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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0935**

State of Minnesota,
Respondent,

vs.

Ahmed Mohamed Ahmed,
Appellant.

**Filed April 24, 2017
Affirmed
Halbrooks, Judge**

Benton County District Court
File No. 05-CR-14-1649

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Philip K. Miller, Benton County Attorney, Karl Schmidt, Assistant County Attorney, Foley, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Melissa Sheridan, Assistant Public Defender, Eagan, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Halbrooks, Judge; and Jesson, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges the district court's denial of his request to continue his sentencing hearing, arguing that the district court abused its discretion. We affirm.

FACTS

In September 2014, appellant Ahmed Mohamed Ahmed and three others robbed a gas station at gun point. There was one female employee and one male employee in the gas station at the time of the robbery. Ahmed punched the male employee multiple times while ordering him to open a safe, and the four robbers left the gas station with money from the cash register and safe.

On September 15, 2014, respondent State of Minnesota charged Ahmed with aiding aggravated first-degree robbery, and less than one month later, the state filed notice of its intent to seek an aggravated sentence up to the statutory maximum of 240 months in prison. *See* Minn. Stat. § 244.10, subd. 5a(a)(10) (2014) (stating that committing a crime “as part of a group of three or more persons who all actively participated in the crime” is an aggravating factor). Over the next several months, the district court granted several pretrial continuance requests made jointly by both parties and by Ahmed alone, and it also discharged Ahmed’s defense counsel at his request and reassigned a different public defender.

On November 9, 2015, Ahmed pleaded guilty and testified that he committed the crime with three other offenders, and the state agreed to cap its upward departure request at 120 months. With a criminal-history score of three and an offense-severity level of eight, Ahmed’s presumptive sentence was 78 months with a range of 67 to 93 months. The district court scheduled the sentencing hearing for January 8, 2016, and approved an interim commitment to the Minnesota Department of Corrections.

On December 31, 2015, Ahmed moved the district court for an extension of the sentencing hearing “to allow the defense to fully prepare for sentencing.” The district court granted the continuance motion and rescheduled the sentencing hearing for March 11, 2016.

One day before the rescheduled sentencing hearing, Ahmed’s counsel again moved to continue the hearing because he was unable to complete his position paper due to substantial pre-existing time commitments and difficulties contacting Ahmed based on his interim commitment. The district court denied this motion and justified its decision at the sentencing hearing:

Well, I did a very thorough review of the case and procedural posture, and this file goes way back to a first appearance that occurred on September 29th of 2014; and for circumstances beyond your control, [defense counsel], there had been a number of continuances.

Actually your continuance yesterday was the 6th continuance request in this case. Some of those were joint continuance requests. Most of them were made by previous counsel who the Defendant then discharged prior to your appointment, [defense counsel].

So it has been a long road. We have had multiple, multiple hearings and continuances and resets that I don’t blame you for but are just the fact of the matter in this specific case. It’s true that the Defendant did plead guilty back on November 9th of 2015. We are four months beyond that now for the sentencing hearing. So I am going to deny the defense request for a continuance.

However, I would add that if the Defendant is dissatisfied with the Court’s sentence and wishes to pursue post conviction relief the Court would be open to having a hearing where additional information could be presented about a reduction in sentence and the Court would consider that.

The state argued that the district court should sentence Ahmed to 120 months in prison—an upward durational departure—because his actions were the most egregious of the four men who participated in the robbery. Ahmed’s counsel stated that he was unprepared to respond to the state’s upward-departure argument. The district court sentenced Ahmed to 120 months in prison. This appeal follows.

D E C I S I O N

Ahmed argues that the district court abused its discretion by denying his request to continue his sentencing hearing because he did not have adequate time to prepare an argument on the departure issue. We review a district court’s decision to grant or deny a continuance of a sentencing proceeding under the abuse-of-discretion standard. *State v. Mix*, 646 N.W.2d 247, 250 (Minn. App. 2002), *review denied* (Minn. Aug. 20, 2002). And we may only reverse the district court if the moving party shows that he or she was prejudiced as a result of the denial. *Id.* A district court abuses its discretion if it “acts arbitrarily, without justification, or in contravention of the law.” *Id.*

Sentencing hearings “shall be scheduled so that the parties have adequate time to prepare and present arguments regarding the issue of sentencing.” Minn. Stat. § 244.10, subd. 1 (2016). And a district court’s decision to grant or deny a continuance “should be based on all facts and circumstances surrounding the request.” *State v. Vance*, 254 N.W.2d 353, 358 (Minn. 1977). But district courts have “broad discretion to determine when and under what circumstances a continuance should be granted.” *State v. Johnson*, 256 N.W.2d 280, 286 (Minn. 1977). A district court does not abuse its discretion if it denies a motion

to continue a sentencing hearing based on “a substantial delay in sentencing.” *State v. Wallner*, 346 N.W.2d 386, 388 (Minn. 1984) (summarizing the district court’s opinion that a sentencing hearing held “almost one and one-half years” after charging was a substantial delay).

Here, the district court commented on the “long road” of the proceedings and ultimately denied Ahmed’s second request to continue his sentencing hearing because it had been nearly one and one-half years since Ahmed was charged and four months since he pleaded guilty. In addition, the district court had already granted one continuance request to give Ahmed another three months to prepare for his sentencing.

Ahmed asserts that his counsel was not ready for the sentencing hearing because: (1) the dispositional advisor assigned to this case “was not immediately available to assist defense counsel in gathering information, arranging psychological evaluations and preparing a report and recommendation”; (2) “Ahmed’s interim commitment to prison made it extremely difficult” to meet with him; and (3) psychological evaluations had not been sent to the dispositional advisor by the sentencing hearing, so they were not included in his report. But Ahmed moved the district court for an interim commit to prison, and he fails to cite to any authority that supports his position that, based on these circumstances, a district court is required to grant a continuance.

The district court has broad discretion to consider whether to grant or deny a motion to continue the sentencing hearing so long as the parties have adequate time to prepare.

See Minn. Stat. § 244.10, subd. 1. Based on this record, we conclude that the district court's denial of Ahmed's second continuance request was a proper exercise of its discretion.

Affirmed.