NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

Nos. 13-3748/13-3785

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Appellee,	)	ON APPEAL FROM THE UNITED
	)	STATES DISTRICT COURT FOR
v.	)	THE NORTHERN DISTRICT OF
	)	OHIO
WILLIAM M. WILSON,	)	
	)	
Defendant-Appellant.	)	

O R D E R

Before: BOGGS, SUTTON, and WHITE, Circuit Judges.

William Wilson appeals from the district court's judgment sentencing him to a within-guidelines sentence and from the order requiring him to pay restitution to a victim of his child-pornography offenses. The parties have waived oral argument, and this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Wilson pleaded guilty to one count of distributing child pornography, in violation of 18 U.S.C. § 2252(a)(2). With a total offense level of 37, a criminal history category of I, and a twenty-year statutory maximum for his offense, Wilson's advisory guidelines range was 210 to 240 months of imprisonment. The district court sentenced Wilson to 210 months of imprisonment, to be followed by five years of supervised release. Thereafter, the district court ordered Wilson to pay $22,231.89 in restitution to "Cindy," whose images were included in the child pornography collection found on Wilson's computer. Wilson appealed separately from the judgment of conviction and sentence, filed as No. 13-3748, and from the restitution order, filed as No. 13-3785. These appeals were consolidated for our review.

Wilson first challenges the district court's imposition of a within-guidelines sentence. He challenges only the substantive reasonableness of his sentence, which is "reviewed under a deferential abuse-of-discretion standard." *United States v. O'Georgia*, 569 F.3d 281, 287 (6th Cir. 2009) (internal quotation marks omitted). "A sentence may be considered substantively unreasonable when the district court selects a sentence arbitrarily, bases the sentence on impermissible factors, fails to consider relevant sentencing factors, or gives an unreasonable amount of weight to any pertinent factor." *United States v. Brinley*, 684 F.3d 629, 636 (6th Cir. 2012) (citation omitted). We apply a rebuttable presumption of reasonableness to a within-guidelines sentence. *United States v. Vonner*, 516 F.3d 382, 389 (6th Cir. 2008) (en banc).

It is clear from the record that the district court considered the relevant statutory sentencing factors. The district court explicitly rejected Wilson's arguments that his advanced age and significant health issues warranted a downward variance. Instead, the district court concluded that those considerations warranted a sentence at the low end of the guidelines range. The district court also remained concerned about Wilson's failure to acknowledge the impact of his crime upon the victims. There is nothing in the record to suggest that the district court selected the sentence arbitrarily, relied on an impermissible factor, or gave unreasonable weight to any factor. Wilson's arguments that the sentencing guidelines provisions governing child pornography offenses are too harsh and greater than necessary to achieve the goals of sentencing are unavailing, as we have already rejected similar arguments. *See United States v. Bistline*, 665 F.3d 758, 764 (6th Cir.), *cert. denied*, 133 S. Ct. 423 (2012). And, while a district court may choose to reject guidelines sentences for child-pornography offenses due to policy disagreements with those guidelines, it is not required to do so. *See United States v. Janosko*, 355 F. App'x 892, 895-96 (6th Cir. 2009). Wilson has not overcome the presumption that his sentence was substantively reasonable.

Wilson next challenges the district court's restitution order. The Mandatory Restitution for Sexual Exploitation of Children Act, 18 U.S.C. § 2259, requires courts to order restitution for violations of 18 U.S.C. § 2252. *See* 18 U.S.C. § 2259(a), (b)(4)(A). Courts are required to "direct the defendant to pay the victim . . . the full amount of the victim's losses as determined

by the court." 18 U.S.C. § 2259(b)(1). The government must show that the defendant's offense conduct was both the cause-in-fact and the proximate cause of the victim's losses. *Paroline v. United States*, 134 S. Ct. 1710, 1722, 1727-28 (2014).

Wilson contends that the government failed to prove that his conduct proximately caused Cindy's losses. While the failure to raise this objection before the district court would generally limit our review to plain error, the government has not asked for plain-error review. *See United States v. Taylor*, 696 F.3d 628, 634 (6th Cir. 2012). Thus, "[w]e review de novo the question whether restitution is permitted under the law" and review for an abuse of discretion the amount of restitution. *United States v. Evers*, 669 F.3d 645, 654 (6th Cir. 2012). "The government bears the burden of proving the amount of the victim's loss by a preponderance of the evidence." *Id.*

The government concedes that losses that Cindy incurred prior to Wilson's offense were erroneously included in the losses attributed to Wilson. "[A] defendant generally cannot cause harm prior to the date of his offense." *United States v. Gamble*, 709 F.3d 541, 554 (6th Cir. 2013). *Paroline* does not undermine this rule. Thus, the district court abused its discretion in finding that Wilson proximately caused all of Cindy's claimed losses, and we must remand to the district court for further proceedings. To the extent that Wilson argues that other losses were improperly included in the loss total attributed to him, it is unnecessary for us to address those arguments at this stage.

Accordingly, we affirm the district court's judgment of conviction and sentence, but we vacate the district court's restitution order and remand the case for further proceedings. The district court is permitted to consider the restitution award de novo and to exercise its discretion to admit new evidence or argument. *See United States v. Hargrove*, 714 F.3d 371, 376 (6th Cir. 2013).

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk