**NOT FOR PUBLICATION**

# In the United States Court of Appeals
## For the Eleventh Circuit

No. 26-10415
Non-Argument Calendar

UNITED STATES OF AMERICA,

*Plaintiff-Appellee,*

*versus*

JOEL LUBIN,

*Defendant-Appellant.*

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:25-cr-20391-BB-1

Before WILLIAM PRYOR, Chief Judge, and GRANT and LAGOA, Circuit Judges.

PER CURIAM:

Joel Lubin appeals his sentence of 60 months of imprisonment following his guilty plea for conspiracy to commit wire fraud.

He argues that the district court failed to state whether it granted the government's motion for a downward departure based on his substantial assistance, and if it did so, it failed to explain how that departure affected his guideline range. He also argues that his sentence is substantively unreasonable. We affirm.

## I. BACKGROUND

Lubin pleaded guilty to one count of conspiracy to commit wire fraud. 18 U.S.C. §§ 1343, 1349. A probation officer prepared a presentence investigation report that calculated a base offense level of 7. U.S.S.G. § 2B1.1. The report added an 18-level enhancement for a loss amount of $7,249,457.94. *Id.* § 2B1.1(b)(1)(J). It added 4 levels because Lubin was an organizer or leader of the offense, which involved five or more participants. *Id.* § 3B1.1(a). It subtracted 3 levels for Lubin's acceptance of responsibility, *id.* § 3E1.1(a)-(b), which resulted in a total offense level of 26. With a criminal history score of 0 and criminal history category of I, it calculated a guideline range of 63 to 78 months of imprisonment. The statutory maximum sentence for Lubin's offense was 20 years.

The government moved for a downward departure, U.S.S.G. § 5K1.1, based on Lubin's substantial assistance. At sentencing, it explained that Lubin had been charged as part of an investigation targeting for-profit schools and was responsible for issuing diplomas to individuals who had not achieved a nursing degree or diploma. It stated that Lubin made "a good amount of money" from the offense but had been cooperative from the outset

of the investigation by identifying his cohorts and satisfying his forfeiture obligations. It requested a sentence of one-third from the lower end of Lubin's guideline range. The district court inquired about the extent of Lubin's cooperation and the status of his cohorts. Lubin acknowledged the seriousness of his offense but argued that his lack of criminal history, service, family support, and assistance to the government warranted a prison sentence of 24 months. The district court stated that neither party objected to the presentence investigation report and adopted its calculation of an offense level of 26, criminal history category of I, and guideline range of 63 to 78 months of imprisonment.

The district court stated that Lubin's "horrific" conduct endangered the public by allowing unqualified individuals to provide health care for his personal financial gain. It stated that it considered his lack of criminal history, substantial assistance, the nature and characteristics of the offense, the sophisticated means used to commit the offense, and the need to promote respect for the law, deter similar conduct, and avoid unwarranted disparities. After considering the relevant factors, the district court granted a downward departure and imposed a prison sentence of 60 months followed by 2 years of supervised release and a fine of $25,000. Lubin did not object. After the sentencing hearing, the district court stated that it granted the motion for a downward departure in a paperless order "for the reasons stated on the record."

## II. STANDARDS OF REVIEW

If a defendant fails to object to the procedural reasonableness of his sentence in the district court, we review for plain error. *United States v. Vandergrift*, 754 F.3d 1303, 1307 (11th Cir. 2014). Procedural errors include miscalculating "the Guidelines range, treating the Guidelines as mandatory, failing to consider the § 3553(a) factors, selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence—including an explanation for any deviation from the Guidelines range." *Gall v. United States*, 552 U.S. 38, 51 (2007). We review the substantive reasonableness of a sentence for abuse of discretion. *Id.* A district court abuses its discretion when it fails to consider factors due significant weight, gives significant weight to an improper or irrelevant factor, or commits a clear error of judgment. *United States v. Sotelo*, 130 F.4th 1229, 1244 (11th Cir. 2025).

## III. DISCUSSION

The district court committed no plain procedural error. It granted a downward departure for substantial assistance. *See United States v. Rodriguez*, 398 F.3d 1291, 1301 (11th Cir. 2005). But the government "has no control over whether or to what extent the district court will depart from the Guidelines." *United States v. Livesay*, 525 F.3d 1081, 1091 (11th Cir. 2008). Even after granting a downward departure, the district court must consider the statutory sentencing factors before imposing a sentence. *United States v. McVay*, 447 F.3d 1348, 1356 (11th Cir. 2006). And Lubin fails to explain how

any procedural error led the district court to impose a harsher sentence or otherwise prejudiced his substantial rights.

Lubin's sentence is also substantively reasonable. The district court considered the relevant sentencing factors and determined that a sentence of 60 months of imprisonment was appropriate based on the seriousness of his offense, lack of criminal history, and substantial assistance. Based on this record, we are not "left with the definite and firm conviction that the district court committed a clear error of judgment" in sentencing Lubin to 60 months of imprisonment, which was also well below the statutory maximum sentence of 20 years. *United States v. Irey*, 612 F.3d 1160, 1190 (11th Cir. 2010) (en banc).

## IV. CONCLUSION

We **AFFIRM** Lubin's sentence.