

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

LLOYD MACK ROYAL, III,

Defendant-Appellant

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

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BRIEF FOR THE UNITED STATES AS APPELLEE

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 17-4774

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

LLOYD MACK ROYAL, III,

Defendant-Appellant

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

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BRIEF FOR THE UNITED STATES AS APPELLEE

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**JURISDICTIONAL STATEMENT**

Lloyd Mack Royal, III, appeals his sentence imposed under federal law. See J.A. 141, 149.<sup>1</sup> The district court had jurisdiction under 18 U.S.C. 3231. After vacating one conviction underlying Royal's original sentence, the district court resentenced Royal as to his remaining convictions on November 30, 2017. See

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<sup>1</sup> "J.A. \_\_\_\_" refers to page numbers in the Joint Appendix that Royal filed with his opening brief. "Br. \_\_\_\_" refers to page numbers in Royal's opening brief. "S.A. \_\_\_\_" refers to page numbers in the Supplemental Joint Appendix that the United States filed with this brief.

J.A. 33-35, 149. The district court entered judgment on December 4, 2017 (J.A. 142), and it entered an amended final judgment correcting a clerical error on December 14, 2017 (J.A. 149). Royal filed a notice of appeal on December 13, 2017 (J.A. 141), which is deemed timely filed under Federal Rule of Appellate Procedure 4(b)(2). This Court has jurisdiction under 28 U.S.C. 1291.

### **STATEMENT OF THE ISSUE**

Whether Royal's new sentence at the bottom of the applicable Sentencing Guidelines range is substantively reasonable.

### **STATEMENT OF THE CASE**

A jury convicted Royal of several counts involving sex trafficking and distribution of controlled substances, and the district court sentenced him to 37 years' imprisonment. S.A. 5-6; *United States v. Royal*, 442 F. App'x 794, 795 (4th Cir. 2011) (unpublished) (per curiam). After the district court vacated one count of conviction on collateral review, it resentenced Royal to 30 years' imprisonment. J.A. 149-150. Royal now argues that this sentence is substantively unreasonable. Br. 24.

1. *Factual Background*<sup>2</sup>

In April 2007 in Germantown, Maryland, Royal met Melissa, a 17-year-old homeless girl who used drugs and had dropped out of high school.<sup>3</sup> J.A. 167; *Royal*, 442 F. App'x at 795. Melissa had little contact with her family, and she survived by stealing food and sleeping in storage bins. *Royal*, 442 F. App'x at 795. Several hours after they met, Royal gave Melissa alcohol and marijuana, and Melissa had sex with both Royal and his cousin because she needed a place to sleep. *Ibid*.

Melissa soon introduced Royal to another 17-year-old girl named Stephanie. *Royal*, 442 F. App'x at 795. On April 15, 2007, Royal gave the girls alcohol and

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<sup>2</sup> Royal suggests that this Court may consider only facts “drawn solely from the presentence report, the submissions of the parties prior to the resentencing hearing, and the hearing itself” because “there is no indication in the record” that the resentencing judge, who did not preside over the trial, reviewed the trial transcript. Br. 5. This suggestion is incorrect. To the contrary, this Court must consider the totality of the circumstances, see *Gall v. United States*, 552 U.S. 38, 51 (2007), which includes the offense conduct described at trial. See *United States v. Ventura*, 864 F.3d 301, 311 (4th Cir. 2017) (“[W]e then assess whether the sentence is substantively reasonable ‘in light of all relevant facts.’” (quoting *United States v. Layton*, 564 F.3d 330, 336 (4th Cir. 2009))). In any event, this Court need not resolve whether it can consider the trial testimony, as the documents that the resentencing judge expressly reviewed state the facts established at trial. See generally J.A. 166-169, 349-356; Doc. 112-113.

<sup>3</sup> Because the named victims were minors at the time of the offenses, we refer to them by first name only.



marijuana, and he instructed them to dance naked on a bed. *Ibid.* He then engaged in oral and vaginal sex with both girls to “test” their sexual aptitude. J.A. 167.

Royal physically and emotionally abused Melissa throughout April and May 2007. J.A. 167-168. He arranged for her to stay with coconspirator Shantia Tibbs for a few days and with coconspirator Angela Bentolila for a few weeks. J.A. 167; *Royal*, 442 F. App’x at 795. During this time, Bentolila reported to Royal on Melissa’s activities, and Royal assaulted Melissa based on these reports. J.A. 167-168. On one occasion, he violently anally raped her. J.A. 168, 352-353; *Royal*, 442 F. App’x at 795. Other times, he held knives to her throat and threatened to kill her. J.A. 168, 351. He smacked her and repeatedly punched her in the face. J.A. 167, 352. He threatened to shoot her and kidnap her young sister. J.A. 168, 351; *Royal*, 442 F. App’x at 795. He forced her to kiss his pinky ring and threatened to burn her belongings. J.A. 168, 351.

