STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0332

State of Minnesota,
Respondent,

vs.

Brett Allen Goulet,
Appellant.

Filed April 29, 2008
Affirmed
Poritsky, Judge[*]

Polk County District Court
File No. K3-06-375

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

Gregory A. Widseth, Polk County Attorney, 223 East Seventh Street, Suite 101, Crookston, MN 56716 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Philip Marron, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104

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

[*] Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

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

PORITSKY, Judge

Appellant challenges the denial of his motion for a downward dispositional departure on his sentence, arguing: (1) that the district court erred by failing to make any findings regarding the reason for denial; and (2) that the district court erred by concluding that there were no compelling circumstances warranting departure. We affirm.

FACTS

On November 11, 2005, appellant Brett Goulet got into a loud argument with Julia Smith, his live-in girlfriend. After Smith slapped him, Goulet decided to leave for the night, and he was in the process of loading up his car when two police officers arrived, responding to a reported domestic assault. Officer Arnold Andring noticed a gun case on the sidewalk and found a .30 caliber rifle and ammunition inside the case. Goulet stated that it was his grandfather's rifle, which Smith had borrowed to go hunting; this was consistent with Smith's later statements to officer Andring.

Goulet's grandfather confirmed that the rifle was indeed his. But he also told officer Andring that it was Goulet, not Smith, who had picked up the rifle to go deer hunting. Goulet's grandfather stated that he was unaware his grandson was on probation and "never would have given . . . Goulet the rifle had he known that." And although Smith had told officer Andring that Goulet did not hunt, Minnesota Department of Natural Resources records showed that Goulet had purchased a deer-hunting license on November 7, 2005.

Because Goulet has an extensive criminal and juvenile record,[1] including a number of "crime[s] of violence" within the meaning of Minn. Stat. § 624.712, subd. 5 (2004), he was charged with unlawful possession of a firearm in violation of Minn. Stat. § 624.713, subds. 1(b), 2(b) (2004) (making it unlawful for a person convicted or adjudicated delinquent for committing "crime of violence" to possess firearms). Although this offense carries a mandatory-minimum sentence of five years, Minn. Stat. § 609.11, subd. 5(b) (2004), Goulet's plea agreement permitted him to enter an *Alford* plea and argue for a downward dispositional departure, as allowed by Minn. Stat. § 609.11, subd. 8(a) (2004). After hearing argument from both sides, the district court imposed a five-year sentence but made no findings on the record. This appeal followed.

D E C I S I O N

I.

Goulet first argues that the district court erred when it failed to make findings of fact on the record to justify its decision not to depart downward. He cites Minn. Stat. § 244.10, subd. 1 (2004) and Minn. R. Crim. P. 27.03, subd. 1(F) in support of his position. The statute requires the court, at the conclusion of the sentencing hearing, to "issue written findings of fact and conclusions of law regarding the issues submitted by the parties, and . . . enter an appropriate order." Minn. Stat. § 244.10, subd. 1. Similarly, the rule requires the court to make findings of fact, conclusions of law, and an

[1] While a juvenile, Goulet was adjudicated delinquent for second-degree assault and possessing a dangerous weapon on school property. As an adult, he was convicted of first-degree criminal damage to property, gross-misdemeanor theft, fifth-degree controlled substance, and two counts of felony theft of motor vehicle.

appropriate order on the issues submitted by the parties, but allows the court either to state them on the record or to make them in writing within 20 days after the conclusion of the sentencing hearing. Minn. R. Crim. P. 27.03, subd 1(F). Goulet asks that this court remand the matter to the district court to make the appropriate findings, conclusions, and order.

We find this argument unpersuasive. Initially, we note that neither side presented any evidence at the sentencing hearing, so we are not sure what factual issues there were to resolve or what legal conclusions there were to draw. Goulet did plead guilty, and, on the basis of the plea, the district court found him guilty. The mandatory minimum sentence for the offense is a commitment for five years, and the court imposed it. In light of the fact that no evidence was presented at the sentencing hearing and that the mandatory minimum sentence was five years, the court's finding of guilty and imposition of the mandatory minimum sentence were sufficient findings of fact, conclusions of law and order, as required by both the statute and the rule upon which Goulet relies.

