STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1581

State of Minnesota,
Respondent,

vs.

James Dietz Lauck,
Appellant.

Filed July 30, 2018
Affirmed
Rodenberg, Judge

Washington County District Court
File No. 82-CR-16-3584

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

Pete Orput, Washington County Attorney, Nicholas A. Hydukovich, Assistant County Attorney, Stillwater, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Richard Schmitz, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Florey, Presiding Judge; Peterson, Judge; and Rodenberg, Judge.

U N P U B L I S H E D O P I N I O N

RODENBERG, Judge

Appellant James Dietz Luack challenges his sentence for two counts of second-degree assault with a deadly weapon. He argues that the district court abused its discretion

by failing to adequately consider his status as an armed-services veteran and by not fully considering the treatment options available to him if he were put on probation. We affirm.

FACTS

Between 6:00 and 7:00 a.m. on August 26, 2016, appellant arrived at his ex-girlfriend's residence to claim the belongings he had left there. Appellant entered the house, approached his ex-girlfriend, and held a handgun to her head. He demanded that she go downstairs to the basement, from which he demanded that his ex-girlfriend's mother join them. She did. At one point, appellant put the handgun muzzle in his ex-girlfriend's mouth. He counted out six bullets, indicating for whom each was intended, and indicating the last one was for himself. Appellant told his ex-girlfriend that he wanted to feel her "blood all over him," and he threatened the mother that she would never see her grandchild. Appellant also cut off some of his ex-girlfriend's hair and made her cut more herself. When appellant eventually went upstairs, the two women broke a basement window, climbed outside, and ran to the safety of a neighbor's house. Appellant was arrested later that day.

The state charged appellant with two counts of second-degree assault with a dangerous weapon, one count of kidnaping with a firearm, and two counts of terroristic threats with a firearm. Appellant pleaded guilty to two counts of second-degree assault with a dangerous weapon, and the state dismissed the remaining charges.

Appellant moved for a downward dispositional departure sentence, arguing that he is amenable to probation and that he suffers from diminished mental capacity because of post-traumatic stress disorder (PTSD). He submitted 14 character-reference letters and a

certificate commemorating his completion of the PTSD program at a medical center in Wisconsin.

At sentencing, the district court considered appellant's motion and attached documents, the presentence investigation (PSI) report, and a psychologist's report of a mental-health examination of appellant. Appellant is a military veteran with no criminal history. He exhibits signs of PTSD, borderline personality disorder, unspecified depressive disorder, and polysubstance use disorder. The district court recognized its obligation to consider appellant's amenability to probation and supervision, and appellant's remorse, among other things. The district court expressly acknowledged appellant's military service and his PTSD diagnosis "when crafting an appropriate sentence." The district court imposed concurrent 36-month executed sentences for the two counts of second-degree assault.

This appeal followed.

D E C I S I O N

A district court has great discretion in sentencing. *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014). The Minnesota Sentencing Guidelines provide a prescribed sentencing range that is "presumed to be appropriate." Minn. Sent. Guidelines 2.D.1. (2016). When the district court departs from a presumptive sentence, it must place on the record at the time of sentencing the reasons for a sentencing departure. *State v. Geller*, 665 N.W.2d 514, 517 (Minn. 2003).

"[W]e will not ordinarily interfere with a sentence falling within the presumptive sentence range, either dispositionally or durationally, even if there are grounds that would

justify departure." *State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006) (quotation and alteration omitted). We "may not interfere with the sentencing court's exercise of discretion, as long as the record shows the sentencing court carefully evaluated all the testimony and information presented before making a determination." *State v. Van Ruler*, 378 N.W.2d 77, 80-81 (Minn. App. 1985). Only in rare cases does a refusal to depart from the guidelines warrant reversal. *Bertsch*, 707 N.W.2d at 668.

Appellant argues that the district court erred when it denied his motion for a downward dispositional departure from the sentencing guidelines because he is particularly amenable to probation. Appellant points to his young age, his lack of a prior criminal record, his remorse, his cooperation with authorities, and the overwhelming community support available to him as supporting a departure.

A downward durational or dispositional departure is permitted when there "exist identifiable, substantial, and compelling circumstances that distinguish a case and overcome the presumption in favor of the guidelines sentence." *Soto*, 855 N.W.2d at 308 (quotation omitted). Minnesota law expressly allows district courts sentencing a defendant to consider whether he is "currently serving in the military or is a veteran and has been diagnosed as having a mental illness." Minn Stat. § 609.115, subd. 10 (2016). In considering this factor, the district court may order a presentence evaluator to consult with government agencies or personnel to provide "the court with information regarding treatment options available to the defendant." *Id.* The district court also may, in such a case, "consider the treatment recommendations of any diagnosing or treating mental health professionals together with the treatment options available to the defendant." *Id.* The

statute indicates *that* the district court may consider that the offender is a veteran, but the legislature wisely left to the district court's discretion *how* that consideration comes into play in each individual case.

Here, before the district court imposed a guidelines sentence, it expressly considered appellant's diagnoses of PTSD, borderline personality disorder, depression, and substance abuse. It took into account appellant's status as a veteran, and considered the requirements of section 609.115, subdivision 10. The district court reviewed the PSI and recommendation of the psychologist, who concluded:

> [A]lthough Mr. Luack is diagnosed with a mental illness, the symptoms did not prevent him from appreciating the nature or wrongfulness of his conduct at the time of the alleged offense. . . . Mr. Luack was *not* laboring under such a defect of reason that he did not know the nature of the acts constituting the offense with which he is charged.

The district court also considered the *Trog* factors, which require the court to consider the defendant's "particular amenability to individualized treatment in a probationary setting." *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982) (listing age, prior record, remorse, cooperation, attitude in court, and support of friends and/or family as factors relevant to determining whether defendant is particularly amenable to probation). In imposing the sentence, the district court explained:

> I am looking at just a horrific crime. I am looking at the effect that it had on the victims and I appreciate [their] courage in coming to court and reading [their] statements.
>
> On the other side, I am looking at a recommendation, or a series of recommendations from a probation officer that are very unusual in a case like this that specifically state things that I am supposed to take into account. They include the absence of any significant prior record. The amenability to supervision.

> The remorsefulness, and other things that are not only quoted, but described in some detail in that report. So I am asked to depart because of that. I also have read this morning a presentence investigation from a dispositional . . . adviser . . . that is consistent with the probation department's recommendations.

Moreover, the district court judge explained that he, like appellant, had served in the military, has "a high respect" for it, and applauded appellant's efforts to improve so far. Considering all of these things, the district court declined to depart from the guidelines.

The district court acted within its discretion. We agree with the district court's observation at sentencing that this was "a horrific crime." It had a substantial and permanent effect on the victims. The district court considered all of the necessary and relevant factors for departing from a guidelines sentence and made a detailed record of its analysis. The district court thoughtfully and carefully considered all of the relevant legal factors in a very thorough record. *See Van Ruler*, 378 N.W.2d at 80. We see no abuse of the district court's discretion.

Affirmed.