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UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JORDAN DODD,

Defendant-Appellant.

No. 25-3557

Appeal from the United States District Court for the Northern District of Ohio at Cleveland.
No. 1:24-cr-00130-1—Bridget Meehan Brennan, District Judge.

Decided and Filed: October 26, 2026

Before: READLER, DAVIS, and BLOOMEKATZ, Circuit Judges.

COUNSEL

ON BRIEF: Dennis G. Terez, Beachwood, Ohio, for Appellant. Segev Phillips. UNITED STATES ATTORNEY'S OFFICE, Cleveland, Ohio, for Appellee.

OPINION

BLOOMEKATZ, Circuit Judge. Jordan Dodd pleaded guilty to possessing and conspiring to produce child pornography. The district court sentenced Dodd to fifty years in prison—the statutory maximum. He appealed, arguing that his sentence is procedurally and substantively unreasonable. But any procedural error would be harmless and the sentence, though the harshest possible, is within the scope of the district court's broad discretion. So we affirm.

BACKGROUND

Jordan Dodd pleaded guilty to one count of possessing child pornography and one count of conspiring to produce child pornography. Because the dispute regarding his sentence involves not just those crimes, but also several previous state offenses, we recount his criminal history in some detail.

Jordan Dodd was convicted of his first sex offense at age thirteen. He admitted to repeatedly molesting two girls, aged six and eight, on a school bus over the course of a school year. For this conduct, Dodd was convicted of two counts of gross sexual imposition in an Ohio juvenile court, and then received about seven months of sexual behavior treatment in a residential setting.

Several years later, when he was twenty years old, state law enforcement discovered that Dodd was using email to obtain child sexual abuse materials (CSAM), including images and videos. Law enforcement found over two hundred images and three videos on his cell phones, including some of children engaged in bondage. Following this investigation, Dodd was convicted in Ohio state court of two counts of pandering sexually oriented materials and sentenced to 120 days in prison and five years of probation.

After he was released from prison, and while still on probation, Dodd was again found with CSAM. The FBI received a tip in September 2022 in a related investigation indicating that Dodd was receiving and storing CSAM. When he went to meet with his probation officer later that month, FBI agents confronted him and he ultimately admitted that he was exchanging CSAM and consented to a search of his digital devices. That search revealed 632 images of CSAM, including some depicting bestiality, bondage, and rape. As the FBI continued to investigate Dodd and others' exchange of CSAM, which would later serve as the basis for the possession count in this case, Dodd was arrested because he had also violated the terms of his state community control from the pandering offense. Contrary to the terms of his probation, Dodd had failed to engage in sex offender treatment, report contact with law enforcement, and avoid contact with minors. An Ohio court sentenced him to a term of 18 months' imprisonment

for violating the terms of his community control, subject to a detainer to hold him over at the end of that sentence for prosecution on the federal CSAM possession charge.

Even behind bars, Dodd sought to obtain CSAM. After the end of his 18-month sentence, but while he remained detained for prosecution on his federal possession charge, law enforcement discovered in April 2024 that Dodd had received CSAM through the prison messaging system. Upon investigation, law enforcement discovered that Dodd had exchanged thousands of messages with an individual outside of the institution named Amy Wamack, whom Dodd had met through another incarcerated person. Wamack was a caregiver for her one- and two-year-old nieces and Dodd asked Wamack to produce CSAM of the infants for him. He asked her to send him images of the infants' genitals for his sexual gratification, and instructed Wamack to perform sexual acts on the one-year-old female child, including inserting objects into the infant's vagina. He also repeatedly expressed his wishes to sexually abuse the infants upon his release. Although Wamack initially expressed hesitation, Dodd coerced her by suggesting that it wouldn't hurt the infants, that he loved them, and that Wamack must not trust him if she thought that he would hurt the children. Wamack ultimately sent the images as requested. And although the images were initially denied by the jail's messaging system, Dodd insisted that she resend the images. This conduct underlies the conspiracy to produce child pornography count in this case.

