

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007 IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

1 At a stated term of the United States Court of Appeals for the Second
2 Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley
3 Square, in the City of New York, on the 21st day of March, two thousand
4 fourteen.

5
6 PRESENT: CHESTER J. STRAUB,
7 ROBERT D. SACK,
8 RAYMOND J. LOHIER, JR.,
9 *Circuit Judges.*

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11
12 UNITED STATES OF AMERICA,
13
14 *Appellee,*

15
16 v.

No. 13-1126-cr

17
18 GAMALE GIST, AKA JAMALE GIST,
19
20 *Defendant-Appellant.*

1 FOR APPELLANT: STEVEN Y. YUROWITZ, Newman & Greenberg,
2 New York, NY.

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4 FOR APPELLEE: RAJIT S. DOSANJH, Assistant United States
5 Attorney (Ransom P. Reynolds, *on the brief*), for
6 Richard S. Hartunian, United States Attorney for
7 the Northern District of New York, Syracuse, NY.
8

9 Appeal from a judgment of the United States District Court for the
10 Northern District of New York (Glenn T. Suddaby, *Judge*).

11 UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED,
12 AND DECREED that the judgment of the District Court is AFFIRMED. We
13 REMAND only to allow the District Court to amend the Statement of Reasons
14 (“SOR”) in order to memorialize therein its orally stated reasons for imposing a
15 term of supervisory release above the statutory minimum.

16 Defendant-appellant Gamale Gist appeals from the District Court’s
17 judgment of conviction entered March 13, 2013. On appeal, Gist argues that his
18 fifteen-year term of supervised release is substantively unreasonable. We
19 assume the parties’ familiarity with the facts and record of the prior proceedings,
20 to which we refer only as necessary to explain our decision to affirm in part and
21 remand in part.

22 1. Substantive Reasonableness

23 This Court reviews challenges to the substantive reasonableness of a
24 sentence under a deferential abuse-of-discretion standard, United States v.
25 Verkhoglyad, 516 F.3d 122, 127 (2d Cir. 2008), “tak[ing] into account the totality
26 of the circumstances, giving due deference to the sentencing judge’s exercise of
27 discretion, and bearing in mind the institutional advantages of district courts,”
28 United States v. Cavera, 550 F.3d 180, 190 (2d Cir. 2008) (en banc). Applying this

1 standard, we conclude that Gist’s fifteen-year term of supervised release was not
2 substantively unreasonable. As the District Court explained, the term of
3 supervision reflected not only Gist’s extensive criminal record, but also his
4 repeated violations of the conditions of parole imposed as a result of a prior state
5 conviction as well as his history of carrying and using weapons. The District
6 Court acted within its discretion in determining that the fifteen-year term of
7 supervised release was necessary for specific deterrence and to protect the
8 public.

9 2. Limited Remand to Amend the Written Statement of Reasons

10 For the purposes of this appeal, we assume without deciding that the
11 fifteen-year term of supervised release constituted an upward variance. Gist and
12 the Government agree that the fifteen-year term of supervised release
13 represented an upward variance from the recommended Guidelines range. See
14 21 U.S.C. § 841(b)(1)(B) (setting the applicable statutory minimum term of
15 supervised release at eight years); U.S.S.G. § 5D1.2(c) (explaining that, under the
16 Guidelines, the “term of supervised release imposed shall be not less than any
17 statutorily required term of supervised release”). The District Court appears also
18 to have understood that the fifteen-year term represented an upward variance.
19 See App’x 38 (“[T]he Guidelines is eight years. So, obviously, it’s an upward
20 variance. I’ve put my reasons on the record as to why.”).

21 Under 18 U.S.C. § 3553(c)(2), when a sentencing court imposes a sentence
22 that varies from the Guidelines, it must state “the specific reason for the
23 imposition of a sentence different” from that prescribed by the Commission and
24 memorialize that reason in the SOR. See Verkhoglyad, 516 F.3d at 133. Although
25 Gist complains on appeal that the District Court failed to provide any reason in

1 the SOR for the fifteen-year term, he failed to raise this argument before the
2 District Court. Plain error review therefore applies. Id. at 133 n.8. There was no
3 plain error here because the District Court’s failure to memorialize the stated
4 reasons for the fifteen-year term did not affect Gist’s substantial rights. See id. at
5 133.

6 Nonetheless, we note that – in addition to the omission of the reasons for
7 the supervised release term – the current SOR erroneously states that the
8 applicable statutory minimum is ten years, as opposed to eight, despite the
9 District Court’s clear recognition at re-sentencing that the applicable mandatory
10 minimum was eight years. We agree with the Government that a limited
11 remand for purposes of amending the SOR, though not required here, is “the
12 better course.” Id. A complete and accurate SOR aids both the Bureau of
13 Prisons, which “consults the written judgment of conviction, which may contain
14 information relevant to a defendant's service of sentence,” United States v. Hall,
15 499 F.3d 152, 155 (2d Cir. 2007), abrogated on other grounds by United States v.
16 Elbert, 658 F.3d 220, 223 (2d Cir. 2011), and the Sentencing Commission, which
17 “revis[es] the Guidelines to reflect the desirable sentencing practices of the
18 district courts” in response to sentencing data, Rita v. United States, 551 U.S. 338,
19 382 (2007) (Scalia, L. concurring). We therefore remand for the limited purpose
20 of allowing the District Court to amend the SOR to accurately reflect both the
21 applicable eight-year statutory minimum term of supervised release and the
22 reasons the District Court sentenced Gist to a fifteen-year term of supervised
23 release.

24 We have considered Gist’s remaining arguments and conclude that they
25 are without merit. For the foregoing reasons, the judgment of the District Court

1 is hereby AFFIRMED. We REMAND only to permit the District Court to correct
2 the SOR.

3 FOR THE COURT:

4 Catherine O'Hagan Wolfe, Clerk of Court

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