NOT RECOMMENDED FOR PUBLICATION
File Name: 26a0391n.06

Case No. 25-3998

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Oct 05, 2026
KELLY L. STEPHENS, Clerk

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. DEANGELO SMITH, Defendant-Appellant.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO O P I N I O N

Before: GIBBONS, SUTTON, and DAVIS, Circuit Judges

DAVIS, Circuit Judge. Deangelo Smith struck a commonplace deal with the government; distilled to its essence, it provided that Smith would plead guilty to his crime, and the government would recommend a within-guidelines sentence. But Smith broke the deal when he committed a new crime. So the district court released the government from the agreement and sentenced Smith to a prison term well above the guidelines range. He claims that the district court made several errors in arriving at his sentence—including declining to credit him with acceptance of responsibility under the guidelines and finding that he breached the agreement to begin with. But we see no such errors. Further, the district court explained its reasons for varying upward in a thorough, reasoned opinion. Thus, we AFFIRM.

I.

On November 29, 2024, agents from the Ohio Investigative Unit executed a traffic stop near Mookie's Beverage in North Randall. In the backseat, they found Smith, five months into a three-year term of supervised release that followed a 120-month prison sentence for armed robbery. *United States v. Smith*, No. 1:25-cr-33, 2025 WL 3501065, at *1 (N.D. Ohio Dec. 6, 2025). Under questioning, Smith admitted that he had a loaded handgun tucked inside his waistband. Two months later, a grand jury indicted him for violating 18 U.S.C. § 922(g)(1), which prohibits felons from possessing firearms.

Rather than face trial, "[Smith] entered a plea agreement with the [g]overnment." *Smith*, 2025 WL 3501065, at *2. Pursuant to that agreement, the government pledged "to recommend a three (3) level reduction for acceptance of responsibility under U.S.S.G. § 3E1.1(a) and (b), provided [Smith's] conduct continue[d] to reflect . . . acceptance of responsibility." (Plea Agreement, R. 12, PageID 46). The agreement also warned Smith that he would lose the benefits of the bargain if he "commit[ted] additional crimes." (*Id.* at PageID 49). On May 13, 2025, the court accepted Smith's guilty plea and approved the agreement. *See Smith*, 2025 WL 3501065, at *2.

At sentencing, however, the government asked the district court to release it from the agreement because Smith "committed new crimes" while incarcerated. (Gov't Stg. Mem., R. 26, PageID 174). Specifically, it alleged that Smith "possessed a weapon and used that weapon to strike and ultimately cause the death of another inmate." (*Id.*). Video of the incident tells a more complicated story. The footage depicts Smith as the initial victim of an unprovoked attack. Isiaha Waulk, a fellow pretrial detainee, accosted and stabbed Smith in the common area of the A-6 General Housing Unit of the Northeast Ohio Corrections Center ("NEOCC"). *See Smith*, 2025

WL 3501065, at *3. Smith escaped, retreated to his cell, and lingered in the doorway. Twenty-seven seconds later, he returned to the common area. About a minute after that, Smith and three other detainees, all armed with shivs, began chasing Waulk around the unit. They caught him near the showers, where they proceeded to stab and beat him. They then dragged him under a stairwell where, while Waulk lay motionless, Smith stomped on Waulk's head with such force that it "bounce[d] off the concrete floor." *Smith*, 2025 WL 3501065, at *3. During all of this, NEOCC staff declined to intervene. Only in the aftermath did they approach Waulk and attempt to administer first aid. But he succumbed to his injuries and was pronounced dead at a local hospital. *Smith*, 2025 WL 3501065, at *3.

Smith argued that he acted in self-defense, but the district court determined otherwise and released the government from the plea agreement. *See id.* at *6–7. The court also refused to apply the three-level reduction for acceptance of responsibility because it found Smith's conduct while incarcerated to be inconsistent with contrition. *See id.* at *7–8. And after considering the 18 U.S.C. § 3553(a) factors, the court imposed an above-guidelines sentence of 96 months in prison and three years' supervised release. *See id.* at *9–11. Smith filed a timely appeal.

II.

The district court had jurisdiction under 18 U.S.C. § 3231. Our jurisdiction over the appeal is secured through 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a).

III.

