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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-395**

State of Minnesota,
Respondent,

vs.

Robin Johnson,
Appellant.

**Filed December 27, 2011
Affirmed
Ross, Judge**

Dakota County District Court
File No. 19HA-CR-10-911

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

James C. Backstrom, Dakota County Attorney, Helen R. Brosnahan, Assistant County Attorney, Hastings, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Sean M. McGuire, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Hudson, Judge; and Worke, Judge.

UNPUBLISHED OPINION

ROSS, Judge

To express his displeasure about the quality of officiating at his sixth-grade son's basketball game, Robin Johnson walked onto the court, yelled at a league commissioner,

and then punched the commissioner in the face so forcefully that he dislocated his jaw, broke his teeth, and felled him, unconscious, in front of all the children and the other parents. Johnson landed his punch immediately after his son, inspired by Johnson's confrontation with the commissioner, hurled a basketball into the back of the commissioner's head. The episode interrupted the traditional postgame good-sportsmanship players' handshake. Johnson appeals from his 72-month prison sentence for first-degree assault. In this appeal, Johnson contends that the district court was required to depart downward from the presumptive 110-month sentence even further than it did and assign him only to a term of probation. The contention is wholly without merit.

D E C I S I O N

Before sentencing Johnson, who had pleaded guilty to first-degree felony assault, the district court learned the details of the attack. Johnson's attack occurred during a tournament organized by the Burnsville Athletic Club in February 2010. Johnson confronted a club official immediately after his son's team lost its game, yelling at him, "You guys are cheaters!" The official took out his cellular telephone and warned that he would contact police unless Johnson left. Johnson knocked the phone from his hand and Johnson's son flung a basketball at the back of the official's head. The official turned away from Johnson to see who had struck him, and when he wasn't looking, Johnson threw a violent punch that knocked him unconscious to the floor. The official was taken to the hospital. He had a dislocated jaw and three fractured molars, two of which had to be surgically rebuilt and the other removed.

The district court also learned about Johnson's long, violent criminal history. Among other offenses, Johnson has been convicted of home-invasion robbery, burglary, armed robbery, and attempted murder. During one of his offenses, Johnson shot a cab driver in the face three times while taking \$5 in cash.

And the district court learned how the attack affected the official. The official lost some of his short-term memory. He underwent surgery. He had a hematoma, and at sentencing a lump still remained on his jaw. He had large clots on his arm where his intravenous medication had been delivered while he was hospitalized. He had been his family's sole wage earner, but he was out of work longer than two months. He quit his volunteer service for the athletic club, ending 17 years of organizing, coaching, and mentoring.

Given Johnson's criminal history and the severity of the assault, his presumptive guidelines sentence was 110 months in prison (approximately the midpoint of the guidelines range of 94 months to 132 months) with a minimum fine of \$9,000. But the district court imposed a sentence that departed downward. It sentenced Johnson only to 72 months in prison. The district court attributed the departure to the fact that Johnson's assault consisted of only one punch and could not fairly be considered in the same category "as if [Johnson] had used a gun or a bat or beaten somebody senseless." But it rejected Johnson's request for probation, observing, "It was a hell of a punch and somebody really got hurt." Explaining further its decision to reject probation, the court added, "The bottom line . . . is that you have a pretty extensive criminal history. There

[are] a lot of crimes of violence in there. You have a violent past and there is a significant concern for public safety.”

We are not persuaded by Johnson’s challenge to the district court’s decision to deny his motion for a downward dispositional departure and to assign him only to probation. We will not reverse a district court’s refusal to impose a downward departure unless the district court has abused its discretion. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). The district court must impose the presumptive sentence unless there are “substantial and compelling circumstances” that warrant a downward departure. *Id.* (quoting Minn. Sent. Guidelines I(4)). We will not upset the district court’s decision not to depart downward except in the rare case, *id.*, and it is not enough for the appellant simply to point out that reasons for a downward departure exist. *State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006).

In *State v. Trog*, the supreme court identified several factors relevant to deciding whether a dispositional departure is justified. 323 N.W.2d 28, 31 (Minn. 1982). But if the district court considers reasons for departure and chooses not to depart, it need not explain itself further. *State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985). Johnson argues that because he raised the issue of a dispositional departure and some mitigating factors exist, the district court was required to discuss all relevant departure factors and its failure to do so indicates that it failed to exercise its discretion. We recently rejected essentially the same argument in *State v. Pegel* on reasoning that applies equally here:

Appellant accurately asserts that the district court did not discuss all of the *Trog* factors before it imposed the presumptive sentence. But there is no requirement that the

district court must do so. Also, the record demonstrates that the district court deliberately considered circumstances for and against departure and exercised its discretion.

795 N.W.2d 251, 254 (Minn. App. 2011) (quotations and citations omitted).

Even if Johnson's argument had merit, it is clear to us that the district court considered the relevant offender-related factors. Its remarks at sentencing reflect that it had contemplated Johnson's psychological and chemical-dependency reports and Johnson's letter and proof that he completed anger-management classes. The sentencing judge spoke at some length, and with apparent empathy, about Johnson's childhood and his claims to have tried to stop taking drugs and committing crimes. It considered his age, his record, his remorse and acceptance of responsibility, and his cooperation and attitude. The factors the court relied on to impose a downward durational departure are largely the same factors that Johnson claims the court did not consider when denying his motion for a downward dispositional departure.

We also reject Johnson's argument that the district court was wrong to conclude that the factors, fairly considered, did not require a dispositional departure. Careful review of the record informs us that this argument simply warrants no further discussion; it is enough for us to state that this is certainly not the "rare case" in which we will reverse the district court's decision not to depart (further) downward.

Affirmed.