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Case No. 26-1328

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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KELLY L. STEPHENS, Clerk

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. CLEVE CJ WESTBROOK, III, Defendant-Appellant.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN OPINION

Before: BATCHELDER, WHITE, and THAPAR, Circuit Judges.

ALICE M. BATCHELDER, Circuit Judge. After Cleve Westbrook violated the terms of his supervised release, the district court imposed a new prison sentence of 12 months and one day, which Westbrook claims is procedurally and substantively unreasonable. We affirm.

I.

Cleve Westbrook has an extensive and serious criminal history that includes car theft, home invasion, fleeing police officers, and drug and gun possession. His most recent conviction was as a felon in possession of a firearm and led to a 30-month prison sentence followed by three years of supervised release with the standard and special conditions. That supervised release began in August 2025 and four months later he was caught committing five violations over a two-week span.

First, at a random drug-testing appointment, a probation officer caught Westbrook attempting to submit a false urine sample. He had hidden in his pants a syringe filled with yellow liquid that he tried to discharge into the sample-collection cup. That amounted to two violations, one for failing to submit a sample and the other for attempting to submit a false sample. Three days

later, at a casino, he followed a woman into the women's public restroom and stole her wallet, which contained a $93 slot-machine voucher. He cashed the voucher, turned in the wallet to casino security, and kept the cash. This was all recorded on surveillance video. Westbrook eventually entered a no-contest plea in state court to a misdemeanor larceny charge. That state-law crime was another violation. And 11 days later he returned to the probation office to submit his actual urine sample, which tested positive for cocaine. That was two more violations, for his possessing and using cocaine.

At the supervised-release revocation hearing, Westbrook admitted all five violations and the district court accepted his admissions. Westbrook also expressed remorse. The advisory guideline range was 12 to 18 months in prison, but Westbrook's counsel sought a downward variance. The prosecutor requested a 12-month sentence, the low end of the range.

In deciding the sentence, the court explained that it was starting with the advisory range to find a sentence that was sufficient but not greater than necessary, and that the sentencing factors weighed both ways. Specifically, the court referred to Westbrook's criminal history but then tilted the balance in Westbrook's favor by recognizing that these supervised release violations did not involve guns or drug-trafficking quantities, which the court saw as an improvement in Westbrook's behavior. But the court tilted the balance back again by concluding that it was not enough for Westbrook merely to refrain from committing the very worst possible crimes. The court decided to revoke Westbrook's supervised release and send him back to prison for a period of months at the low end of the range, and to impose a new term of supervised release, with four months at a halfway house (as Westbrook's lawyer had requested) and new supervised-release conditions.

The court also considered Westbrook's "string of troubles" during his prior incarcerations, comprising some 73 prison-misconduct violations, but noted that it did not "see that" during his

most recent incarceration. Regarding that as improvement as well, the court expressed its belief that Westbrook would be willing and able to "reduce the time he is serving through his own good conduct." So, the court added one day to a 12-month sentence, thereby making Westbrook eligible for good-behavior credit, which is available only for federal sentences of "more than 1 year," and which would allow Westbrook to reduce his sentence by up to 54 days. *See* 18 U.S.C. § 3624(b)(1).

When the court asked the *Bostic* question, Westbrook's counsel had no objection. But now Westbrook appeals, claiming the sentence is procedurally and substantively unreasonable.

II.

A.

Westbrook says the district court violated *Tapia v. United States*, 564 U.S. 319 (2011), by adding the day to his sentence so that he would be eligible for good-behavior credits. In *Tapia*, the district court sentenced the defendant to 51 months in prison, the high end of the advisory range, to ensure that she could complete a drug-addiction treatment program in prison, namely the Bureau of Prisons' "500 Hour Drug Program." *Id*. at 321, 334. In reversing, the Supreme Court held that a sentencing "court may not impose or lengthen a prison sentence to enable an offender to complete a treatment program or otherwise to promote rehabilitation." *Id*. at 335.

Westbrook emphasizes a statement from the sentencing hearing in which the district court said that it was choosing "a guideline sentence of 12 months and one day, because I think it'll be important for Mr. Westbrook to reduce the time he is serving through his own good conduct." The district court added "I think he can do it, but I think especially with the history he's had in earlier years it will be a good demonstration and reminder that constructive engagement counts for

something." Therefore, according to Westbrook, the court violated *Tapia* and selected a sentence longer than necessary "in order to encourage [his] good behavior." Apt. Br. at 13.