Dodd pleaded guilty to both the possession and the conspiracy charge, and the district court sentenced him to fifty years, the statutory maximum. In reaching this sentence, the district court began with calculating Dodd's range under the Sentencing Guidelines. In its calculation, the district court included a five-level enhancement for engaging in a "pattern of activity involving the sexual abuse or exploitation of a minor"—which we call the "pattern enhancement" for simplicity. U.S. Sent'g Guidelines Manual § 2G2.2(b)(5) (U.S. Sent'g Comm'n 2025). The district court determined that Dodd's juvenile conviction for gross sexual imposition demonstrated that Dodd had engaged in a "pattern" of sexual abuse of a minor and therefore provided the proper basis for applying the pattern enhancement. With or without the pattern enhancement, Dodd's Guidelines range would have been thirty years to life, but was

capped at fifty based on the statutory maximums for his crimes of conviction. *See* 18 U.S.C. §§ 2251(e), 2252A(b)(2).

At sentencing, Dodd disputed the application of the pattern enhancement and requested the mandatory minimum sentence of fifteen years. *Id*. The government requested thirty years; the low end of the Guidelines range. As we explain in greater detail below, the district court considered each of the required factors enumerated in 18 U.S.C. § 3553(a) and sentenced Dodd to fifty years, the statutory maximum. Dodd timely appealed this sentence.

ANALYSIS

Dodd argues that his sentence is both procedurally and substantively unreasonable. We consider each challenge separately, reviewing both to determine whether the district court abused its discretion. *See United States v. Bolds*, 511 F.3d 568, 578 (6th Cir. 2007).

I. Procedural Reasonableness

Dodd begins by challenging the procedural reasonableness of his sentence. Procedural reasonableness requires the district court to "properly calculate the guidelines range, treat that range as advisory, consider the sentencing factors in 18 U.S.C. § 3553(a), refrain from considering impermissible factors, select the sentence based on facts that are not clearly erroneous, and adequately explain why it chose the sentence." *United States v. Rayyan*, 885 F.3d 436, 440 (6th Cir. 2018) (citing *Gall v. United States*, 552 U.S. 38, 51 (2007)). Dodd contends that the district court's sentence was not procedurally reasonable for two reasons: *first*, he argues that the district court improperly relied on Guidelines commentary in determining that his juvenile conviction for sexual imposition could supply the basis for the five-level pattern enhancement under U.S.S.G. § 2G2.2(b)(5); *second*, he contends that the district court improperly speculated that he would reoffend and fashioned his sentence based on that assumption. We review each argument in turn.

A. Pattern Enhancement

We first address Dodd's argument about the Guidelines commentary regarding the pattern enhancement in U.S.S.G. § 2G2.2(b)(5). Section 2G2.2(b)(5) provides a five-level

sentencing enhancement for defendants who "engaged in a pattern of activity involving the sexual abuse or exploitation of a minor." U.S. Sent'g Guidelines Manual § 2G2.2(b)(5) (U.S. Sent'g Comm'n 2025). The commentary to this section specifies that a "pattern of activity" means that the defendant engaged in "*any* combination of two or more separate instances" of sexual abuse or exploitation of a minor, regardless of whether those instances "occurred during the course of the offense," "involved the same minor," or "resulted in a conviction." *Id.* cmt. 1 (emphasis added). Following this commentary, the district court applied the enhancement because Dodd's sexual imposition charge involved sexual abuse of two minor victims over a period of several months. And, as this commentary says, it did not matter that the abuse underlying Dodd's 2014 juvenile offense did not occur during the course of the instant offenses that he pleaded to in 2025.

Dodd contends that the district court could not rely on the commentary because in his view it conflicts with the language of § 2G2.2(b)(5). He says that following the text of § 2G2.2(b)(5), the court could consider only acts related to the offense of conviction (i.e., the federal possession and conspiracy charges), and because his juvenile conviction was not related to the instant offenses, it could not support the five-point enhancement. Although we do not ultimately resolve this question, we acknowledge that Dodd's argument has some persuasive value.

