**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A12-0628**

State of Minnesota,
Respondent,

vs.

Douglas Lowell Dressen,
Appellant.

**Filed December 10, 2012**
**Affirmed**
**Schellhas, Judge**

Stearns County District Court
File No. 73-K4-04-001234

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)

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

Considered and decided by Ross, Presiding Judge; Peterson, Judge; and Schellhas, Judge.

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

**SCHELLHAS**, Judge

Appellant challenges his 52-month consecutive sentence for first-degree peace-officer assault, arguing that the sentence is erroneous because it is less than the

mandatory minimum 120-month sentence required by Minn. Stat. § 609.221, subd. 2(b) (2002), and that if he is sentenced to the mandatory minimum sentence of 120 months, the length of his sentence will exceed the terms of his plea agreement. We affirm.

## FACTS

Respondent State of Minnesota charged appellant Douglas Dressen in March 2004 with two counts of first-degree peace-officer assault under Minn. Stat. §§ 609.221, subd. 2, .11, subd. 5; motor-vehicle fleeing of a peace officer under Minn. Stat. § 609.487, subd. 3; felonious handgun possession under Minn. Stat. §§ 609.165, subd. 1(b), .11, subd. 5(b); and receiving stolen property under Minn. Stat. §§ 609.53, subd. 1, .52, subd. 3(3)(d)(v) (2002). In October 2004, Dressen pleaded guilty to both peace-officer-assault counts, agreed that he would be sentenced to prison with an aggregate cap of 198 months, and agreed that the state would pursue consecutive sentences. The district court sentenced Dressen consecutively to 105 months for the first count of peace-officer assault and 81 months for the second peace-officer-assault count.

In July 2010, Dressen moved to correct his sentences, arguing that he was "sentenced in the wrong chronological order." The district court denied the motion, and Dressen appealed. This court reversed because "the district court erred by failing to impose the consecutive sentences . . . in the order in which the offenses occurred," and we remanded "for resentencing in any manner permitted by the guidelines that does not increase the total length of the original sentence imposed." *Dressen v. State*, No. A11-277, 2011 WL 5026334, at *1–2 (Minn. App. Oct. 24, 2011) (*Dressen I*).

On remand, the state requested that the district court resentence Dressen consecutively to an aggregate sentence of 198 months, including a 146-month sentence for the first peace-officer-assault count and a consecutive 52-month sentence for the second peace-officer-assault count. The state acknowledged that the 52-month sentence is contrary to the 120-month mandatory minimum sentence under section 609.221, subdivision 1(b), but argued that the sentence is permissible as a "durational departure," based on *State v. Wukawitz*, 662 N.W.2d 517 (Minn. 2003). The district court so sentenced Dressen, noting that the 52-month sentence is a "downward durational departure" and is appropriate for two reasons: (1) the victim of the offense of the second peace-officer-assault count "was behind the first officer and therefore not in as grave danger making this offense less serious," and (2) the departure served the purpose of "enforce[ing] the law of the case as established by the Court of Appeals which has limited the total sentence to the original 198 months that Mr. Dressen was sentenced to in October of 2004."

This appeal follows.

## D E C I S I O N

Dressen asks this court to vacate his 52-month consecutive sentence for first-degree peace-officer assault and to remand for resentencing because his 52-month sentence is less than the 120-month mandatory minimum sentence required by section 609.221, subdivision 2(b). *See* Minn. Stat. § 609.221, subd. 2(b) (stating that a person convicted of first-degree peace-officer assault "*shall* be committed to the commissioner of corrections for not less than ten years" (emphasis added)); *State v. Bluhm*, 676 N.W.2d

649, 652−53 (Minn. 2004) (concluding that statute requires mandatory minimum six-month jail term because, among other reasons, statute uses term "shall"). Although Dressen's brief leaves this court to engage in some speculation, Dressen seems to believe that with an agreed-upon cap of 198 months, he cannot lawfully be sentenced consecutively because of the statutory mandatory minimum sentence of 120 months. Dressen seems to argue that this court must reverse and remand for concurrent resentencing of both counts of first-degree peace-officer assault.

The state argues that this court should affirm the district court's consecutive 52-month peace-officer-assault sentence even though the sentence conflicts with section 609.221, subdivision 2(b). Relying on *Wukawitz*, 662 N.W.2d 517, the state argues that, "under the unique facts of this case," we should conclude that "the district court had the limited discretion to depart from the mandatory minimum sentence to conform to the parties' plea agreement." The state argues that this court should apply the *Wukawitz* approach to "honor the bargain both sides reached" and to prevent Dressen from "receiving a windfall" by "manipulate[ing] the process" to obtain "the benefit of the plea agreement . . . without the consequence of the agreed upon 198 months in prison." We agree.