The government argues that because Westbrook did not object at sentencing, either immediately or upon answering the *Bostic* question, our review is for plain error. We have treated *Tapia* violations as both procedural, thus subject to plain-error review, *see United States v. Jaques*, No. 24-3390, 2025 WL 561784, at *5-8 (6th Cir. Feb. 20, 2025) ("*Tapia* violations are procedural and subject to plain-error review."); *accord United States v. McPherson*, 814 F. App'x 957, 962 (6th Cir. 2020); *United States v. Krul*, 774 F.3d 371, 380–81 (6th Cir. 2014) (Griffin, J., concurring); *United States v. Brown*, No. 23-6029, 2025 WL 1294688, at *2 (6th Cir. May 5, 2025) (applying invited-error review), and as substantive, thus reviewed for abuse of discretion, *see United States v. Deen*, 706 F.3d 760, 762 (6th Cir. 2013). Westbrook's claim fails under either standard.

In deciding *Tapia* claims, "we have repeatedly upheld sentences even where the sentencing judge references the defendant's need to leverage rehabilitative opportunities." *United States v. Gibson*, No. 23-2096, 2025 WL 1021554, at *5 (6th Cir. Apr. 3, 2025). That is what the court did here—expressed its hope that Westbrook would take advantage of the opportunity for good-behavior credit. "Only when the judge relies on rehabilitative goals to set the length of a prison term, such as by extending the time in prison to complete a drug-treatment program, will the sentence violate *Tapia*." *United States v. Yarbrough*, 774 F. App'x 293, 294 (6th Cir. 2019). The court did not identify any rehabilitative program or set the length of Westbrook's sentence to ensure that he would remain incarcerated long enough to complete any such program. Instead, the court added the single day to the bottom of the guidelines range to give Westbrook the opportunity to reduce his time of incarceration. Also, the choice to make Westbrook eligible for good behavior

credit falls within the protection-of-the-public consideration, in that Westbrook's good behavior would help to protect the prison population during his incarceration.

At worst, the court considered the catch-22 created by the statute, wherein a sentence of 12 months could turn out to be longer than a sentence of 12 months and one day because good-behavior credits, which reduce the time actually served, are available for only sentences of "more than 1 year," 18 U.S.C. § 3624(b)(1). *See United States v. Howard*, 127 F. App'x 172, 173 n.1 (6th Cir. 2005) ("Although this sentence is technically one day longer than the minimum Guidelines term of imprisonment, it is in effect the lowest possible sentence the district court could have imposed within the applicable Guidelines range."). This is not the type of sentencing decision the Court considered and prohibited in *Tapia*.

Westbrook has shown no plain error or abuse of discretion.

B.

Westbrook argues that the district court committed procedural error because it did not adequately explain why it chose the bottom-of-the-guidelines sentence, and because it did not discuss Westbrook's claims that he "needed structure to successfully rehabilitate" and "was taking care of his aging father and his son." Apt. Br. at 20. To be sure, a court commits procedural error by "failing to adequately explain the chosen sentence." *United States v. Messersmith*, 164 F.4th 523, 528 (6th Cir. 2026) (quoting *Gall v. United States*, 552 U.S. 38, 51 (2007)).

But Westbrook did not object to this at sentencing, either immediately or upon answering the *Bostic* question, so we review this procedural challenge for plain error. "Plain-error review is a demanding standard and requires a defendant to prove that (1) an error occurred; (2) that error was obvious; and (3) that error affected his substantial rights. Even if all three of these elements are satisfied, we retain discretionary power to remediate the error, [only when] (4) the error had a

serious effect on the fairness, integrity[,] or public reputation of judicial proceedings." *United States v. Harrell*, 180 F.4th 888, 904 (6th Cir. 2026) (quotation marks and citations omitted). "Only in exceptional circumstances will we find such error—only, we have said, where the error is so plain that the trial judge was derelict in countenancing it." *United States v. Vonner*, 516 F.3d 382, 386 (6th Cir. 2008) (en banc) (quotation marks, editorial marks, and citation omitted); *United States v. Wilmurth*, No. 25-1429, 2026 WL 1047126, at *3 (6th Cir. Apr. 17, 2026). Even if we were to find the district court's explanation so lacking as to constitute error, it was not—when read in context and totality—so unmistakably deficient "that the trial judge was derelict."