Goulet cites *State v. Austin*, 295 N.W.2d 246 (Minn. 1980), arguing that remand is necessary to ensure that the final disposition of his case is legitimate and to enable proper appellate review. But Goulet's reliance on *Austin* is unpersuasive. Sentencing for an offense is an entirely different matter from finding a probation violation. When an individual pleads guilty to, or is found guilty of, an offense, the appellate court can determine the individual's misconduct by looking at the complaint and the statute that was violated. Indeed, there must have been a violation of a statute in the first place. But a probation violation may follow from conduct that does not violate a statute. In fact, it is

usual for the sentencing court to impose conditions of probation that do not involve statutory violations, but are appropriate to the particular offender, such as meeting regularly with a probation officer, completing a treatment program, refraining from alcohol or drugs, and so forth. For the appellate court to meaningfully review a case of a probation violation, it is necessary for the record to identify the particular condition violated by the offender and to contain a finding that the violation was intentional or inexcusable, both of which were articulated by the court in *Austin.* 295 N.W.2d at 250. And when the court imposes a disposition for a probation violation, the sentencing guidelines offer only general principles, as opposed to the operation of the guidelines at sentencing. *Compare* Minn. Sent. Guidelines III.B (probation violation) *with* Minn. Sent. Guidelines IV, IV (sentencing). For that reason, *Austin* requires the court to make a finding that the need for confinement outweighs the policies favoring probation. 295 N.W.2d at 250.

It seems to us that Goulet is really arguing that the district court should have given its *reasons* for declining to depart downward. Such an argument, if made, would be equally unpersuasive. Where the legislature has provided a minimum sentence of a year and a day or more, the presumptive sentence is commitment to the commissioner of corrections. Minn. Sent. Guidelines II.E. The court may depart downward from a mandatory sentence, but in such a case, "the judge must provide written reasons which specify the substantial and compelling nature of the circumstances." *Id.*; *see also State v. Geller*, 665 N.W.2d 514, 516 (Minn. 2003) (citing Minn. R. Crim. P. 27.03) (stating that if the district court decides to depart, it must explain its reasons on the record). If, on the

other hand, the court "considers reasons for departure but elects to impose the presumptive sentence," no explanation is necessary. *State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985). Consequently, we conclude that because no new evidence was presented at the sentencing hearing, the district court was not required to make additional findings of fact or conclusions of law before imposing the statutory minimum sentence.

II.

Goulet next argues that the district court erred by not departing downward. The court may depart downward from a mandatory minimum in an individual case, but only if the court "finds substantial and compelling reasons to do so." Minn. Stat. § 609.11, subd. 8(a) (2004). Substantial and compelling circumstances are "those circumstances that make the facts of a particular case different from a typical case," *State v. Peake*, 366 N.W.2d 299, 301 (Minn. 1985), and their existence is a threshold issue for departure, *State v. Curtiss*, 353 N.W.2d 262, 263 (Minn. App. 1984). A finding of such circumstances is required before the district court may depart from the mandatory minimum sentence. *State v. Shattuck*, 704 N.W.2d 131, 141 (Minn. 2005). But even if the individual case provides grounds for departure, the district court is not required to actually depart. *State v. Olson*, 459 N.W.2d 711, 716 (Minn. App. 1990), *review denied* (Minn. Oct. 25, 1990). Rather, the existence of compelling circumstances provides only the foundation upon which the district court may exercise its broad discretion. *Curtiss*, 353 N.W.2d at 263.

This court does not ordinarily interfere with the district court's discretion to decline a request to depart from the presumptive sentence. *Olson*, 459 N.W.2d at 716.