Before the commentary on § 2G2.2(b)(5) at issue in this case existed, we interpreted the pattern enhancement in *United States v. Surratt*, 87 F.3d 814, 819 (6th Cir. 1996). Using traditional tools of statutory interpretation, *Surratt* concluded that the pattern enhancement could be properly applied only to "past sexual abuse or exploitation activities *related to the offense of conviction*." *Id.* (emphasis added) (citing *United States v. Chapman*, 60 F.3d 894, 901 (1st Cir. 1995)). After *Surratt*, however, the Sentencing Commission added the commentary that the district court relied on here, so we changed course and followed it in *United States v. Gawthrop*, 310 F.3d 405, 414 (6th Cir. 2002). Supreme Court precedent at the time required us to give the commentary controlling weight, *United States v. Stinson*, 508 U.S. 36, 38 (1993), and therefore we held that despite our interpretation of § 2G2.2(b)(5) in *Surratt*, a district court should apply the pattern enhancement even when the prior instances of sexual abuse or exploitation of a minor

were unrelated to the offenses for which the district court was sentencing for the defendant. *See Gawthrop*, 310 F.3d at 414.

Since then, however, Supreme Court precedent—and our own—have changed yet again, which provides a window for Dodd's argument that the district court should not have relied on the commentary. Recognizing that Guidelines commentary—unlike Guidelines text—has not been approved by Congress, we now treat it akin to an administrative agency's interpretation of its legislative rules. *United States v. Riccardi*, 989 F.3d 476, 485 (6th Cir. 2021) (citing *Kisor v. Wilkie*, 588 U.S. 558, 563, 584, 589 (2019)).[1] Thus, we now do not automatically defer to the commentary, but instead afford deference only when the Guideline is "genuinely ambiguous" after we've considered the traditional tools of construction. *Id.* (quoting *Kisor*, 588 U.S. at 573). That change in how we view Guidelines commentary undermines *Gawthrop* and raises the question as to whether the text of § 2G2.2(b)(5) is "genuinely ambiguous" after applying the traditional tools of statutory interpretation. *Surratt* suggests that it might not be, and instead that the traditional tools of statutory interpretation favor Dodd's—and not the commentary's—view that the pattern enhancement only applies if the prior instances of sexual abuse or exploitation of a minor are related to the instant offense, or at least fall within a continuous pattern to the instant offense. *Surratt*, 87 F.3d at 818–19. Indeed, the original bases underlying our interpretation of § 2G2.2(b)(5) in *Surratt* appear unchanged. *See id*; *see also United States v. Debus*, 688 F. Supp. 3d 201, 208–11 (M.D. Pa. 2023) (discussing the applicability of *Surratt*'s reasoning and holding post-*Kisor*).[2]

But, ultimately, we need not resolve whether the district court erred in relying on the commentary and applying the enhancement, because any error would be harmless given the unique circumstances in this case. We have "often held (as a common-sense matter)" that when a district court errs in calculating a defendant's Guidelines range, that error is harmless if the error "did not affect the defendant's ultimate guidelines range" and there is no other reason to

[1]The Supreme Court is also hearing a case regarding the proper deference that courts must give to the Sentencing Guidelines commentary. *See Beaird v. United States*, No. 25-5343, 146 S.Ct. 2553 (cert. granted Apr. 20, 2026, argued Oct. 13, 2026).

[2]Dodd also argued below that it was improper to apply the pattern enhancement on the basis of a juvenile conviction. But Dodd does not argue this issue on appeal, so we do not address it here.

infer that the error influenced the court's sentencing analysis. *United States v. Combs*, No. 24-5111, 2024 WL 5003356, at *3 (6th Cir. Dec. 6, 2024); *see also, e.g.*, *United States v. Aguilar-Andres*, 780 F. App'x 231, 234 (6th Cir. 2019); *United States v. Bivens*, 811 F.3d 840, 843 (6th Cir. 2016).

Here, Dodd's Guidelines range did not change with the addition of the pattern enhancement. The parties agree that, without the pattern enhancement, Dodd's final offense level would have been 41, rather than 42. Appellant Reply Br. at 4; Appellee Br. at 21. And for defendants in criminal history category II, like Dodd, an offense level of either 41 or 42 carries a Guidelines range of thirty years to life, both of which are shortened by the statutory maximum to a range of thirty to fifty years. *See* U.S. Sent'g Guidelines Manual ch. 5, pt. A (U.S. Sent'g Comm'n 2025); 18 U.S.C. §§ 2251(e), 2252A(b)(2); *see also* Appellant Reply Br. at 4; Appellee Br. at 21. Furthermore, the district court's decision to apply the pattern enhancement did not mean that it considered information about Dodd that otherwise would have been off limits. Even Dodd admits that the district court was within its rights to consider his conviction for gross sexual imposition as a factor "concerning the background, character, and conduct of the defendant" when "determining the sentence to impose." Appellant Br. at 33 (quoting U.S. Sent'g Guidelines Manual § 1B1.4 (U.S. Sent'g Comm'n 2025)). And it is likewise relevant as part of Dodd's "history and characteristics," which the district court is required to consider under 18 U.S.C. § 3553(a)(1). Because the purported error did not affect Dodd's Guidelines range or the information that the district court properly considered in fashioning its sentence, and resulted in only a one-point difference in his offense level, any error in applying the pattern enhancement was harmless.

B. Improper Speculation

Next, Dodd argues that the district court abused its discretion by improperly considering the risk Dodd posed to the infant victims upon his release both at sentencing and in its post-sentencing addendum to the statement of reasons. At sentencing, the district court emphasized that Dodd's jail messages "even described how he intended to sexually abuse these infants once he was released," and explained that the mandatory minimum thirty-year sentence would be insufficient given "what he said he would do to those infants when he was released." Sent'g. Tr.,

R. 45, at PageID 310, 315. Dodd suggests that this reasoning was based on improper speculation because the victims are unlikely to be available to him when released. He posits that the infants may be removed from Wamack's care or she may cut off contact with Dodd. He also states that his messages expressing a desire to abuse the infants should not be taken literally, as he has never abused infants before and has a "proclivity to bend the truth." Appellant Br. at 36. We review this claim for abuse of discretion. *See United States v. Taylor*, 800 F.3d 701, 713 (6th Cir. 2015).[3]

The district court did not abuse its discretion in considering Dodd's messages describing how he would abuse the infants upon release. The sentencing statute requires the district court to fashion a sentence that, among other objectives, "protect[s] the public from further crimes of the defendant." 18 U.S.C. § 3553(a)(2). As part of this factor, the district court properly considered whether the record demonstrated if Dodd is likely to commit further crimes. It identified many reasons for thinking he would, emphasizing that he sent these disturbing messages to Wamack while already in prison and subject to monitoring of his communications, and he coerced Wamack into abusing the infant victims despite her initial hesitance and the technical difficulties of getting the images past the prison messaging system's security measures. Dodd might be right that he is unlikely to harm these particular victims upon release; indeed, they would be over thirty years old assuming Dodd received the mandatory minimum sentence. But his argument misses the point. The district court interpreted Dodd's messages expressing his desire to sexually abuse these infants, combined with the fact that he actually did coerce Wamack into abusing them, as an indicator that he poses a risk to the public. And it did not abuse its discretion by considering that factor at sentencing.

[3]The parties dispute the proper standard of review. The government argues that we should review the sentencing proceedings for plain error only, because Dodd did not preserve the specific issue that he argues here, but concedes that because Dodd did not have an opportunity to object to the post-sentencing addendum to the statement of reasons, those statements should be reviewed for abuse of discretion. Appellee Br. at 34. Dodd contends that he preserved this issue in its entirety by objecting to the application of the pattern enhancement, and so it should be reviewed for abuse of discretion. Appellant Reply Br. at 8. Because we consider the district court's (sentencing and post-sentencing) statements together, we review for abuse of discretion. And because we find that the district court did not abuse its discretion, let alone plainly err, we need not resolve the dispute over the proper standard of review.

II. Substantive Reasonableness

Finally, Dodd argues that the district court decision to sentence him to fifty years, the statutory maximum, is substantively unreasonable. Substantive reasonableness concerns whether the court "placed too much weight on some of the 3553(a) factors and too little on others in sentencing the individual" such that "a sentence is too long." *Rayyan*, 885 F.3d at 442. Dodd says the district court placed too much weight on deterring him from future crime and ignored its obligation to avoid unwarranted sentencing disparities. But he does not persuade us to disturb his sentence.

