

United States Court of Appeals
For the Eighth Circuit

No. 24-2817

United States of America

Plaintiff - Appellee

v.

Travon Rice

Defendant - Appellant

Appeal from United States District Court
for the Eastern District of Arkansas - Central

Submitted: December 15, 2025

Filed: August 18, 2026

Before LOKEN, L.R. SMITH, and KOBES, Circuit Judges.

LOKEN, Circuit Judge.

In October 2019, when he was 15 years old, Travon Rice was convicted in state court of first degree battery and possession of a handgun by a minor after he chased and shot two men who were meeting him to purchase a video game. Rice was sentenced to 96 months imprisonment. He was released from custody to supervision in April 2022. On June 18, two months later, a Little Rock police officer received a safety alert referring to Rice.

Investigating Rice's parole and supervision database, officers discovered pictures and videos on his Instagram account showing him posing with a Glock pistol that appeared to be modified with a switch to make it function as a machinegun. When Rice failed to attend a parole meeting two days later, officers conducted a parole visit at his home, where they discovered six guns, several of which had previously been reported as stolen, including the modified Glock pistol. Rice's state felony conviction prohibited him from possessing firearms. During a police interview, he admitted to posting the Instagram photos and to knowing he could not possess a firearm. A grand jury indicted Rice, charging him with felony possession of a firearm in violation of 18 U.S.C. § 922(g)(1) and possession of a machinegun in violation of 18 U.S.C. § 922(o). In March 2024, on the eve of trial, he pleaded guilty to possession of a machinegun in exchange for the government moving to dismiss the felony possession count.

Rice's Presentence Investigative Report (PSR) calculated an advisory guidelines sentencing range of 57 to 71 months imprisonment based on a base offense level of 22 for possessing a firearm capable of accepting a large capacity magazine; a total offense level of 23 based on a two-level increase for possessing between three and seven firearms, a two-level increase because at least one firearm was stolen, and a three-level decrease for acceptance of responsibility; and a criminal history score of 6 (Criminal History Category III) based on his multiple delinquent juvenile adjudications, the adult state court conviction for theft, battery, and possession of a handgun, and committing the instant offense while on parole for that offense.

Rice requested a sentence on the low end of the range because he was only 21 years old, his lengthy criminal history was primarily juvenile offenses committed between the ages of 13 and 15, and he suffered a turbulent upbringing including the murder of his father and sister at a young age. Defense counsel also noted he had earned his GED and learned landscaping skills while in prison and also asked "that this sentence run concurrently with the violation he's in on right now or his

revocation of parole. . . . [T]here's a projected release date right now of 2027. We don't know what kind of credit he's going to get for that." The district court¹ responded that Rice "was only out for two months after being released on that charge when he was caught with what I would characterize as almost an arsenal of dangerous weapons." Invited by the court to speak in his own behalf, Rice said, "I'm ready to put everything behind me and start a new chapter."

The government then urged a sentence at the top of the guidelines range "for all of the reasons that are listed in the presentence report," noting Rice's violent criminal history and the possession of multiple firearms, one with a switch and some that were stolen. Counsel noted that previously Rice "shot someone It's a very serious offense." Government counsel did not disagree with defense counsel's statement that the government is "agreeable to a joint recommendation for the concurrent sentence."

Stating that it had considered the entire PSR, the comments of counsel, Mr. Rice, and the letters submitted, "as well as the provisions found in 18 U.S.C. Section 3553," the district court declared: "it's the judgment of the Court that Mr. Rice be committed to the custody of the Bureau of Prisons for a term of 90 months to run consecutively to any undischarged portion of the state sentence he may be currently serving," and that the court will "recommend that he participate in substance abuse treatment, mental health counseling with an emphasis in anger management and education and vocational programs during incarceration." The court then explained its reason for imposing an upward variance:

This upward variance is justified when I look at Mr. Rice's criminal history. In particular . . . he was 15 . . . when he chased down . . . two people and . . . shot both [victims] This was only two

¹The Honorable James M. Moody, Jr., United States District Judge for the Eastern District of Arkansas.

months after he was released . . . from state custody [after] he was found in possession of . . . dangerous firearms including the machine gun that he pled guilty to [in this case]. The 96 months that he received at his state court conviction . . . was insufficient to deter this conduct. As I said, he was only two months out of that custody at [the time of] the instant offense. At age 13 when he committed his first crime it looks like he was revoked seven times . . . so [defense counsel], while you say he doesn't have any criminal history points for adult behavior, it appears that since he was roughly 13, he's either been in [or] out of custody, and he is now only 21, so it doesn't surprise me that he doesn't have any [prior] adult conviction at 21.

I think he's a danger to the community. I think that his previous sentence was insufficient to deter his conduct making this 90-month sentence sufficient but not greater than necessary to reflect the seriousness of the offense, promote respect for the law, but also to address his needs.

The court did not further explain its decision to impose a sentence consecutive to any undischarged portion of the state sentence. Rice, invited to comment, said "I thought I was going to get my jail credit." After an off-the-record conversation with Rice, counsel stated that he had no comments on the sentence.

At the court's invitation, defense counsel stated, "We'll object under the 3553(a) factors, specifically looking at his age, his personal characteristics and background, and I believe we'll be filing an appeal." There was no specific objection to the consecutive sentencing.