In *Wukawitz*, the supreme court addressed a 140-month sentence that was based on a plea agreement, which provided that the defendant would serve 93 1/3 months in prison and 46 2/3 months on supervised release. 662 N.W.2d at 520. The defendant's original sentence did not include a conditional-release term even though Minn. Stat. § 609.109, subd. 7 (1998), mandated that a district court impose on persons convicted of violating

Minn. Stat. § 609.342 (1998) "conditional release for five years" to begin "after the person has completed the sentence imposed." *Id.* at 522. The district court corrected Wukawitz's sentence to include the erroneously omitted five-year conditional-release term but erred by ordering that the conditional release would begin running *during*, rather than after, Wukawitz's incarceration period, which violated the conditional-release statute. *Id.* at 521. Wukawitz appealed, and this court corrected the district court's error by ordering that the conditional-release term would begin running *after* the end of Wukawitz's incarceration period. *Id.* To accomplish that result without exceeding the sentencing cap that the parties included in their plea agreement, this court reduced the mandatory conditional-release period by 13 1/3 months. *Id.* The supreme court affirmed, concluding that the plea agreement would be violated both by (1) adding a conditional-release term that caused the aggregate sentence to "exceed the [aggregate sentence] set forth in the plea agreement" and (2) reducing the aggregate incarceration period below the aggregate incarceration period agreed to in the plea agreement because doing so would be contrary to "what the parties to the plea bargain reasonably understood to be the terms of the agreement." *Id.* at 526–27 (quotation omitted).

Like the supreme court in *Wukawitz*, this court must determine how to resolve a conflict created by a plea agreement that contemplates sentencing that cannot comply with a sentencing statute. As in *Wukawitz*, compliance with the sentencing statute would violate the terms of the plea agreement. If Dressen is sentenced consecutively to the mandatory minimum, he will receive an aggregate sentence of 240 months. If he is

sentenced concurrently, the state does not receive of the benefit of the agreed-upon consecutive sentences.

In *Wukawitz*, the supreme court remanded to the district court to give Wukawitz an opportunity to withdraw his plea, if plea withdrawal did not prejudice the state. 662 N.W.2d at 528–29. But, here, at Dressen's resentencing hearing his counsel stated to the court:

> Mr. Dressen would object to any attempt by the Court or the State to force him to withdraw his guilty plea. We are not requesting plea withdrawal today.
>
> . . . .
>
> And I just wanna reiterate, if, if—certainly would object . . . if the Court is gonna try to compel Mr. Dressen to withdraw his pleas . . . .

And, on appeal, Dressen does not request an opportunity to withdraw his guilty plea. Therefore, based on *Wukawitz*, we conclude that the district court did not abuse its discretion by imposing the 52-month consecutive sentence in order to avoid violating the terms of the plea agreement.

We note with disapproval Dressen's apparent attempt to avoid the consequences of his plea agreement simply because its terms required the district court to impose a sentence that conflicts with a sentencing statute. *See State v. Rhodes*, 675 N.W.2d 323, 328 (Minn. 2004) ("The tender of a guilty plea, once accepted by a court, is and must be a most solemn commitment." (quotation omitted)); *State v. Taylor*, 288 Minn. 37, 43 n.8, 178 N.W.2d 892, 895 n.8 (1970) (noting that, when defendant received favorable plea agreement, "the integrity of a guilty plea as a solemn commitment would be tarnished if

an accused were allowed to play games with the judicial process" (quotations omitted)); *cf. Bangert v. State*, 282 N.W.2d 540, 547 (Minn. 1979) (doubting that "fairness and public policy entitle a defendant to the benefit of a mistake by the sentencing judge"). A plea agreement is "a bargained-for understanding between the government and criminal defendants." *State v. Meredyk*, 754 N.W.2d 596, 603 (Minn. App. 2008) (quotation omitted); *see Wukawitz*, 662 N.W.2d at 527 (noting that court determines whether plea agreement has been violated based on "what the parties to the plea bargain reasonably understood to be the terms of the agreement" (quotation omitted)). Applying *Wukawitz* to this case ensures that Dressen receives exactly what he and the state bargained for. *See Carey v. State*, 765 N.W.2d 396, 401 (Minn. App. 2009) (rejecting defendant's argument that plea was involuntary, reasoning in part that defendant "received exactly what he bargained for").

**Affirmed.**