwarranted sentencing disparities.

We conclude that the district court did not abuse its discretion in sentencing Turner to life imprisonment. The court considered the ably-presented arguments against a guidelines sentence, including the fact of Turner's guilty plea and the guidelines' failure "to address the nuance of Carney Turner as a human being, to address or recompense his victims who are human beings, or provide anything approaching justice in this case." Turner Sentencing Tr. 90–91. The court concluded, however, that "these guidelines are . . . appropriately factored." Id. at 107. The court considered defense counsel's account of defendants who had received life imprisonment for mass murder, terrorism, or more horrific sex trafficking, but nonetheless found that the egregiousness of Turner's conduct warranted a life sentence. The record makes clear that the district court "considered the parties' arguments and ha[d] a reasoned basis for exercising his own legal decisionmaking

authority." Rita v. United States, 551 U.S. 338, 356 (2007). Turner's life sentence is thus not substantively unreasonable.

Conclusion

The judgments are affirmed.
