



## United States v. Gravel

323 Fed.Appx. 55 (2009) | Cited 0 times | Second Circuit | April 21, 2009

### AMENDED SUMMARY ORDER

Rulings by summary order do not have precedential effect. Citation to summary orders filed after January 1, 2007, is permitted and is governed by this court's Local Rule 32.1 and Federal Rule of Appellate Procedure 32.1. In a brief or other paper in which a litigant cites a summary order, in each paragraph in which a citation appears, at least one citation must either be to the Federal Appendix or be accompanied by the notation: "(summary order)." A party citing a summary order must serve a copy of that summary order together with the paper in which the summary order is cited on any party not represented by counsel unless the summary order is available in an electronic database which is publicly accessible without payment of fee (such as the database available at <http://www.ca2.uscourts.gov/>). If no copy is served by reason of the availability of the order on such a database, the citation must include reference to that database and the docket number of the case in which the order was entered.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the twenty-first day of April two thousand and nine.

PRESENT: RALPH K. WINTER, JOSÉ A. CABRANES, ROBERT D. SACK, Circuit Judges.

UPON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the District Court is AFFIRMED.

Defendant Eric Gravel appeals from a November 19, 2007 judgment entered in the District Court, following a guilty plea. Specifically, defendant pleaded guilty to conspiring to distribute 100 grams or more of heroin and 500 grams or more of cocaine, in violation of 21 U.S.C. §§ 846 and 841, and being an unlawful user of controlled substances in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(3) and 924. The District Court sentenced defendant principally to a term of 112 months imprisonment. We assume the parties familiarity with the factual and procedural history of the case.

Defendant's sole argument on appeal is that his sentence is substantively unreasonable, insofar as it is lengthier than the sentences imposed on defendant's four co-conspirators. In particular, defendant argues that he was only a "mid-level and non-violent participant in the conspiracy," unlike several of the others who received lighter sentences, and accordingly asks that the matter be remanded for a new sentencing hearing. Appellant's Br. at 14.



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In reviewing a substantive unreasonableness claim, "we will not substitute our own judgment for the district court's on the question of what is sufficient to meet the § 3553(a) considerations in any particular case," and will "set aside a district court's substantive determination only in exceptional cases where the trial court's decision cannot be located within the range of permissible decisions." *United States v. Cavera*, 550 F.3d 180, 189 (2d Cir. 2008) (en banc) (internal quotation marks and emphasis omitted). In short, our task is only "to patrol the boundaries of reasonableness, while heeding the Supreme Court's renewed message that responsibility for sentencing is placed largely in the precincts of the district courts." *Id.* at 191. With respect to disparities between the sentences of co-conspirators, we have previously stated that "it is appropriate for a district court, relying on its unique knowledge of the totality of circumstances of a crime and its participants, to impose a sentence that . . . reflect[s] the extent to which the participants in a crime are similarly (or dissimilarly) situated and tailor the sentences accordingly." *United States v. Wills*, 476 F.3d 103, 110 (2d Cir. 2007), abrogated on other grounds by *Cavera*, 550 F.3d at 191.

After hearing from defendant and the government at sentencing, the District Court carefully addressed the § 3553(a) factors and the different in length between defendant's sentence and those of his co-conspirators:

I want to say that I thought about the factors under 3553(a), in particular the proportionality, and there's a distinction between this defendant and others. First, the criminal history is different. Second, the distribution of . . . guns is different. Third, I appreciate the argument of leadership role. That obviously factored into his sentence as opposed to a nonleadership role. But the fact is the quantities that this defendant distributed were large and significant. And fourth, the fact that once . . . charged, this defendant has had a tremendous pattern of just ignoring court orders and violating court orders, and, you know, that just continued on, and I think that that distinguishes, at least in regard to proportionality, what would seem otherwise to be unfair. And the fact that I've tried to adjust his sentence both by way of criminal history and also by way of giving him credit to accurately reflect the time he should serve in this particular offense. So I've considered all of those factors and feel that this is the appropriate sentence.

Appellant App. at 95-96.

In light of the District Court's thoughtful analysis, and in light of the fact that the sentence imposed was at the low end of the applicable Guidelines range, we cannot find that the sentence is outside the broad "range of permissible decisions." *Cavera*, 550 F.3d at 189.

## CONCLUSION

We reject all of defendant's arguments on appeal. Accordingly, the judgment of the District Court is **AFFIRMED**.



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1. The Clerk of Court is directed to amend the official caption in this case to conform to the listing of the parties above.