Smith raises three issues on appeal—all concerning his sentence. First, he contends that the district court erred when it withheld the reduction for acceptance of responsibility based on conduct unrelated to his offense of conviction. (Appellant's Br., ECF 11, at 17). Second, he faults the district court for ignoring mitigating factors and overemphasizing post-plea malfeasance when

calculating his sentence. (*Id.*). Finally, he argues that, because he acted in self-defense during the incident at NEOCC, the government failed to prove that he committed new crimes while awaiting sentencing, and the district court, therefore, improperly released the government from the plea agreement. (*Id.*). None of these arguments have merit.

A. Acceptance of Responsibility

Standard of Review. "We review a district court's determination that a defendant has not accepted responsibility for clear error, and that judgment is entitled to 'great deference' . . . even when the facts are undisputed and the only question on appeal is whether the district court appropriately applied the guideline to the facts." *United States v. Jett*, 154 F.4th 459, 464 (6th Cir. 2025) (citation omitted). We will not reverse unless the determination is "without foundation." *United States v. Turner*, 324 F.3d 456, 462 (6th Cir. 2003) (quoting *United States v. Roberts*, 243 F.3d 235, 240–41 (6th Cir. 2001)).

Post-Plea Conduct as a Basis to Deny Acceptance of Responsibility. The United States Sentencing Guidelines instruct courts to decrease the offense level of defendants who "clearly demonstrate[] acceptance of responsibility for [their] offense." U.S.S.G. § 3E1.1(a). Accepting responsibility requires the defendant to do more than just plead guilty. After all, even a recalcitrant criminal may have incentives to admit guilt. *See United States v. Merritt*, 102 F.4th 375, 382 (6th Cir. 2024). Thus, a defendant is not entitled to the reduction if his post-plea conduct is inconsistent with acceptance of responsibility. *See id.* at 381–83. Importantly, though, we have held that post-plea criminal conduct can show lack of acceptance only insofar as it is "related to the underlying offense" to which the defendant pleaded guilty. *United States v. Morrison*, 983 F.2d 730, 735 (6th Cir. 1993). That is, the conduct must be: (1) "of the same type as the underlying offense"; (2) "the motivating force behind the underlying offense"; (3) "related to actions toward government

witnesses concerning the underlying offenses"; or (4) "involve an otherwise strong link with the underlying offense." *Id.* (emphasis omitted). Discrete instances of criminal behavior may suggest a persistent disrespect for the rule of law, but they do not establish that the defendant has abdicated responsibility "*for his offense*," *i.e.*, the crime of conviction. *See id.* ("[A]n individual may be truly repentant for one crime yet commit other unrelated crimes.").

Smith contends that the district court went astray when it denied him the acceptance-of-responsibility reduction based on unrelated offenses he committed in detention. He analogizes his case to *United States v. Banks*, 252 F.3d 801 (6th Cir. 2001), where we reversed a district court's refusal to credit a defendant for acceptance of responsibility based on "post-plea assault and destruction of property" crimes "plainly unrelated to the offenses for which [the defendant] was being sentenced (drug trafficking and firearm possession)." *Id.* at 807. Superficial similarities abound, but Smith's situation differs from *Banks* in a material way.

The district court in *Banks* explicitly "acknowledged that the post-plea assault and destruction of property charges were distinct from the charges for which [the defendant] was being sentenced." *Id.* at 806. It nevertheless denied him the reduction for acceptance of responsibility on the grounds that his "post-plea conduct was 'consistent with *other criminal activity* of which [he] had been charged and convicted *in earlier years*.'" *Id.* (citation omitted). This appeal to a "general criminal disposition" is precisely what *Morrison* forbids. *Id.* But it is not what motivated the district court's sentence in Smith's case. To the contrary, the court detailed, at length, the similarities between Smith's crime of conviction (felon in possession of a firearm) and his post-plea conduct (illegally possessing a shiv while in federal custody). *See Smith*, 2025 WL 3501065, at *7–8. It underscored that "[i]n both the underlying offense and during the NEOCC incident, [Smith] had a weapon he was prohibited from possessing because of the risk of harm to others."