As we consider Dodd's substantive reasonableness challenge, we start by emphasizing that our standard imposes a steep barrier to his claim. Dodd received a within-Guidelines sentence, so we presume that it is substantively reasonable. *United States v. Miller*, 73 F.4th 427, 431 (6th Cir. 2023). To rebut that presumption, Dodd needs to show that the district court "ignored pertinent § 3553(a) factors, or gave unreasonable weight to any single factor." *United States v. Gardner*, 32 F.4th 504, 530 (6th Cir. 2022) (citation modified). The fact that the district court "assigned greater weight to certain sentencing factors," however, "does not mean that the court unreasonably weighed the factors," because "one or two factors often prevail while others pale." *United States v. Hawkins*, 165 F.4th 442, 457–58 (6th Cir. 2026). Instead, our "highly deferential review" focuses on whether the district court exceeded its broad discretion, not whether we would impose the same sentence in the first instance. *Rayyan*, 885 F.3d at 442; *see also United States v. Ely*, 468 F.3d 399, 404 (6th Cir. 2006).

The crux of Dodd's argument is that it was unreasonable for the district court to sentence him to the statutory maximum because "[w]e can easily imagine worse crimes" than his and thus sentencing him to the statutory maximum necessarily creates disparities between his case and worse offenses that are subject to the same statutory maximum. Appellant Br. at 42. But the district court explained that several aspects of Dodd's offense made it particularly concerning. *First*, it stressed that Dodd continued to possess and pursue CSAM even when under tight controls. The conduct charged in the possession count occurred while he was under state supervision following imprisonment for pandering sexual materials. And his conspiracy to produce CSAM occurred while he was incarcerated, despite his admission that he knew that

prison messages were monitored—a fact which the district court noted is not accounted for in the Guidelines calculations. That he continued this dangerous conduct even when incarcerated distinguished his offense and the district court did not abuse its discretion in placing significant weight on it. *Second*, Dodd's prior experiences in residential and institutional sex offender treatment have not been effective, in part due to his own lack of engagement. That suggested the court could not count on rehabilitation during a shorter sentence. *Third*, the district court noted the unique vulnerability of the victims here, who were so young they were still in diapers. His messages with Wamack contained plans in graphic detail for how he would abuse those infants upon his release from prison. And he caused Wamack to abuse the infants and produce images of them by exerting "manipulation, coercion, and pressure" on Wamack even after she initially told him that she would not send him images, and even after the images were initially intercepted by the prison messaging system. Sent'g Tr., R. 45, at Page ID 310 (cleaned up). These factors all support the district court's conclusion that Dodd's conduct was particularly serious, and accordingly, that it merited a proportionally serious sentence.

The cases that Dodd cites to the contrary are inapposite. In *United States v. Poynter*, we overturned a sentence where the district court varied upward from the Guidelines range without providing a justification that distinguished the defendant from other repeat sex offenders. 495 F.3d 349, 353 (6th Cir. 2007). But Dodd received a within-Guidelines sentence, which, as we've mentioned, is presumptively reasonable. And in *United States v. Perez-Rodriguez*, we reversed a sentence where the district court justified an upward variance with reasons already accounted for in the Guidelines, and that applied to over 90% of people convicted of the offense at issue. 960 F.3d 748, 755 (6th Cir. 2020). That is not the case here, as the district court did provide reasons that distinguish Dodd from other sex offenders, including distinctions not accounted for in the Guidelines. For example, it noted the coercive and manipulative approach Dodd used to induce Wamack to abuse the victims and produce CSAM images, as well as the fact that his conduct took place while Dodd was already incarcerated for CSAM-related offenses.

Finally, Dodd argues that the district court failed to give due consideration to the government's recommended 30-year sentence, and to the various grounds identified by the probation department for downward departure (age) and variance (mental health disorders, low

cognitive ability) from the Guidelines range. Appellant Br. at 43. Although the government requested a shorter sentence, its recommendation "does not bind the court." Fed R. Crim. P. 11(c)(1)(B). The district court analyzed the record and weighed the factors differently. It considered Dodd's mental health disorders and low cognitive ability as factors "in mitigation," but ultimately concluded that, in light of his repeated offenses, they did not merit a lower sentence. Sent'g. Tr., R. 45, at Page ID 315; *see United States v. Adams*, 124 F.4th 432, 440 (6th Cir. 2024) (emphasis in original) (upholding a sentence where the district court "impose[d] a longer sentence *despite* [the defendant's] mental health, not because of it," where the defendant's "mental health concerns could no longer be treated as mitigating against jail time considering his flagrant violations of supervised release conditions"). Accordingly, we conclude that the district court did not abuse its discretion in giving a higher sentence than the government recommended.

CONCLUSION

We affirm Dodd's sentence.