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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-277**

Douglas Lowell Dressen, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed October 24, 2011
Reversed and remanded
Stoneburner, Judge**

Stearns County District Court
File Nos. 73K5042909; 73K4041234

David W. Merchant, Chief Appellate Public Defender, Richard Schmitz, Assistant Public Defender, St. Paul, Minnesota (for Appellant)

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

Janelle P. Kendall, Stearns County Attorney, Michael J. Lieberg, Assistant County Attorney, St. Cloud, Minnesota (for respondent)

Considered and decided by Stoneburner, Presiding Judge; Kalitowski, Judge; and Peterson, Judge.

UNPUBLISHED OPINION

STONEBURNER, Judge

Appellant challenges his sentence, arguing that the district court erred by failing to impose consecutive sentences in the order in which the offenses occurred as required by the sentencing guidelines. We agree, and therefore reverse the sentences imposed and remand for resentencing in accord with the sentencing guidelines.

FACTS

In March 2004, appellant Douglas Lowell Dressen, a felon ineligible to possess a firearm, stole a pickup truck from an automobile dealership in St. Cloud. Police officers, who had been tipped off about the theft, attempted to stop Dressen by pursuing the pickup in two squad cars with lights and sirens activated. Dressen did not stop. The pursuit continued for 22 miles and 25 minutes. Two or three minutes into the pursuit, Dressen fired 11 to 12 shots at the squad cars through the cab window of the pickup. Dressen eventually stopped. He was arrested and subsequently charged with two counts of first-degree assault against a peace officer, felon in possession of a firearm, fleeing a peace officer in a motor vehicle, and felony receiving stolen property.

Dressen pleaded guilty to all five counts under a plea agreement in which the parties agreed that his total sentence would be 198 months, consisting of 105 months for the first count of first-degree assault against a peace officer; a consecutive 81 months for the second count of first-degree assault against a peace officer; a consecutive year and a day for fleeing a peace officer in a motor vehicle; a concurrent 60 months for felon in

possession of a firearm; and a concurrent 23 months for felony receiving stolen property.¹ Dressen was sentenced pursuant to the plea agreement in October 2004.

In July 2010, Dressen moved for a correction of sentence, arguing that the district court erred by failing to impose the consecutive sentences in the order in which they occurred, which, Dressen asserted, would have resulted in a sentence of 174 months. The state opposed the motion, arguing that there was no error in sentencing because fleeing a peace officer occurred both before and after the assault offenses and Dressen received the sentence he bargained for, which was substantially less than the presumptive-guidelines sentence that could have been imposed. The district court agreed that there was no sentencing error because the fleeing offense continued after the assaults and denied Dressen's motion. This appeal followed.

D E C I S I O N

This court reviews the district court's sentencing decision for an abuse of discretion. *State v. Franklin*, 604 N.W.2d 79, 82 (Minn. 2000). But "[s]tatutory construction and interpretation of the sentencing guidelines are subject to de novo review." *State v. Johnson*, 770 N.W.2d 564, 565 (Minn. App. 2009). "A criminal sentence that is contrary to the requirements of the applicable sentencing statute is unauthorized by law." *State v. Cook*, 617 N.W.2d 417, 419 (Minn. App. 2000).

The Minnesota Sentencing Guidelines require that "[w]hen consecutive sentences are imposed, offenses are sentenced in the order in which they occurred." Minn. Sent.

¹ The plea agreement also resolved a separately filed charge of criminal damage to property, for which Dressen was sentenced to a concurrent 21 months.

Guidelines II.F (2004). On appeal, the state concedes that, because the offense of fleeing a peace officer in a motor vehicle occurred prior to the assaults, the district court erred by failing to impose the consecutive sentences in this case in the order in which the offenses occurred. We agree.

The state argues that the error alleged by Dressen is harmless because he received the sentence he agreed to in the plea negotiation and because, if the district court had imposed all of the sentences in the order in which the offenses occurred and had not departed downward from the presumptive sentences for assault in the first degree, Dressen's sentence would have been substantially longer.² But the record reflects that the 198-month total sentence the parties agreed on was presented to the district court, in Dressen's presence, as the presumptive guideline sentence. In explaining the plea agreement to the district court, the prosecutor stated:

What is proposed today. . . pursuant to joint agreement is the defendant would plead guilty to all five counts He would further agree and the State would be pursuing consecutive sentences on Counts I and II. Those are both Assault in the First Degree Counts. And a consecutive sentence with regard to Count IV, that's the Fleeing count. The overriding number pursuant to the Guidelines, based upon a criminal history score of two coming into that matter, would be a 198-month commit.

² The state notes that the offenses of felon in possession and receiving stolen property occurred prior to the fleeing and assault offenses which were also sentenced out of chronological order and that the district court departed downward from the presumptive sentences for first-degree assault without making findings to support the departures as required by the sentencing guidelines. *See* Minn. Sentencing Guidelines II.D (2004) ("When departing from the presumptive sentence, a judge must provide written reasons which specify the substantial and compelling nature of the circumstances, and which demonstrate why the sentence selected in the departure is more appropriate, reasonable, or equitable than the presumptive sentence.").

The district court asked Dressen if he heard the plea agreement. He responded, “Yep.”

The district court asked Dressen if he understood the terms of the plea agreement. He responded, “Yeah.” It appears from the record that the parties and the district court were not aware that the negotiated plea involved a downward departure from the sentencing guidelines or that the proposed order of sentencing was improper under the guidelines.

The relief requested by Dressen is a new sentencing hearing. We conclude that the interests of justice are best served by reversing the sentences imposed and remanding this matter to the district court for resentencing in any manner permitted by the guidelines that does not increase the total length of the original sentence imposed. *See State v. Prudhomme*, 303 Minn. 376, 380, 228 N.W.2d 243, 243 (1975) (holding that sentence on remand cannot exceed original sentence).

Reversed and remanded.