U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 26-1860

UNITED STATES OF AMERICA

v.

JOHN COURTNEY POLLARD,
Appellant

Appeal from the U.S. District Court, W.D. Pa.
Chief Judge Cathy Bissoon, No. 1:24-cr-00031-001

Before: KRAUSE, PORTER, and AMBRO, *Circuit Judges*
Submitted Sep. 23, 2026; Decided Nov. 6, 2026

NONPRECEDENTIAL OPINION*

PORTER, *Circuit Judge*. John Courtney Pollard threatened to kill an election worker during the 2024 elections. He pleaded guilty to transmitting interstate threats and the District Court sentenced him to ten months' imprisonment. Pollard argues that the District Court procedurally erred at sentencing by not applying a four-level Sentencing Guidelines reduction for threats evidencing little or no deliberation. But the record demonstrates that the District Court would have imposed the same sentence if it calculated the advisory Guidelines range with the reduction Pollard sought. We will affirm.

I

In September 2024, an election worker recruited volunteers over Facebook to watch the polls on Election Day. Pollard sent the election worker a text message expressing

* This is not an opinion of the full Court and, under I.O.P. 5.7, is not binding precedent.

interest. Nine minutes later, Pollard sent her three more text messages, each containing threats of violent harm and death.

After the FBI traced the messages to Pollard, a grand jury indicted him with one count of making interstate threats in violation of 18 U.S.C. § 875. Pollard pleaded guilty without a plea agreement.

Before the sentencing hearing, the government and Pollard informed the District Court of their positions regarding the advisory Guidelines range. The government argued for a two-level enhancement to the offense level because "the offense involved more than two threats." U.S. Sent'g Guidelines Manual § 2A6.1(b)(2)(A) (U.S. Sent'g Comm'n 2024). Applying that enhancement would have yielded an advisory Guidelines range of ten to sixteen months' imprisonment. Pollard argued for a four-level reduction to the offense level because his "offense involved a single instance evidencing little or no deliberation." *Id.* § 2A6.1(b)(6)(B). Applying the reduction and not the enhancement would have made Pollard's advisory Guidelines range zero to six months' imprisonment.

At the sentencing hearing, the District Court rejected applying the "more than two threats" enhancement. It found Pollard's offense conduct to be "more akin to a continuing thought" expressed through three different text messages. App. 122. It also rejected the reduction because Pollard showed "deliberation in getting the number," "typing the number" out, then "deciding to reach out with something that wasn't a threat initially," and then "not having heard back, [to] reach out again with a threat." App. 129.

Because it did not apply the enhancement or reduction, the District Court calculated the total offense level to be ten and the criminal history category to be one, yielding an

advisory Guidelines range of six to twelve months' imprisonment. After calculating the advisory Guidelines range, the District Court heard testimony from Pollard's victim. The victim described the fear Pollard caused her to feel, which was compounded by political violence in the lead-up to the 2024 election. The District Court also heard testimony from one of Pollard's acquaintances who described their long friendship. The District Court then heard Pollard's allocution.

The District Court sentenced Pollard to ten months' imprisonment and one year of supervised release and imposed a $5,000 fine. During sentencing, the District Court explained that it had taken a "holistic view" of the case after balancing Pollard's acceptance of responsibility and lack of criminal history with the serious nature of the offense, the need to protect the public, and the need for just punishment, deterrence, and rehabilitation. App. 148. The District Court said that "ten months would have been the Court's sentence" regardless of whether it applied the enhancement or reduction. *Id.* at 149. That's because, in the District Court's judgment, "[t]here [was] no scenario under which a lesser sentence would be sufficient." *Id.* The District Court also explained that it determined a sentence of imprisonment was "required" for general and specific deterrence. *Id.* at 150.

Pollard timely appealed. After he did so, the District Court reiterated its sentencing decision when it denied Pollard's motions for bond pending appeal and to postpone or reschedule his self-report date.

II

The District Court had jurisdiction under 18 U.S.C. § 3231. We have jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a). A miscalculation of the advisory

Guidelines range is a procedural error subject to harmless-error review. *United States v. Raia*, 993 F.3d 185, 195 (3d Cir. 2021). A Guidelines error is harmless when the record demonstrates a "high probability" that the sentencing Guidelines miscalculation did not affect the sentence imposed. *United States v. Jackson*, 132 F.4th 266, 278 (3d Cir. 2025) (quoting *Raia*, 993 F.3d at 195). We have defined "high probability" to mean a "sure conviction" that the district court would impose the same sentence. *Raia*, 993 F.3d at 195 (citation omitted).

III

Pollard argues that he was entitled to the little-or-no-deliberation reduction because his threatening messages resulted from an aberrational impulse. The record demonstrates "that the sentencing Guidelines range did not affect the actual sentence," so we do not decide whether the District Court erred when it declined to apply the little-or-no-deliberation reduction. *United States v. Zabielski*, 711 F.3d 381, 387 (3d Cir. 2013) (citation modified).

The District Court said that it would have sentenced Pollard to ten months' imprisonment regardless of the Guidelines enhancement or reduction. That type of "explicit statement" by the Court "help[s] to improve the clarity of the record, promote[s] efficient sentencing, and obviate[s] questionable appeals." *Id.* at 389; *cf. Molina-Martinez v. United States*, 578 U.S. 189, 200–01 (2016) (explaining, on plain-error review, that the record may demonstrate through "relevant statements by the judge" that a defendant was not prejudiced by a Guidelines error).

Pollard attacks the District Court's statement as a "generic disclaimer." Appellant's Br. 39. But the record confirms that the Court meant what it said. It conducted a thorough sentencing hearing after reviewing all the parties' submissions, including their positions on the advisory Guidelines range. It extensively discussed the facts concerning the enhancement and reduction and ultimately decided not to apply either. *Cf. Zabielski*, 711 F.3d at 387–88 (explaining that the erroneous application of an enhancement is more likely to be harmless where the District Court "correctly apprehended both the facts underlying that enhancement and the significance of those facts").

The District Court also discussed Pollard's crime and life and thoughtfully considered the parties' arguments, describing the case as "one of the tougher cases" it had decided. App. 140. The record shows that it "underst[ood] the facts of the case, grasp[ed] their significance, and incorporate[d] them into a just sentence." *Zabielski*, 711 F.3d at 388. That is the "most important" aspect of sentencing. *Id.* The record shows "a high probability" that the Court would have imposed the same sentence even if it calculated the advisory Guidelines range with the reduction Pollard sought. *Id.* at 387. Thus, we find that even if the District Court miscalculated the advisory Guidelines range, that error was harmless.

We also reject Pollard's other arguments for vacating his sentence. First, Pollard argues that the difference in the Guidelines range could have been the difference between incarceration and a non-carceral sentence, requiring remand. Under his proffered Guidelines range, the District Court could have imposed a sentence of probation without conditions of confinement. U.S. Sent'g Guidelines Manual § 5C1.1(b) (U.S. Sent'g

Comm'n 2024). The Guidelines range the District Court calculated, in Zone B of the sentencing table, permitted the Court to impose a sentence of probation with conditions of confinement. *Id.* § 5C1.1(c)(3). We have never mandated remand based on whether the advisory Guidelines range falls within Zone A or B of the sentencing table.[1] The District Court clearly explained its rationale for rejecting a non-carceral sentence.

Second, Pollard argues that the District Court did not calculate what the Guidelines range would have been with the reduction and never recognized the need for a variance to reach a ten-month sentence. But the record demonstrates it knew the different Guidelines ranges and the necessity of a variance to reach its sentence under Pollard's proffered range. *See Zabielski*, 711 F.3d at 389–90. The Court stated that it would impose the same sentence regardless of the reduction or enhancement. That statement necessarily means that it would do so under three potential advisory Guidelines ranges: (1) the range the government sought, with the enhancement; (2) the range Pollard sought, without the enhancement and with the reduction; and (3) the range it calculated. As the enhancement and reduction were the only disputed parameters that could have affected the Guidelines range, the District Court obviously recognized that applying the reduction would require an upward variance to ten months.

Finally, Pollard compares this case to *United States v. Newkirk*, 174 F.4th 336 (3d Cir. 2026), where we held that a time-served sentence was substantively and procedurally unreasonable, given a Guidelines range of 92 to 115 months' imprisonment. *Id.* at 338. He

[1] In the District Court, Pollard recognized that the Court had discretion to impose a sentence of probation under "[e]ither assessment of the guideline range." App. 90.

relies on our statement that the greater the variance from the Guidelines range, the "fuller [the] explanation" for the sentence required. *Id.* at 344 (citation omitted). Unlike in *Newkirk*, however, the District Court here provided a thorough explanation of its reasons for the sentence imposed. And the difference between the bottom of Pollard's proffered Guidelines range and the sentence he received was ten months, not over seven years. *Id.* at 339. Thus, *Newkirk* does not help Pollard. In short, the record demonstrates that the District Court would have sentenced Pollard to ten months' imprisonment regardless of what the Guidelines advised.

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For the forgoing reason reasons, we will AFFIRM the District Court.