Id. at *8. And it concluded, on that basis, that Smith did not clearly demonstrate acceptance of responsibility. *See id.*

Smith quibbles with the attempt to link his felon-in-possession charge to his post-plea conduct. Shivs, he says, are not firearms, and life in detention presents different challenges than life on the outside. (*See* Appellant's Br., ECF 11, at 26–28). He even cites a Fourth Circuit decision that criticized as "a stretch" a district court's efforts to draw parallels between possession of a firearm in the community and possession of sharpened metal rods while incarcerated "given the significant differences between firearms and metal rods, and the prison and non-prison contexts." *United States v. Nixon*, 130 F.4th 420, 432 (4th Cir. 2025). *Nixon*, though, is an out-of-circuit case that concerned the propriety of an upward departure, which, under Fourth Circuit law, is warranted only where "there is a direct corollary between the uncharged conduct and the offense of conviction, typically requiring an *exact match* between at least some part of the related conduct and the uncharged 'similar' acts." *Id.* (emphasis added) (citation omitted).

We have never required district courts to identify "an exact match" between the crime of conviction and the conduct proffered as evidence of a defendant's lack of acceptance of responsibility under U.S.S.G. § 3E1.1(a). We demand only that the post-plea conduct is "related." *See Jett*, 154 F.4th at 467. For instance, in *Jett* we affirmed the district court's decision to deny credit for acceptance of responsibility where the defendant pleaded guilty to possession with intent to distribute methamphetamine and later attempted to smuggle K2 into his jail cell. *See id.* at 467–68. Similarly, in *United States v. Walker*, 182 F.3d 485, 487–88 (6th Cir. 1999), we accepted the district court's determination that testing positive for cocaine while on bail was related to the crime of conspiracy to distribute cocaine. And in *United States v. Zimmer*, 14 F.3d 286, 289 (6th Cir. 1994), we left undisturbed the district court's conclusion that testing positive for marijuana was

related to the crime of manufacturing marijuana. Here, the district court set forth the proper relatedness standard and explained its rationale for denying the reduction. Although Smith mainly focuses on the differences between his non-violent, illegal possession of a firearm on the one hand and his shiv-wielding, violent assault of Waulk on the other, those details were not the points of comparison on which the district court relied. Instead, the court homed in on Smith's illegal possession of a deadly weapon in both instances for its relatedness analysis. We see nothing clearly erroneous in its approach or conclusion.

B. Substantive Reasonableness

Standard of Review. Labeling a sentence "substantively unreasonable" is, in common parlance, declaring that the "sentence is 'too long' because the district court placed 'too much weight on some of the § 3553(a) factors and too little on others.'" *United States v. Thomas*, 933 F.3d 605, 612–13 (6th Cir. 2019) (quoting *United States v. Parrish*, 915 F.3d 1043, 1047 (6th Cir. 2019)). We review these kinds of challenges "for an abuse of discretion." *United States v. Lee*, 974 F.3d 670, 676 (6th Cir. 2020) (citing *Gall v. United States*, 522 U.S. 38, 51 (2007)). And because sentencing "is a matter of reasoned discretion, not math," that review is "highly deferential." *United States v. Rayyan*, 885 F.3d 436, 442 (6th Cir. 2018) (citing *Gall*, 522 U.S. at 51). Even sentences that vary upward outside of the guidelines' range are not unreasonable unless the district court fails to "ensure that the justification [for the variance] is sufficiently compelling to support the degree of the variance." *Gall*, 552 U.S. at 50. Naturally, though, a greater upward variance necessitates a more compelling justification. *See United States v. Perez-Rodriguez*, 960 F.3d 748, 754 (6th Cir. 2020).

Consideration of Post-Plea Conduct. Smith argues that the district court overemphasized his post-plea conduct without accounting for the harrowing circumstances under which that

conduct occurred. (Appellant's Br., ECF 11, at 30–34). He highlights the danger of life at NEOCC—"17 inmates ha[ve] been stabbed since the beginning of 2024." (*Id.* at 6). And he faults the hapless corrections staff for failing to maintain order. (*See id.* at 5–6). Given these conditions, he says, inmates "had to be responsible for their own survival," and that necessitated the manufacture and possession of weapons like shivs. (*Id.* at 6). Moreover, while Smith does not deny attacking Waulk, he criticizes the district court for emphasizing his time on the offensive while overlooking that Waulk struck him first. (*Id.* at 34).