On appeal, Rice argues (i) his sentence is substantively unreasonable because the district court imposed an upward variance by giving undue weight to factors that were already taken into account by the Guidelines, and (ii) the district court failed to consider 18 U.S.C. § 3584 and USSG § 5G1.3 when it ordered that Rice's federal sentence run consecutive to his undischarged state sentence.

(i) “We review a defendant’s challenge to substantive reasonableness under a highly deferential abuse-of-discretion standard.” United States v. Jones, 71 F.4th 1083, 1086 (8th Cir. 2023) (citation omitted). A district court abuses its discretion when it “(1) fails to consider a relevant factor that should have received significant weight; (2) gives significant weight to an improper or irrelevant factor; or (3) considers only the appropriate factors but in weighing those factors commits a clear error of judgment.” United States v. Feemster, 572 F.3d 455, 461 (8th Cir. 2009) (en banc) (cleaned up). “[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.” Id. at 464 (quotation omitted).

After careful review, we conclude the district court did not abuse its substantial discretion. Rice argues the court improperly imposed an upward variance based on his criminal history and the nature and circumstances of his federal offense, because the Guidelines already accounted for those factors. However, “[i]t is well-settled that factors taken into account in calculating the advisory guidelines range can form the basis of an upward variance[.]” United States v. Manuel, 73 F.4th 989, 993 (8th Cir. 2023). The district court was well within its discretion to conclude that Rice’s numerous prior parole revocations, his substantial recidivism a mere two months after completing his 96-month state prison sentence, and his extensive violent criminal record justified an upward variance. See, e.g., United States v. Haskins, 101 F.4th 997, 999-1000 (8th Cir. 2024) (affirming upward variance from the top of the advisory guidelines range, 57 months, to 120 months, for a defendant who committed his most serious crime at a young age); United States v. Johnson, 916 F.3d 701, 703 (8th Cir. 2019) (204-month sentence affirmed when top of range was 71 months, in part because defendant posed a danger to the public due to his violent criminal history). The upward variance is not substantively unreasonable.

(ii) Rice’s argument that the district court did not consider 18 U.S.C. § 3584 and USSG § 5G1.3 when imposing a sentence consecutive to his undischarged state

sentence is without merit. “Judges have long been understood to have discretion to select whether the sentences they impose will run concurrently or consecutively with respect to other sentences that they impose, or that have been imposed in other proceedings, including state proceedings.” Setser v. United States, 566 U.S. 231, 236 (2012) (citation omitted). “Under 18 U.S.C. § 3584, a district court has the discretion to impose a sentence concurrently or consecutively based on the same § 3553(a) factors as other sentencing decisions.” United States v. Boyum, 54 F.4th 1012, 1016 (8th Cir. 2022) (cleaned up), quoting United States v. Becker, 636 F.3d 402, 408 (8th Cir. 2011). We do not require the district court to “categorically rehearse” each of the § 3553(a) factors so long as those factors were properly considered as required by § 3584, even if the court “completely omitted a discussion of § 3584 in making its sentencing decision.” Becker, 636 F.3d at 408 (citations omitted) (cleaned up).

Section 5G1.3 of the advisory Guidelines provides rules for the sentencing of defendants who are subject to an undischarged or anticipated term of imprisonment. Subsections (a), (b), and (c) appear not to apply to defendants such as Rice who committed their federal offense while serving state parole terms rather than terms of imprisonment. But the commentary to the policy statement in § 5G1.3(d) expressly states that it applies to a defendant who was serving parole when he committed the instant offense. USSG § 5G1.3(d) comment n.4(C).

“Generally, the district court retains broad statutory authority to impose a sentence to run consecutively with or concurrently to an undischarged term of imprisonment.” United States v. Meyers, 401 F.3d 959, 961 (8th Cir. 2005). Here, the district court obviously considered Rice’s request for concurrent sentences. Aware of the undischarged state sentence, its likely discharge date, and an anticipated parole revocation sentence, the court properly considered and discussed the entire PSR and the relevant § 3553(a) factors and exercised its discretion to impose a consecutive federal sentence together with an upward variance and recommended substance abuse treatment and mental health counseling because “he’s a danger to the

community” and prior sentences were insufficient to deter his conduct. Rice did not object to this determination.

Our prior § 5G1.3 cases make clear that the district court’s explanation and decision did not abuse its substantial § 5G1.3 discretion, much less commit plain error. See, e.g., United States v. Lomeli, 596 F.3d 496, 504-05 (8th Cir. 2010). In United States v. Ware, for example, we upheld the district court’s imposition of a federal sentence consecutive to two state court sentences because those sentences were unrelated to the federal offense. 141 F.4th 970, 975-76 (8th Cir. 2025); cf. United States v. Harris, 324 F.3d 602, 605 (8th Cir. 2003) (endorsing consecutive sentence for defendant on state parole under prior version of Guidelines). Here, Rice’s federal offense repeated the same type of conduct for which he had received the 96 month state sentence for an unrelated incident. The district court’s imposition of Rice’s federal sentence consecutive to any undischarged portion of his unrelated state sentence did not result in a substantively unreasonable sentence.

The district court’s Judgment in a Criminal Case is affirmed.