Compelling reasons for departure may be counterbalanced by equally compelling reasons against it. *Id.* Implicit in this deference, however, is the assumption that the district court in fact "exercised its broad discretion, comparing reasons for and against departure." *Curtiss*, 353 N.W.2d at 263. When deciding whether a downward dispositional departure is appropriate, the defendant's amenability to probation is the "major factor to consider." *Van Ruler*, 378 N.W.2d at 80. Here, the district court could easily have concluded that Goulet was not amenable to probation. The presentence investigation report (PSI) bluntly states that "Goulet is at high risk to re-offend": he has been under court supervision for the past seven years and "has violated the terms of [his] probation multiple times." In fact, Goulet was already on probation for three other felonies when he committed the offense in this case. (We note that at the sentencing hearing, Goulet did not find any errors or omissions in the PSI.)

Goulet claims that he is amenable to probation. The district court may also "focus on the defendant as an individual and try to determine whether the presumptive sentence would be best for him and for society," taking into account factors including the defendant's age, prior record, remorse, cooperation, attitude in court, and the support of friends or family. *Id.* But here, Goulet displays no remorse; according to the PSI he "does not see his behavior as wrong or even see the [firearm-possession charge] as valid," describing the charge as "bullsh*t."

Goulet further argues as a ground for departure that "[his] offense was atypical." Indeed, the district court should also consider "whether the defendant's conduct was significantly more or less serious than that typically involved in the commission of the

crime in question." *State v. Sanchez-Sanchez*, 654 N.W.2d 690, 693-94 (Minn. App. 2002) (quotation omitted). Goulet suggests that "[a]side from the simple possession of the firearm, there was no other crime or illegal use associated with the firearm," which "was only illegal because [he] was prohibited from possessing a firearm as a result of his previous convictions." But there did not need to be any other crime or illegal use associated with the firearm beyond "simple possession" because simple possession was itself the crime. Minn. Stat. § 624.713, subd. 1(b) (2004). Moreover, Goulet was not prohibited from possessing firearms merely because of his prior convictions; he was prohibited from possessing firearms because of the violent nature of the offenses. *See State v. Weber*, 741 N.W.2d 402, 403 (Minn. App. 2007) (discussing "the legislature's obvious desire to restrict firearms from those convicted of violent crimes").

Goulet offers his National Guard service, during which he regularly carried a loaded M-16, as a mitigating factor. He states that he "had been in the military service and successfully completed that." But we do not read the record to show that his military service was "successfully completed". According to the PSI, Goulet received a general—rather than honorable—discharge. Although the "stigma imposed by this form of discharge . . . is significantly less than that associated with a dishonorable discharge," *United States v. Rice*, 109 F.3d 151, 156 (3d Cir. 1997), it does suggest that Goulet was a less-than-model soldier.[2] But whether Goulet could carry a firearm under the auspices of

[2] A general discharge is not given to soldiers who are discharged for completing their service obligations with the National Guard. Army Reg. 135-178, § 2-9.b(2) (2007). Rather, it is an administrative separation for soldiers "who do not conform to required standards of conduct and performance . . . [or] demonstrate potential for further military

federal law while on active duty is irrelevant to whether he was eligible to possess one in his civilian life. Under Federal law, persons who might otherwise be prohibited from possessing firearms may carry firearms as part of their military service. *Cf.* U.S. Const. art. VI (Supremacy Clause); *United States v. Baker*, 438 F.3d 749, 758 (7th Cir. 2006) (observing that 18 U.S.C. § 925(a)(1) effectively permits "members of the armed services and law enforcement agencies [i.e., *not* civilians] who might otherwise be prohibited from carrying firearms to do so in connection with their public responsibilities" (alteration in original)). In any event, that Goulet may have handled a firearm while in the service, under military command and subject to military discipline, does not mitigate the offense of illegally possessing a firearm in the relative freedom of civilian life.

In short, the district court was well within its broad discretion when it declined to find compelling circumstances warranting a downward dispositional departure.

Affirmed.

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service." Army Reg. 135-178, § 1-1.b(3) (2007); *see Rice*, 109 F.3d at 156 (discussing reasons for general discharge). Although the record does not reflect the specific reason for Goulet's separation, a general discharge from the National Guard signifies that a soldier's service "has been honest and faithful," but that "significant negative aspects of the [s]oldier's conduct or performance of duty outweigh positive aspects of the [s]oldier's military record." Army Reg. 135-178, § 2-9.b (2007).