Several weeks after meeting Melissa and Stephanie, and after learning that both were 17, Royal directed Tibbs to find customers willing to pay for sex with the teenage girls. See J.A. 167-168; *Royal*, 442 F. App’x at 795. On April 21, 2007, Royal and Tibbs brought the girls to a residence in Washington, D.C., where Melissa and Stephanie engaged in sex acts with a customer. J.A. 168; *Royal*, 442 F. App’x at 795. Tibbs collected money from the customer and gave it to Royal. J.A. 168; *Royal*, 442 F. App’x at 795.

The next night, Melissa and Stephanie attended a party. J.A. 168. When Royal ordered them to leave, Stephanie refused to get into Royal's car, but he chased her until she complied. J.A. 168. Royal then drove Melissa and Stephanie to a dark, nearby lake, where he took out a gun and demanded that Stephanie walk with him. J.A. 168. Once they were near the water, Royal struck Stephanie in the face, yelling, "Don't you ever do that again." J.A. 168. He pointed the gun at Stephanie and declared that he "was God and decided who lived and who died." J.A. 168. He then gave Stephanie the gun and demanded that she shoot it at the lake. J.A. 168. Stephanie tried to comply, but the gun did not fire, and Royal was surprised to discover that it was unloaded. J.A. 168. He took Stephanie back into the car and loaded the gun. J.A. 168. He ordered Stephanie to fire the gun out the car window, and she did. J.A. 168. Royal later explained that he had told Stephanie to shoot the gun so that he would have evidence against her if she sought help from the police. J.A. 169.

Royal soon decided that he "needed another girl" and asked Melissa to contact her friend Ilana, whom he had seen on MySpace and knew was 15 years old. *Royal*, 442 F. App'x at 796. Melissa introduced the two of them. J.A. 169. On May 8, 2007, Royal gave Melissa and Ilana cocaine, phencyclidine (PCP), and ecstasy. J.A. 169; *Royal*, 442 F. App'x at 796. Royal then took the girls to a hotel, where Melissa and Ilana engaged in sex acts with a customer. J.A. 169; *Royal*, 442

F. App'x at 796. The next day, Royal again provided Melissa with PCP, and Melissa and Tibbs engaged in sex acts with the same customer. J.A. 169; *Royal*, 442 F. App'x at 796.

Throughout April and May, Royal continued to provide Melissa and Stephanie with marijuana and cocaine. J.A. 168. Melissa had not tried cocaine before meeting Royal, but he forced her to use that drug. *Royal*, 442 F. App'x at 796. On one occasion, he gave Stephanie so much cocaine that she blacked out and her body convulsed, but Royal refused to allow her to seek medical treatment. J.A. 168.

In addition, from September 2006 through May 2007, Royal arranged for the purchase of cocaine from a source in New York. *Royal*, 442 F. App'x at 796. He stored and sold marijuana and cocaine at his former girlfriend's house, and he sold cocaine to Bentolila dozens of times. *Ibid.* He often brought Bentolila drugs, which Bentolila shared with Melissa and Stephanie. *Ibid.*

Toward the end of May 2007, law enforcement officers received a tip about Royal's activities and sought to question Melissa. *Royal*, 442 F. App'x at 796. Royal instructed her to "lie" and state that he "had no idea [about her] age." *Ibid.* (brackets in original). In 2009, after Royal and Bentolila were arrested, the two were placed in adjoining holding cells at the federal courthouse. *Ibid.* Royal instructed Bentolila to "do the right thing and not snitch." *Ibid.*

## 2. *Procedural History*

In 2010, a grand jury in the District of Maryland returned an eight-count second superseding indictment charging Royal with conspiracy to commit sex trafficking, in violation of 18 U.S.C. 371 (Count 1); sex trafficking of three minor victims by force, fraud, or coercion, in violation of 18 U.S.C. 1591 (Counts 2, 3, and 4); possession of a firearm in furtherance of a crime of violence, in violation of 18 U.S.C. 924(c) (Count 5); conspiracy to distribute controlled substances, in violation of 21 U.S.C. 846 (Count 6); and distribution of controlled substances—namely, cocaine and PCP—to persons under the age of 21, in violation of 21 U.S.C. 859 (Counts 7 and 8). J.A. 2-3, 7; *Royal*, 442 F. App'x at 796.

After a six-day trial before Judge Alexander Williams, Jr., a jury found Royal guilty on all counts.<sup>4</sup> S.A. 1-5; *Royal*, 442 F. App'x at 796. Using a special verdict form, the jury found that Royal knew that each of his victims was under the age of 18 and that he used force, fraud, or coercion to cause them to engage in

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<sup>4</sup> Royal's opening brief incorrectly states that "a jury convicted Mr. Royal of all counts in the second superseding indictment except for Conspiracy to Distribute Controlled Substances." Br. 2. To the contrary, the jury found Royal guilty on all eight counts, *including* conspiracy to distribute controlled substances. S.A. 3; see J.A. 191, 356; *Royal*, 442 F. App'x at 796. Although the jury indicated on the special verdict form that Royal was not guilty as to one of the three objects of the drug conspiracy (PCP), it nonetheless found him guilty of conspiring to distribute both cocaine and marijuana. S.A. 3; see *Royal*, 442 F. App'x at 796.

commercial sex. S.A. 1-2. The jury also specifically found that Royal brandished a firearm in furtherance of a crime of violence. S.A. 3.

*a. 2010 Sentencing And Subsequent Appeal*

The probation department's Presentence Investigation Report (PSR) calculated Royal's total offense level as 42. J.A. 174. Applying a criminal history category of II, the PSR calculated an advisory Sentencing Guidelines range of 360 months to life in prison, plus a mandatory consecutive sentence for brandishing a firearm in furtherance of a crime of violence under 18 U.S.C. 924(c) (Count 5). J.A. 176, 178.

In July 2010, the district court sentenced Royal to a total of 444 months' (37 years') imprisonment. S.A. 6. It sentenced him to 60 months in prison for Count 1; 360 months each for Counts 2, 3, and 4; 240 months for Count 6; and 360 months each for Counts 7 and 8, all to run concurrently, plus a seven-year mandatory consecutive term for Count 5. S.A. 6. The district court noted that this was "a very, very serious case involving minors," but it nonetheless imposed a sentence at the low end of the Guidelines range. J.A. 366.

On direct appeal, Royal challenged only his sentence.<sup>5</sup> *Royal*, 442 F. App'x at 795. He asserted that the district court erred by applying four sentencing

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<sup>5</sup> Royal's opening brief misstates that this Court affirmed his *convictions* on direct appeal. See Br. 3. Royal did not appeal his convictions. His prior appeal  
(continued...)

enhancements for his (1) exploitation of a vulnerable victim, (2) use of a computer, (3) obstruction of justice, and (4) aggravating role in the offense. *Ibid.* He also contended that the sentencing court erred in considering conduct that the jury had not found beyond a reasonable doubt. *Ibid.* Royal did not argue that his 37-year sentence was substantively unreasonable. See *ibid.*; Appellant's Br., *United States v. Royal*, No. 10-4806, 2011 WL 526183 (4th Cir.) (filed Feb. 15, 2011).

This Court affirmed Royal's 37-year sentence in an unpublished, per curiam opinion. *Royal*, 442 F. App'x at 795. It also denied his petition for rehearing and rehearing en banc (J.A. 13), and the Supreme Court denied certiorari, *Royal v. United States*, 565 U.S. 1168 (2012).

In 2013, Royal moved to vacate, set aside, or correct his sentence under 28 U.S.C. 2255. J.A. 13. The district court denied that motion, *United States v. Royal*, No. AW-13-386, 2013 WL 3868152 (D. Md. July 24, 2013), and this Court dismissed Royal's subsequent appeal, 667 F. App'x 26 (4th Cir. 2014) (unpublished) (per curiam). The Supreme Court again denied certiorari. *Royal v. United States*, 135 S. Ct. 291 (2014).

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(...continued)

concerned only his 444-month (37-year) sentence, which this Court affirmed. See *Royal*, 442 F. App'x at 801.

*b. 2016 Collateral Review*

In 2016, Royal filed a second Section 2255 motion, seeking to vacate his conviction under 18 U.S.C. 924(c) for possession of a firearm in furtherance of a crime of violence (Count 5). J.A. 15. This Court authorized him to file this motion based on recent case law. See J.A. 15. The United States agreed that the district court should vacate Royal's Section 924(c) conviction. See J.A. 189. It acknowledged that, under *United States v. Fuertes*, 805 F.3d 485 (4th Cir. 2015), cert. denied, 136 S. Ct. 1220 (2016), and *United States v. Naughton*, 621 F. App'x 170 (4th Cir. 2015) (unpublished), cert. denied, 136 S. Ct. 1393 (2016), sex trafficking and conspiracy to commit sex trafficking are no longer considered "crimes of violence" for purposes of 18 U.S.C. 924(c). See J.A. 35. As sex trafficking and conspiracy to commit sex trafficking had served as the predicate "crimes of violence" for Royal's Section 924(c) conviction (J.A. 29), the United States agreed that Royal was legally innocent of 18 U.S.C. 924(c) and was therefore entitled to resentencing. See J.A. 189.

*c. 2017 Resentencing*

The district court held a resentencing hearing in November 2017. A different judge, Judge Theodore Chuang, presided. J.A. 15, 33. The court began by granting Royal's unopposed Section 2255 motion in light of *Fuertes*, vacating his conviction as to Count 5, and vacating his original sentence. J.A. 34-35.

In resentencing Royal, the court adopted the original PSR, except for its references to the now-vacated Section 924(c) conviction. J.A. 37-39. The court also noted that it had received victim impact statements and the parties' sentencing memoranda. J.A. 35-36. The court concluded that the appropriate advisory Guidelines range for Royal's remaining convictions was still 360 months' to life imprisonment. See J.A. 37, 178. Royal agreed. See J.A. 193, 370.

The United States requested a 360-month sentence, the bottom of the Guidelines range and the same sentence the court had previously imposed, minus the seven years for Count 5. See J.A. 47, 348. The United States also argued that the court should still consider Royal's use of a gun in furtherance of the sex trafficking offenses, despite the vacatur of his Section 924(c) conviction. See J.A. 358. Royal agreed that "the case law is clear that the Court can consider the fact that a gun was used \* \* \* in determining its sentence." J.A. 100.

Royal urged the court to impose a below-Guidelines sentence of 180 months, the statutory minimum. See J.A. 98, 177, 191. He argued that two factors that were not presented or available at the original sentencing warranted this sentence: (1) Royal's traumatic upbringing and family history and (2) his rehabilitation in prison since the original sentencing. J.A. 87.

The district court imposed the minimum Guidelines sentence of 360 months (30 years) in prison. J.A. 121, 158. It sentenced Royal to 60 months in prison for



Count 1; 360 months each for Counts 2, 3, and 4; 240 months for Count 6; and 360 months each for Counts 7 and 8, all to run concurrently. J.A. 158.

### **SUMMARY OF THE ARGUMENT**

This Court should affirm Royal's within-Guidelines sentence, as it is substantively reasonable. Royal agreed that the advisory Guidelines range was 360 months' to life imprisonment. The district court sentenced him to 360 months' imprisonment, which is seven years less than his original sentence. This within-Guidelines sentence is presumptively reasonable, and Royal has not rebutted this presumption. Royal argues only that the new mitigating evidence that he presented at resentencing warranted a below-Guidelines sentence. This argument fails for two reasons.

First, this Court may not reweigh factors the district court properly considered at resentencing or reverse merely because it would have balanced the factors differently. It can only determine whether the district court abused its discretion. Royal has failed to establish that the district court abused its discretion simply because, in Royal's view, the court should have assigned greater weight to his mitigating evidence.

Second, in determining its sentence, the district court appropriately balanced the sentencing factors and considered Royal's new evidence of his traumatic family history and his steps toward rehabilitation. Royal concedes that the court

both considered his mitigating evidence and recognized that it cut in his favor. The court balanced this evidence, however, against the “horrific” nature and circumstances of the offenses and their profound lifelong impact on the victims. Moreover, the court noted that, with the vacatur of Royal’s Section 924(c) conviction, nothing in the remaining Guidelines range accounted for Royal’s use of a firearm in furtherance of the sex trafficking offenses. It therefore weighed the new mitigating evidence favoring a lower sentence (Royal’s background and post-offense rehabilitation) against the evidence favoring a higher sentence (his use of a gun and his conduct’s lasting impact) and sentenced Royal at the bottom of the Guidelines range. The district court acted well within its discretion in conducting this balancing and imposing this within-Guidelines sentence.

## **ARGUMENT**

### **ROYAL’S WITHIN-GUIDELINES SENTENCE IS SUBSTANTIVELY REASONABLE**

#### *A. Standard Of Review*

This Court reviews a sentence for substantive reasonableness “under a deferential abuse-of-discretion standard.” *Gall v. United States*, 552 U.S. 38, 41 (2007); accord *United States v. Susi*, 674 F.3d 278, 282 (4th Cir. 2012). In doing so, this Court must consider the totality of the circumstances, “keeping in mind that ‘a sentence located within a correctly calculated guidelines range is presumptively reasonable.’” *United States v. Ventura*, 864 F.3d 301, 313 (4th Cir. 2017) (quoting

*Susi*, 674 F.3d at 289). A defendant can rebut this presumption of reasonableness only “by showing that the sentence is unreasonable when measured against the 18 U.S.C. § 3553(a) factors.” *United States v. Louthian*, 756 F.3d 295, 306 (4th Cir. 2014). That an appellate court “might reasonably have concluded that a different sentence was appropriate is insufficient to justify reversal of the district court.” *Gall*, 552 U.S. at 51.

*B. Background*

In 2017, both parties submitted sentencing memoranda introducing new evidence for Royal’s resentencing. See J.A. 189-191, 360-361, 370. The United States provided the court with updated victim impact statements (S.A. 11-19, 24-35), and Royal presented new evidence of his traumatic upbringing and his post-offense rehabilitation (J.A. 216-347). The district court considered this evidence, along with other factors, in determining Royal’s new sentence. See J.A. 35-36, 114-110.

*1. New Evidence Presented At Resentencing*

*a. Victim Impact Statements*

The United States provided the resentencing court with new 2017 victim impact statements from Melissa, Stephanie, and Melissa’s mother that described

the profound and lasting impact of Royal's conduct.<sup>6</sup> See J.A. 360-361; S.A. 11-19, 24-35. The three women also addressed the court in person at Royal's resentencing hearing, seven years after Royal's original sentencing and ten years after his arrest. See J.A. 39.

In court, Melissa described "the pain, the torture, [and] the fear" that she endured because of Royal's conduct, "including what [he] did with that gun." J.A. 41-42. She recalled that she lived in a basement for two years after Royal's arrest because of her "constant fear" that he would "come after" her and her family. J.A. 43. She was never able to go back to school, as she suffered from post-traumatic stress disorder (PTSD) and remained addicted to drugs that he had forced her to use. J.A. 43. A decade since Royal's arrest, Melissa continued to describe herself as "traumatized" by his actions. See J.A. 44.

Melissa's mother echoed this sentiment in her written statement, which she also read aloud to the court. See J.A. 48-73; S.A. 24-35. She explained that, even in 2017, "Melissa continue[d] to suffer as a victim in many ways from the past and current trauma she endures at the hands of [Royal]." J.A. 48; see S.A. 24. She described how Melissa still believed that Royal was going to harm her and her family because of his past conduct, including "raping, sodomizing, beating,

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<sup>6</sup> The United States also resubmitted Melissa's and Stephanie's original 2010 victim impact statements. See S.A. 20-23, 36-39; J.A. 370.

drugging, torturing, and selling her,” and because Royal had “used [a] handgun \* \* \* to instill fear and control.” J.A. 52, 67; see S.A. 26, 32. She also explained that Melissa had been unable to keep a job and lost custody of her two daughters because of the PTSD and drug addictions that she developed because of Royal. J.A. 60-61, 70-71; see S.A. 27-29, 32-33.

Similarly, Stephanie described at the hearing how Royal’s actions had a “lifelong effect” on her. J.A. 44. She explained that, even ten years later, she was “still living it every day of [her] life” and that she was “far from over it.” J.A. 44. She recalled the night when Royal had “tried to kill [her]” by the lake and how she “knew that [she] was going to die that night.” J.A. 46. She still suffered from PTSD and insomnia, and she continued to “fear for [her] life.” J.A. 46-48.

*b. Royal’s Mitigating Evidence And Statement To The Court*

Seeking a below-Guidelines sentence, Royal introduced new evidence of his traumatic family history and his post-offense rehabilitation that he had not presented at his original sentencing. See J.A. 87, 98.

First, Royal explained that the original PSR and sentencing had not reflected his “traumatic upbringing” because his family had not discussed its past until shortly before the 2017 resentencing, and previous defense counsel had failed to investigate the matter. See J.A. 82-84; Br. 18. Royal recounted how his father had physically abused him, his younger brother, and his mother; how his father had left

him home alone for hours at a time when he was young; and how he had once observed his father raping his mother. J.A. 85; 201-204, 216-218. Royal also explained that he had been an awkward and clumsy child who was diagnosed with depression. J.A. 207. When he was 16 years old, he was in a car accident and suffered a concussion and severe injuries to his face. J.A. 207-208, 243. The resulting facial scarring caused him to experience further depression and social isolation. J.A. 208-209, 219. He underwent a psychiatric evaluation after the accident and was diagnosed with depression and “[p]ost-concussive syndrome.” J.A. 209, 251.

Second, Royal introduced evidence of his rehabilitation over the past seven years, which the original sentencing court naturally could not have considered. J.A. 87. He presented letters of support from various family members and staff members at the prison who discussed his involvement in the prison’s church community. J.A. 88. He had also earned his G.E.D., completed several classes, and counseled other inmates. J.A. 88. Royal argued that his post-offense rehabilitation was particularly compelling, as he had had no reason to believe that he would have another opportunity for resentencing. J.A. 88.

Third, Royal contended that his conduct was not as egregious as that of defendants in other cases who had received shorter sentences. See J.A. 89-90. He argued that, in this case, “the actual sex trafficking portion was a period of about

three weeks, between mid-April through early May, and one of the victims, the third victim,” had been trafficked for commercial sex on “only a single occasion.” J.A. 94.

Finally, Royal addressed the court himself at his resentencing hearing. He apologized to the victims and asserted that he was no longer the same person he had been. See J.A. 104-105. He described his newfound faith and stated, “I have a peace and a joy that comes through purpose.” J.A. 106-107. He explained that he had earned his G.E.D. and other accolades in prison, but he insisted, “[T]he best thing I believe that I have right now is I have freedom. I am not afraid.” J.A. 109. He explained that he was no longer “a victim” of his former self and stated that he wanted healing for all involved. See J.A. 109, 111.

## *2. The District Court’s Resentencing Decision*

The district court explained that it had considered all of the factors under 18 U.S.C. 3553(a), and it discussed those factors at length.<sup>7</sup> See J.A. 113-119. The court described the nature and circumstances of the offense as “a horrific set of offenses consisting of taking three underage girls and forcing them into prostitution, giving them drugs, forcing them to take drugs, [and] also forcibly

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<sup>7</sup> The Section 3553(a) factors include, among other things, the nature and circumstances of the offense, the history and characteristics of the defendant, the need for the sentence to reflect the seriousness of the offense, the need to afford adequate deterrence, the need to protect the public, and the need to avoid unwarranted sentencing disparities. 18 U.S.C. 3553(a).

raping and sexually assaulting some or all of them.” J.A. 113. The court also noted that Royal had threatened the victims and their family members to coerce them into participating and that he had used a firearm to threaten one of the victims. J.A. 113-114.

The court also recognized that “[t]he impact on the victims has been profound.” J.A. 114. It observed that, “even now, ten years after the offense, the emotional scars have not healed,” and that although Royal “may have moved past this, has perhaps gotten to a better place, \* \* \* unfortunately, the victims have not gotten to that point yet.” J.A. 114.

The court next considered Royal’s history and characteristics, noting that this factor cut in Royal’s favor. It recognized that Royal did not have a very serious prior criminal record and that Royal had presented “substantial information regarding a very difficult and troubled childhood that may help to explain, but certainly not excuse, the offense.” J.A. 115. The court also acknowledged that Royal had engaged in “some admirable post-offense rehabilitation,” which it described as “encouraging.” J.A. 116. The court stated that this progress would serve Royal well in accumulating good-time credit and preparing him for an ultimate release. J.A. 118. It also observed, however, that it was “remarkable that, at this point in time, ten years later, the defendant is in a much, much better place than the victims are even though he is incarcerated.” J.A. 117-118.



Finally, the court noted that, in light of the vacatur of Royal's Section 924(c) conviction, the remaining Guidelines calculation did not account for Royal's use of a firearm in furtherance of the sex trafficking offenses. See J.A. 98-101, 115. When prompted, Royal acknowledged that "the case law is clear that the Court can consider the fact that a gun was used \* \* \* in determining its sentence." J.A. 100.

After considering the Section 3553(a) factors, the district court imposed a minimum Guidelines sentence of 360 months in prison, which is what remained of the previous sentence absent the seven-year consecutive term for Count 5. J.A. 121. In reaching this decision, the court balanced the new information regarding Royal's troubled past and his post-offense rehabilitation with the need for the sentence to still reflect Royal's use of a firearm in furtherance of the sex trafficking offenses. See J.A. 117. The court noted that, without the seven-year consecutive sentence under 18 U.S.C. 924(c), the remaining Guidelines range did not account for Royal's use of a gun. J.A. 117. Accordingly, the court explained that "there could be reasons to increase" Royal's sentence. J.A. 117.

The court also concluded that the new mitigating evidence did not sufficiently outweigh the offense conduct to warrant a downward variance. See J.A. 117. It reasoned that, "even with these positive factors, that show some progress and show some explanation, this crime was so horrific, the impact has

been so severe and profound, that on balance, the nature and circumstances of the offense do not leave room for a lower sentence than the guidelines range.” J.A. 118.

In addition, the court rejected the notion that a Guidelines sentence would create unwarranted sentencing disparities. See J.A. 116. Although Royal cited other cases involving shorter sentences, the court determined that the facts in those cases were materially distinguishable from the facts in this case. See J.A. 93. The court explained that none of the cases Royal cited involved “minors, victims who were threatened with firearms and death, [or] individuals who were raped.” J.A. 93-94.<sup>8</sup>

The court concluded that, although Royal had “benefited from the change in law to take seven years off [his] sentence, \* \* \* in light of the nature of this offense and the impact on its victims, which remain[ed] significant even ten years later, a sentence of 30 years \* \* \* remain[ed] a correct sentence.” J.A. 121.

*C. Royal’s Within-Guidelines Sentence Is Substantively Reasonable In Light Of The Offense Conduct, Including Royal’s Use Of A Firearm In Furtherance Of The Sex Trafficking Offenses*

Royal agreed that the applicable Guidelines range is 360 months’ to life imprisonment. The district court acted well within its discretion when it imposed a

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<sup>8</sup> Although Royal’s opening brief summarizes the sentencing disparity argument he raised in the district court, Royal does not argue that this Court should vacate his sentence on this basis. See Br. 15-16, 19-20.

360-month sentence, which is seven years shorter than Royal's original sentence. This within-Guidelines sentence is presumptively reasonable, and Royal has failed to rebut this presumption.<sup>9</sup>

In challenging his sentence as substantively unreasonable, Royal argues only that the new evidence he presented at resentencing warranted a below-Guidelines sentence. See Br. 28-33. He suggests that the district court assigned insufficient weight to the mitigating evidence of his family history and his post-offense rehabilitation. See *ibid.* This argument fails for two reasons.

1. *This Court May Not Reweigh Factors The District Court Properly Considered During Sentencing*

Royal invites this Court to reweigh factors the district court appropriately considered in crafting its sentence. He asserts that, "while the district court clearly considered the mitigating evidence, it erroneously concluded that this evidence was outweighed by the nature of Mr. Royal's conduct and the effect it had on the

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<sup>9</sup> Royal does not challenge his sentence as procedurally unreasonable (see Br. 1-2, 24), nor could he credibly do so. The district court correctly noted that the applicable advisory Guidelines range is 360 months to life, and Royal did not object to this conclusion or the adoption of the original PSR at resentencing. See J.A. 37-39, 181, 370. In addition, the district court appropriately treated the Guidelines as advisory, allowed both parties to present arguments regarding an appropriate sentence, considered all of the Section 3553(a) factors, thoroughly explained its reasoning, and did not rely on any clearly erroneous facts. See J.A. 113-119; *Gall*, 552 U.S. at 53; *Louthian*, 756 F.3d at 306. Accordingly, Royal argues only that his sentence is substantively unreasonable. See Br. 1-2, 23-24.

victims.” Br. 30; see also Br. 29 (“If Mr. Royal’s childhood trauma were not enough to move the needle, his post-offense rehabilitation should have been.”).

This Court should decline this invitation. An appellate court may not reweigh the Section 3553(a) factors; “it can only determine whether the district court acted within its discretion in sentencing.” *United States v. Carter*, 564 F.3d 325, 330 n.4 (4th Cir. 2009). Accordingly, even if this Court would have balanced the factors differently or imposed a different sentence if it were the sentencing court, it could not reverse the district court’s decision on that basis. See *Gall*, 552 U.S. at 51. In short, Royal has failed to establish that the district court abused its discretion simply because, in Royal’s view, the district court should have assigned greater weight to the mitigating evidence presented at resentencing. Cf. *Susi*, 674 F.3d at 290 (“That the court did not agree with [defendant] as to the value, or relative weight, to give each factor and thus did not sentence [defendant] to as low a sentence as he desired does not in itself demonstrate an abuse of the court’s discretion.”).

2. *The District Court Appropriately Balanced The Sentencing Factors, Including Royal’s History And Characteristics, In Determining His Sentence*

The district court appropriately exercised its discretion in balancing the Section 3553(a) factors and imposing a within-Guidelines sentence. Although Royal asserts that the district court assigned insufficient weight to the new

evidence of his family history and post-offense rehabilitation, he acknowledges that the district court “clearly considered the mitigating evidence” at resentencing. Br. 30; see also Br. 1 (recognizing that “the district court considered this evidence in imposing its sentence”). Royal also acknowledges that the court determined that his history and characteristics cut in his favor. See Br. 21-22; J.A. 115.

The court properly balanced this sentencing factor, however, against the “horrific” nature and circumstances of the offenses and their profound lifelong impact on the victims. See J.A. 113-115, 118. In doing so, the court correctly recognized that another significant development had occurred since the previous sentencing, besides the introduction of new character evidence: With the vacatur of Royal’s Section 924(c) conviction, nothing in the Guidelines accounted for Royal’s use of a firearm in furtherance of the sex trafficking offenses. J.A. 115, 117. In other words, absent the conviction under 18 U.S.C. 924(c) and its mandatory consecutive seven-year sentence, the remaining Guidelines range did not reflect the fact that Royal had used a gun to coerce the victims to engage in commercial sex. Royal acknowledges as much in his opening brief. See Br. 31

The district court was free to consider Royal’s use of a firearm in crafting its new sentence, as Royal concedes. See J.A. 100-101. The court vacated Royal’s conviction under 18 U.S.C. 924(c) because sex trafficking is no longer categorically considered a “crime of violence” for purposes of that statute. See

J.A. 35; *United States v. Fuertes*, 805 F.3d 485, 491 (4th Cir. 2015), cert. denied, 136 S. Ct. 1220 (2016). As the court correctly recognized, however, a jury still found beyond a reasonable doubt that Royal brandished a gun in furtherance of the sex trafficking offenses. See J.A. 101; S.A. 3. Accordingly, as Royal concedes, “the case law is clear that the Court can consider the fact that a gun was used \* \* \* in determining its sentence.” J.A. 100; see also *Ventura*, 864 F.3d at 312 (holding that a district court can consider a defendant’s violent conduct and firearm possession at resentencing after the vacatur of a Section 924(c) conviction, so long as that conduct was proved by a preponderance of the evidence).

Under these circumstances, the district court properly reasoned that Royal’s use of a gun to coerce one of his victims to engage in commercial sex might warrant a *higher* sentence than the Guidelines advised. See J.A. 117. Nevertheless, it imposed a sentence at the very bottom of the Guidelines range. See J.A. 119, 121. It did so by weighing the mitigating evidence favoring a lower sentence (Royal’s background and post-offense rehabilitation) against the evidence favoring a higher sentence (Royal’s use of a gun and the lasting impact of the offense conduct). See J.A. 117.

Thus, Royal is incorrect to suggest that the district court gave him “no credit” for his mitigating evidence. See Br. 30. Royal’s new sentence is seven years shorter than his previous sentence, even though his underlying conduct and

use of a gun remained the same. Given the totality of the circumstances, the district court “properly considered the evidence and arguments presented, and \* \* \* appropriately exercised its discretion” in imposing this within-Guidelines sentence. *Ventura*, 864 F.3d at 313; cf. *ibid.* (holding that the re-imposition of a defendant’s original 420-month sentence after vacatur of his Section 924(c) conviction was substantively reasonable for this reason). Royal has failed to establish otherwise.

### **CONCLUSION**

This Court should affirm Royal’s sentence.

Respectfully submitted,

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## **STATEMENT REGARDING ORAL ARGUMENT**

The United States does not object to oral argument if the Court believes that it would be helpful.



## **CERTIFICATE OF COMPLIANCE**

I certify, pursuant to Federal Rule of Appellate Procedure 32(g), that the attached BRIEF FOR THE UNITED STATES AS APPELLEE:

(1) complies with the type-volume limit of Federal Rule of Appellate Procedure 32(a)(7)(B) because, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f), the brief contains 5993 words.

(2) complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Word 2016, in 14-point Times New Roman font.

s/ Dayna J. Zolle  
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Attorney

Dated: July 31, 2018

## **CERTIFICATE OF SERVICE**

I certify that on July 31, 2018, I electronically filed the foregoing BRIEF FOR THE UNITED STATES AS APPELLEE with the United States Court of Appeals for the Fourth Circuit using the CM/ECF system. All participants in this case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

I further certify that one paper copy of the foregoing brief was sent to the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by first-class certified mail on July 31, 2018.

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