The court began with the advisory guidelines and a bottom-of-the-guidelines sentence. "[W]ithin-Guidelines sentences need not be explained with the same level of detail as non-Guidelines sentences. Rather, the inquiry is whether the record makes clear that the sentencing judge listened to each argument, considered the supporting evidence, was fully aware of the defendant's circumstances[,] and took them into account in sentencing him." *United States v. Sanders*, No. 22-4051, 2024 WL 21573, at *3 (6th Cir. Jan. 2, 2024) (quotation marks omitted) (quoting *United States v. Judge*, 649 F.3d 453, 458 (6th Cir. 2011), and *United States v. Gunter*, 620 F.3d 642, 646 (6th Cir. 2010)). The district court did so here.

The court understood and engaged with Westbrook's arguments and allocution, which covered Westbrook's prior criminal history, the crimes that led to the revocation hearing (the scheme to submit a false urine test, his entering the women's restroom to steal a woman's wallet, and his abusing cocaine even when under a regime of mandatory drug testing), and Westbrook's efforts (and modest success) at self-improvement, including that he wanted to go to a halfway house and was caring for his father and son. When explaining the length of the sentence, the court turned first to Westbrook's criminal history and the "string of troubles" he had while incarcerated

in the Michigan Department of Corrections. The court then credited positive developments: Westbrook had not had a similar string of troubles during his federal sentence, and his violations involved neither guns nor distribution quantities of drugs. But the court concluded that Westbrook's progress had "to be more than just avoiding the worst." Instead, "[i]t needs to be engagement that's active and constructive." The sentence reflects the court's recognition of these various considerations.

While the court could have said more, our "focus is not on what the transcript reveals that the court *said*, but more on what the transcript reveals that the court *did*." *See United States v. Sanders*, No. 22-4051, 2024 WL 21573, at *3 (6th Cir. Jan. 2, 2024) (emphasis added, quotation marks omitted) (quoting *Gunter*, 620 F.3d at 646). Here, the court engaged with Westbrook (and his counsel) concerning his circumstances and his arguments, and it was fully aware of those circumstances and arguments. By setting the sentence at the low end of the advisory range, despite Westbrook's criminal history and the severity of the supervised release violations, the court clearly considered Westbrook's circumstances and arguments.

Westbrook has not shown plain error.

C.

Westbrook argues that his bottom-of-the-guidelines sentence is substantively unreasonable by claiming that the court: (1) contradicted itself by stating that what Westbrook "needs and wants . . . is less time in custody" but then sentencing him to 12 months and one day; and (2) gave too little weight to his claim that he successfully completed his post-release supervision, which caused it to necessarily give too much weight to some other unspecified § 3553(a) factor.

"We presume a within-Guidelines sentence is substantively reasonable. But a defendant can rebut this presumption if a district court chose a sentence arbitrarily, ignored pertinent

§ 3353(a) factors, or gave unreasonable weight to any single factor. We always review this aspect of a sentencing decision for abuse of discretion." *United States v. Gardner*, 32 F.4th 504, 530 (6th Cir. 2022). But the "district court has broad discretion to determine what sentence will serve the[] statutory objectives, and that is particularly so in the discretion-filled context of supervised release." *United States v. Kontrol*, 554 F.3d 1089, 1093 (6th Cir. 2009).

Westbrook's arguments are not persuasive. Read in context, the district court was clearly referring to Westbrook's claim that he needed more structure and that he wanted less time in custody; the court was not saying that Westbrook needed less time in custody. In fact, the phrase "need[ed] . . . less time in custody"—"less" necessarily being relative to something else, i.e., *less than what?*—hardly makes sense the way Westbrook interprets it. But even had the district court meant that, the most reasonable takeaway would be "less" of the advisory range, as reflected in the bottom-of-the-range choice. That lone, ambiguous statement by the court in no way renders the sentence substantively unreasonable.

As for Westbrook's claim that he "successfully" completed his post-release supervision, that contention ignores that he thereafter committed a federal gun crime and a state larceny crime, possessed and used cocaine, had numerous prison infractions, and committed other supervised-release violations. It is hard to credit Westbrook's claim that his post-release supervision was successful, or that it should somehow have convinced the sentencing court to give him a more lenient sentence.

Westbrook has not shown that his sentence is substantively unreasonable.

III.

For the foregoing reasons, we AFFIRM the judgment of the district court.