

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT’S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION “SUMMARY ORDER”). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 16th day of December, two thousand fifteen.

PRESENT: DENNIS JACOBS,
PIERRE N. LEVAL,
GUIDO CALABRESI,
Circuit Judges.

UNITED STATES OF AMERICA,
Appellee,

-v.-

14-4191-cr

DAWN NGUYEN,
Defendant-Appellant.

FOR APPELLANT: ANDREW H. FREIFELD, Law Office
of Andrew H. Freifeld, New York,
NY.

FOR APPELLEE: JAMES P. KENNEDY, JR., for
William J. Hochul, Jr., United
States Attorney for the Western
District of New York, Buffalo,
NY.

1
2 Appeal from a judgment of the United States District
3 Court for the Western District of New York (Larimer, J.).
4

5 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED**
6 **AND DECREED** that the judgment of the district court be
7 **AFFIRMED.**
8

9 Dawn Nguyen appeals from the judgment of the United
10 States District Court for the Western District of New York
11 (Larimer, J.) convicting her of (i) making false statements
12 in connection with the acquisition of a firearm, (ii)
13 disposing of a firearm to a convicted felon, and (iii)
14 possessing firearms as a drug user. Nguyen was sentenced
15 chiefly to 96 months' imprisonment. Nguyen challenges the
16 reasonableness of her sentence. We assume the parties'
17 familiarity with the underlying facts, the procedural
18 history, and the issues presented for review.
19

20 1. We review a sentence for procedural reasonableness
21 under a "deferential abuse-of-discretion standard." Gall v.
22 United States, 552 U.S. 38, 41 (2007). That means a
23 district court's application of the Sentencing Guidelines is
24 reviewed de novo and its factual findings are reviewed for
25 clear error. United States v. Cossey, 632 F.3d 82, 86 (2d
26 Cir. 2011). A sentence is procedurally unreasonable if the
27 district court "fails to calculate (or improperly
28 calculates) the Sentencing Guidelines range, treats the
29 Sentencing Guidelines as mandatory, fails to consider the §
30 3553(a) factors, selects a sentence based on clearly
31 erroneous facts, or fails adequately to explain the chosen
32 sentence." United States v. Aldeen, 792 F.3d 247, 251 (2d
33 Cir. 2015) (quoting United States v. Chu, 714 F.3d 742, 746
34 (2d Cir. 2013)). When a district court deviates from the
35 Sentencing Guidelines range, "it must consider the extent of
36 the deviation and ensure that the justification is
37 sufficiently compelling to support the degree of the
38 variance." Id. at 252 (internal quotation marks and
39 citations omitted).
40

41 Nguyen fails to establish that the district court
42 committed any procedural error. The district court
43 appropriately weighed the factors laid out in § 3553(a) and
44 reasonably determined that the Sentencing Guidelines did not
45 sufficiently account for the severity of Nguyen's conduct
46 and culpability. See United States v. Gilmore, 599 F.3d
47 160, 169 (2d Cir. 2010). As a result, the district court

1 considered whether an upward departure pursuant to §§ 5K2.1
2 ("death") and 5K2.2 ("significant physical injury") was
3 necessary. Death and significant physical injury
4 unquestionably resulted from Nguyen's crimes. Coupling this
5 fact with the finding that Nguyen acted "recklessly" in
6 providing firearms to Spengler – whom she knew to be a
7 mentally unstable, convicted violent felon who mused aloud
8 about killing his sister – provided the district court with
9 a sufficient basis to invoke an upward departure under §§
10 5K2.1 and 5K2.2. See, e.g., United States v. Aitchison, 411
11 Fed. App'x 358, 360-61 (2d Cir. 2011).

12
13 Contrary to Nguyen's argument, the enhancements in §§
14 2K2.1(b)(6)(B) and 2K2.1(c) do not mean that all of the
15 circumstances of her offense were adequately taken into
16 consideration in determining the guidelines range, such that
17 departure was not warranted under §§ 5K2.1 and 5K2.2. The
18 particulars of her offense, such as the multiple deaths and
19 injuries that resulted (both deemed relevant under §§ 5K2.1
20 and 5K2.2), and the mayhem and massive property destruction,
21 authorize departure beyond the § 2K2.1 enhancements, under
22 the provisions of § 5K2.

23
24 Nguyen's challenge to the district court's factual
25 findings similarly fails. Based on the evidence presented
26 in the pre-sentence report and at the sentencing hearing,
27 the district court had a more than adequate basis for
28 finding that (i) the firearm Spengler used to shoot the
29 firefighters was one that Nguyen had provided him, and (ii)
30 Nguyen believed Spengler to be "crazy."

31
32 **2.** Our review of the substantive reasonableness of a
33 sentence is "particularly deferential": we will set aside
34 sentences as substantively unreasonable "only in exceptional
35 cases where the trial court's decision cannot be located
36 within the range of permissible decisions"; that is, where
37 the sentence "shocks the conscience," "constitutes a
38 manifest injustice," or "allowing [it] to stand would damage
39 the administration of justice." Aldeen, 792 F.3d at 255
40 (internal quotation marks and citations omitted).

41
42 The district court had sound reasons to deviate upward
43 from the Sentencing Guidelines range. Nguyen (i) knew that
44 Spengler had previously been convicted of killing his
45 grandmother with a hammer, (ii) knew that Spengler had
46 voiced an intent to kill his sister, (iii) believed Spengler
47 to be "crazy," and (iv) lied to police about being a straw

1 man purchaser for Spengler. Thus, Nguyen's conduct falls
2 well outside the heartland of straw man purchase cases. On
3 this record, the district court's sentence of 96 months'
4 imprisonment is "within the range of permissible decisions."
5 Id.
6

7 Accordingly, and finding no merit in Nguyen's other
8 arguments, we hereby **AFFIRM** the judgment of the district
9 court.
10

11 FOR THE COURT:
12 CATHERINE O'HAGAN WOLFE, CLERK
13
14