United States v. Pierre, No. 05-6629

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan Courthouse, 500 Pearl Street, in the City of New York, on the 22nd day of September, two thousand and six.

PRESENT:

HON. RICHARD J. CARDAMONE,
HON. ROGER J. MINER,
HON. CHESTER J. STRAUB,
Circuit Judges.

UNITED STATES OF AMERICA,

Appellee,

SUMMARY ORDER
No. 05-6629

v.

JEAN THIERRY PIERRE, a.k.a. Jean Pierre, a.k.a. Sensation,

Defendant-Appellant.

Neil B. Checkman, New York, NY, for Appellant.

Justin S. Weddle, Assistant United States Attorney, New York, NY (Karl Metzner, Assistant United States Attorney, *of counsel*; Michael J. Garcia, United States Attorney for the Southern District of New York, *on the brief*), for Appellee.

Appeal from a judgment of the United States District Court for the Southern District of New York (Loretta A. Preska, *Judge*).

AFTER ARGUMENT AND UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the District Court judgment be AFFIRMED.

Defendant-Appellant Jean Thierry Pierre ("Pierre") appeals from a judgment of the United States District Court for the Southern District of New York (Loretta A. Preska, Judge) revoking his probationary sentence and imposing a two-year term of imprisonment. We assume that the parties are familiar with the facts, procedural history, and scope of the issues presented on appeal.

For the reasons set forth below, we find Pierre's arguments on appeal unavailing. We need not decide whether Pierre's failure to object at the time to the court's statement of reasons limits our review to "plain error" review, *see United States v. Lewis*, 424 F.3d 239, 243 (2d Cir. 2005) (noting this issue as undecided), because the sentencing here was free of error or unreasonableness.

Pierre first argues that the District Court failed to provide the required statement under 18 U.S.C. § 3553(c)(2) explaining its reasons for sentencing outside the recommended range. We find, to the contrary, that the court provided a thorough, detailed account of how it arrived at the sentence of two years by applying the relevant sentencing factors set forth in 18 U.S.C. § 3553(a). The court found that, in addition to Pierre's recent crime of petit larceny while on probation, Pierre's "acclimation to probation" had been "abysmal" in that he had continuously failed to report to probation, cooperate with his treatment programs, or comply with his restitution order. The court observed that, in numerous conferences, it had warned Pierre that he must comply with the terms of his probation or face consequences, and that Pierre had ignored

these warnings.

The court specifically considered reports of Pierre's cognitive and psychological limitations, but found that this circumstance did not explain or excuse the extent of his failure while on probation. Next, considering the statutory factors of deterrence, protection of the public, and the avoidance of unwarranted disparities, the court noted that it had afforded Pierre remarkable lenience[1] and that, in return, he had demonstrated a total lack of respect for the law and a pattern of criminality. And finally, the court acknowledged Pierre's need for various social services but concluded that these were best addressed in-house.[2] We find the court's statement of reasons wholly adequate. *See United States v. Goffi*, 446 F.3d 319, 321 (2d Cir. 2006).

Pierre also argues substantive unreasonableness, *i.e.*, that two years is too long, given the limited nature of Pierre's violations, his limited mental capacity, and the fact that the government itself only sought a sentence of three to nine months, as suggested by the Sentencing Guidelines advisory revocation table, § 7B1.4(a). We disagree. "Reasonableness" is a "flexible concept" that requires Courts of Appeals to review sentences with a measure of deference and restraint. *See United States v. Fleming*, 397 F.3d 95, 100 (2d Cir. 2005). While other judges might have weighed differently Pierre's limited mental capacity and efforts at employment

---

[1] Pierre's original crime of conviction, conspiracy to commit bank fraud and possess forged securities, carried a recommended sentence of six to twelve months. The District Court sentenced him to five years' probation, including six months' home confinement. Moreover, despite numerous compliance problems, the court declined, for some time, to sanction Pierre.

[2] Although it is not this Court's role to determine where Pierre is held during the term of his incarceration, we hope that efforts are made to ensure that he is in a facility that provides the mental and vocational services he clearly needs.

against his parole violations and arrived at a lower sentence, the District Court's sentence was reasonable in light of the circumstances discussed above.

For the foregoing reasons, we **AFFIRM** the District Court's sentence.

FOR THE COURT:
ROSEANN B. MACKECHNIE, CLERK

_____
BY: