

**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 28th day of May, two thousand fifteen.

PRESENT: DENNIS JACOBS,
ROSEMARY S. POOLER,
PETER W. HALL,
Circuit Judges.

-----X
UNITED STATES OF AMERICA,
Appellee,

-v.-

14-1258

TALEEK BROOKS,
Defendant-Appellant.
-----X

FOR APPELLANT: Thomas F.X. Dunn, New York, New York.

FOR APPELLEE: Robert T. Polemeni (with David C. James, on the brief), for Kelly T. Currie, Acting United States Attorney for the Eastern

1 District of New York, Brooklyn,
2 New York.
3

4 Appeal from a judgment of the United States District
5 Court for the Eastern District of New York (Mauskopf, J.).
6

7 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED**
8 **AND DECREED** that the appeal be **DISMISSED**.
9

10 Taleek Brooks appeals from the judgment of the United
11 States District Court for the Eastern District of New York
12 (Mauskopf, J.), sentencing him to 50 years' imprisonment
13 followed by a life term of supervised release, after he pled
14 guilty to sexual exploitation of a child and distribution of
15 child pornography. We assume the parties' familiarity with
16 the underlying facts, the procedural history, and the issues
17 presented for review.
18

19 In brief, Brooks: possessed thousands of videos and
20 images depicting violent child pornography, made those
21 videos and images available for others to download over the
22 internet throughout a seven-year period, produced grotesque
23 child pornography in a classroom of the public elementary
24 school where he worked as a teacher's aide, and repeatedly
25 sexually assaulted a ten-year-old boy who attended that
26 elementary school.
27

28 A 2012 grand jury indictment charged Brooks with seven
29 counts of sexual exploitation of a child, in violation of 18
30 U.S.C. § 2251(a) and (e); four counts of distribution of
31 child pornography, in violation of 18 U.S.C. § 2252(a)(2);
32 and one count of possession of child pornography, in
33 violation of 18 U.S.C. § 2252(a)(4)(B). In February 2013,
34 Brooks pled guilty pursuant to a plea agreement to one
35 exploitation count and one distribution count. The plea
36 agreement recited the government's estimation that "the
37 effective Guidelines range is 15 - 50 years," and
38 acknowledged the statutory maximum sentence for each count
39 to which Brooks was pleading: 30 years' imprisonment for the
40 exploitation count, and 20 years' imprisonment for the
41 distribution count. The plea agreement also included an
42 appeal waiver "in the event the Court imposes a term of
43 imprisonment of 50 years or less."
44

45 After pleading guilty and before sentencing, Brooks
46 filed a pro se letter explaining to the district court that
47 he had pled guilty only because he lacked confidence in his

1 counsel. In response to Brooks's letter, the district court
2 relieved defense counsel in July 2013, appointed a new
3 attorney, and adjourned the sentencing date so that Brooks
4 and his new attorney could discuss whether to move to
5 withdraw the plea. The new attorney informed the court in
6 November 2013 that Brooks had decided against moving to
7 withdraw his guilty plea, and in December the district court
8 accepted the guilty plea.

9
10 At Brooks's sentencing, the district court found that
11 the U.S. Sentencing Guidelines advisory range was 30 to 50
12 years' imprisonment, and sentenced Brooks to 50 years'
13 imprisonment, which was the statutory maximum.

14
15 On appeal, Brooks argues that: (1) he should be
16 released from the appeal waiver in his plea agreement
17 because his counsel was ineffective in advising him to enter
18 the plea agreement, and (2) his sentence is substantively
19 unreasonable.

20
21 "When faced with a claim for ineffective assistance of
22 counsel on direct appeal, we may: (1) decline to hear the
23 claim, permitting the appellant to raise the issue as part
24 of a subsequent petition for writ of habeas corpus pursuant
25 to 28 U.S.C. § 2255; (2) remand the claim to the district
26 court for necessary factfinding; or (3) decide the claim on
27 the record before us." *United States v. Adams*, 768 F.3d
28 219, 226 (2d Cir. 2014) (quoting *United States v. Tarbell*,
29 728 F.3d 122, 128 (2d Cir. 2013)). Mindful that the first
30 option is generally preferred, see *United States v.*
31 *Oladimeji*, 463 F.3d 152, 154 (2d Cir. 2006), we dismiss that
32 claim without prejudice to Brooks's right to advance it in a
33 collateral proceeding under
34 § 2255, or otherwise.

35
36 Under such circumstance, we will provisionally enforce
37 the appeal waiver "unless and until [the defendant] prevails
38 (by a habeas petition) in proving that his appeal waiver
39 should be voided because he received ineffective assistance
40 of counsel." *Oladimeji*, 463 F.3d at 155; see also *United*
41 *States v. Monzon*, 359 F.3d 110 (2d Cir. 2004). Because the
42 waiver remains intact for the purposes of this appeal, we
43 need not reach Brooks's challenge to the substantive
44 reasonableness of his sentence.

45
46 Even if the waiver is otherwise unenforceable, see
47 *United States v. Goodman*, 165 F.3d 169, 174 (2d Cir. 1999),

1 Brooks would not be entitled to relief because his
2 sentencing challenge fails on the merits. "The district
3 courts have discretion to select an appropriate sentence,
4 and in doing so are statutorily bound to consider the
5 factors listed in [18 U.S.C.] § 3553(a), including the
6 advisory Guidelines range." *United States v. Cavera*, 550
7 F.3d 180, 188 (2d Cir. 2008). "[O]ur substantive review of
8 a sentence is akin to review under an abuse-of-discretion
9 standard," whereby a district court abuses its discretion if
10 its sentence is "based on an erroneous view of the law or on
11 a clearly erroneous assessment of the evidence, or a
12 decision that cannot be located within the range of
13 permissible decisions." *United States v. Park*, 758 F.3d
14 193, 199-200 (2d Cir. 2014) (internal quotation marks and
15 alteration omitted). Here, the district court did not abuse
16 its discretion by imposing a 50-year sentence, at the top of
17 the effective Guidelines range. After carefully considering
18 the Section 3553(a) factors, the district court determined
19 that such a term of imprisonment was sufficient, but not
20 greater than necessary to serve the purposes of sentencing.
21 See *United States v. Dorvee*, 616 F.3d 174, 182 (2d Cir.
22 2010).

23
24 For the foregoing reasons, and finding no merit in
25 Brooks's other arguments, we hereby **DISMISS** the appeal.

26
27 FOR THE COURT:
28 CATHERINE O'HAGAN WOLFE, CLERK
29