But a review of the sentencing hearing and corresponding opinion reveals a balanced analysis of the relevant factors. The district court said it "ignored nothing" and gave "thought to all" that was presented. (Stg. Hr'g Tr., R. 40, PageID 392–93). It expressly noted the corrections officer "who did nothing but amble around" during the incident at NEOCC. (*Id.* at PageID 367). And the court added that Smith would not hear it "say a single syllable in defense of NEOCC, its policies or the execution thereof." (*Id.*). The written opinion also acknowledged that Smith was the victim of an unprovoked attack while incarcerated. *See Smith*, 2025 WL 3501065, at *6. Because of that fact, it even granted that Smith may have initially "had an argument for self-defense." *Id.*

Thus, although the district court imposed an above-guidelines sentence, it did so according to a thorough and well-reasoned analysis of the relevant factors. *Id.* at *8–11. This is not an abuse of discretion warranting reversal.

C. Plea Agreement

Standard of Review. "Plea agreements are contractual in nature," so we interpret them according to "traditional principles of contract law." *United States v. Wells*, 211 F.3d 988, 995 (6th Cir. 2000) (quoting *United States v. Robison*, 924 F.2d 612, 613 (6th Cir. 1991)). The contents

of these agreements are matters of fact, reviewed for clear error. *See id.* (citing *Robison*, 924 F.2d at 613). Whether the agreement was breached is a question of law that we review de novo. *See United States v. Swanberg*, 370 F.3d 622, 627 (6th Cir. 2004) (citing *United States v. Barnes*, 278 F.3d 644, 646 (6th Cir. 2002)). And when the government accuses a defendant of breaching the plea agreement, "the government bears the burden of proving . . . breach by a preponderance of the evidence." *United States v. Lukse*, 286 F.3d 906, 909 (6th Cir. 2002) (citing *United States v. Benjamin*, 138 F.3d 1069, 1073 (6th Cir.1998)).

Breach Analysis. The district court held that the government proved by a preponderance of the evidence that Smith breached the plea agreement when he committed crimes while incarcerated and awaiting sentencing. *See Smith*, 2025 WL 3501065, at *6–7. The court explained that Smith committed "two new crimes after pleading guilty": (1) "[k]illing another human being"; and (2) "illegally possess[ing] and us[ing] jail-made, knife-like weapons." *Id.* at *6. Either was reason enough to release the government from the terms of the deal.

Smith, however, insists he acted in self-defense, and, as a result, is entitled to specific performance of the plea agreement. (Appellant's Br., ECF 11, at 35–37). The district court accepted that he "may have had an argument for self-defense . . . when Waulk, apparently unprovoked, charged at him with a weapon and chased [him] around the common area." *Smith*, 2025 WL 3501065, at *6. As the court recounted, under Ohio law, a defendant is entitled to a self-defense jury instruction if he, among other requirements, shows that "he had a 'bona fide belief' that he was 'in imminent danger of death or great bodily harm' and his only way to escape was by using force." *Id.* (quoting *State v. Palmer*, 238 N.E.3d 33, 40 (Ohio 2024)). Applying this standard, the court held that Smith "likely had a *bona fide* belief that he was in imminent danger of death or great bodily harm" when "Waulk lunged at him with a shiv." *Id.* But a bona fide belief

in one moment does not provide an open-ended and ongoing justification for the use of lethal force. The district court noted that once he escaped from Waulk, Smith lingered in his cell, returned to the common area, paced the floor, and about two minutes later, teamed up with three other detainees to attack Waulk. *See id.* at *6–7. They incapacitated him, but even as he lay motionless, Smith stomped on his skull so hard that it "bounced off the concrete floor." *Id.* at *7. By then, the district court concluded, any bona fide belief of imminent danger had evaporated, and Smith "was not acting in self-defense." *Id.*

We agree with the district court. The video evidence reflects two separate incidents—one initiated by Waulk during which Smith reasonably feared for his life, the other initiated by Smith and his fellow detainees during which no such fear could reasonably exist. And even if that were not the case, Smith still committed additional crimes while detained because staff caught him, on several occasions, in possession of shivs. *See* 18 U.S.C. § 1791 (criminalizing a federal inmate's possession of an "object that threatens the order, discipline, or security of a prison, or the life, health, or safety of an individual"). That, on its own, entitled the government to seek release from the plea agreement.

IV.

For the foregoing reasons, we AFFIRM the district court's sentence.