

United States Court of Appeals
For the Eighth Circuit

No. 25-3008

United States of America,

Plaintiff - Appellee,

v.

Rick Kelley,

Defendant - Appellant.

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

Submitted: May 14, 2026

Filed: August 27, 2026

Before COLLOTON, Chief Judge, SHEPHERD and KOBES, Circuit Judges.

COLLOTON, Chief Judge.

Rick Kelley pleaded guilty to two drug trafficking conspiracy offenses and a money laundering offense. The district court* calculated an advisory sentencing

*The Honorable Robert F. Rossiter, Jr., then Chief Judge, United States District Court for the District of Nebraska.

guideline range of 41 to 51 months' imprisonment, but varied downward and imposed a sentence of 24 months. The court also made clear that the ultimate sentence was based on the court's consideration of the sentencing factors under 18 U.S.C. § 3553(a), regardless of the guideline calculations. On appeal, Kelley challenges the district court's determinations under the guidelines. Given the district court's clear statement that the sentence was based independently on § 3553(a), and the reasonableness of that sentence, we conclude that any error was harmless, and affirm the judgment.

Kelley pleaded guilty to conspiring to distribute misbranded drugs, conspiring to distribute controlled substances, and conspiring to commit money laundering. Kelley, a partner named Mishra, and several others operated websites through which customers in the United States could buy drugs without a prescription. Kelley opened a limited liability company in 2015 to conduct business. Kelley maintains that he withdrew from unlawful activity at the end of 2015 and continued in business with Mishra on lawful activities only. In 2018, law enforcement agents purchased substances containing heroin from a website operated by the conspirators. Kelley disputes whether he should be accountable for those distributions.

Agents interviewed Kelley in 2019. Kelley claimed that he thought Mishra's activities were legal until he discovered that Mishra sold "hard narcotics" such as OxyContin. Kelley told the investigators that he continued to do business with Mishra after that discovery, but that he opened a new limited liability company to sell clothing and electronics. Kelley said that he had "closed" both companies by late 2016.

Kelley pleaded guilty to two drug conspiracy charges and a money laundering charge. In a factual basis for the guilty pleas, Kelley admitted that "from as early as February 1st, 2014, and continuing until at least November 10th, 2020 . . . the defendants charged in this case created, operated, and utilized numerous internet

pharmaceutical websites, including silkroadsmeds.com.” He acknowledged that “[c]ustomers of the illegal websites in the United States provided their credit card information through emails, and the information was forwarded to Rick Kelley and others who processed the credit cards.” Kelley admitted that “[o]n four occasions in 2018, special agents ordered and received controlled substances from the websites,” and that “[t]esting revealed that the substances received by the agents contained controlled substances, including more than 100 grams of a mixture or substance containing a detectable amount of heroin.”

At sentencing, the parties disputed the quantity of drugs for which Kelley was responsible under the guidelines and whether Kelley was entitled to a decrease in offense level for a mitigating role in the offense. Kelley’s position was that his involvement in illegal drug activity was limited to a short period during 2015, and that he was not accountable for actions taken by others at later dates—including the distribution of heroin in 2018—because the actions were not reasonably foreseeable by him and he had withdrawn from the conspiracy.

The district court ultimately rejected Kelley’s position and found that he was accountable for the heroin from the controlled purchases in 2018:

I think given his admissions, given the factual basis, given what he pled guilty to, I believe -- I believe that the most straightforward calculation in this case and the fairest calculation is that proposed by the government that relies upon the admission that more than a hundred grams of mixture or substance containing a detectable amount of heroin is the -- the point that I put a pin in here. There obviously was a lot more going on. Obviously, Mr. Kelley had some concerns about -- about this conspiracy, but I think that that is the appropriate calculation here.

The court also declined to decrease Kelley's offense level under USSG § 3B1.2, because the court did "not believe the defendant has met his burden for a role adjustment in these circumstances given the myriad of things he did for this conspiracy, wittingly and unwittingly."

The district court calculated an advisory guideline range of 41 to 51 months' imprisonment, but varied downward and imposed a sentence of 24 months. Before imposing sentence, the court explained that the sentence was based on the sentencing factors under 18 U.S.C. § 3553(a), and would have been the same regardless of the calculations under the guidelines:

I will say at this point that -- probably no case or at least no recent case where I've gone through the 3553(a) factors in more detail. *And I will state for the record that the sentence that I'm going to pronounce would have been the sentence regardless of -- of the objections here.* I think it's -- it's an appropriate -- it's an appropriate sentence.

S. Tr. 57 (emphasis added).

On appeal, Kelley argues that the court erred in determining drug quantity and by declining to find a minor role in the offenses. He suggests that the court should have arrived at an advisory range as low as 8 to 14 months' imprisonment.

On this record, we find it unnecessary to address the sentencing guideline calculations raised by Kelley on appeal, because any error would be harmless. The district court is required to impose a sentence according to the factors in 18 U.S.C. § 3553(a), and the court made clear that it would have imposed the same sentence in this case regardless of the guideline calculations. Although the advisory guideline range is one factor to be considered under § 3553(a), the guidelines are advisory only. The court in a particular case may conclude that other factors under § 3553(a) warrant

a particular sentence, independent of the advisory guideline range. *E.g., United States v. Little*, 175 F.4th 987, 992 (8th Cir. 2026).

Here, the court explained that this was “not an easy case for purposes of sentencing,” and that there was “no recent case where [the court had] gone through the 3553(a) factors in more detail.” Regardless of the precise drug quantity involved or precise role in the offense, the court considered Kelley’s involvement in the conspiracy, including that he “did set up these businesses,” and he deliberately kept payments to Mishra below \$10,000 to avoid alerting the Internal Revenue Service. The court found that Kelley “continued to do business with those in the conspiracy,” and “continued to monitor the accounts, take payments, and the like.” The court found that Kelley “is a highly educated man,” and that he could not be characterized as someone who “was just naive.” In mitigation, the court cited Kelley’s age of sixty-six years, health issues, “recent cognitive issues,” and lack of criminal history.

Even if the court had adopted Kelley’s position about a relatively brief and minor role in the three conspiracies to which he pleaded guilty, it would not have been unreasonable or an abuse of discretion to vary from any advisory guideline range and arrive at a sentence of 24 months’ imprisonment based on the § 3553(a) factors taken as a whole. The judgment of the district court is affirmed.
