STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0808

State of Minnesota,
Respondent,

vs.

Dwayne Alan Case,
Appellant.

Filed March 13, 2017
Affirmed
Ross, Judge

Renville County District Court
File No. 65-CR-15-283

Lori Swanson, Attorney General, Michael Everson, Assistant Attorney General, St. Paul, Minnesota; and

David J. Torgelson, Renville County Attorney, Olivia, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Veronica May Surges, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

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

ROSS, Judge

Appellant Dwayne Case shot and killed his girlfriend with a compound hunting bow. He then attempted to end his life by shooting himself in the head with a rifle. Case

survived and eventually pleaded guilty to second-degree intentional murder. The parties' plea agreement contemplated either party arguing for any sentence within the presumptive sentencing range under the sentencing guidelines. The district court imposed a top-of-the-range sentence of 415 months in prison. Case appeals, arguing that the sentence exaggerates his criminality. Because we conclude that the sentence does not exaggerate Case's criminality and because no compelling circumstance requires reversing the presumptive sentence, we affirm.

FACTS

Dwayne Case ignored a district court order prohibiting him from having any contact with his girlfriend Elizabeth Gregg and went camping with her at a remote Renville County campsite in early June 2015. Case shot and killed Gregg with an arrow from his compound bow. He claimed that he remembered little of what happened. According to Case, Gregg woke him while it was still dark, she was angry, and she wanted "a ride home or something like that." He said that he next remembered seeing that Gregg had been impaled by an arrow and that he believed he had shot and killed her. He said he then remembered walking to his mother's house to retrieve a gun so he could shoot himself.

Case's coworker arrived at the campsite shortly after 8:00 a.m. to check on Case, who had not arrived to work and who was not answering his phone. The coworker saw that Case had suffered a gunshot wound to the face, and he immediately went for help.

Renville County Deputy Zachary Pierce arrived and found Case inside his tent with a facial gunshot wound. He was still holding a rifle, which the deputy took from him. Case's injury prevented him from speaking, but he gestured with his hand, suggesting that

the deputy should shoot him. Deputies helped remove Case from the tent, and they saw Gregg's partially undressed dead body under a blanket.

The medical examiner removed a broad-tip arrow from Gregg's body. The arrow had not struck any major artery, but it did strike her liver and stomach. The examiner believed that Gregg survived for "many minutes, possibly hours" with her injury, and that her death was painful. The examiner also concluded that cuts in Gregg's jacket and shirt indicated that she was fully clothed when the arrow struck her. DNA testing of a vaginal swab revealed Case's semen.

Case eventually spoke to investigators and told them that he did not remember hurting himself, he did not think he hurt Gregg, and he hoped he had not hurt her. He continued to claim he did not know what had happened the moment Gregg was shot. The state charged Case with one count of second-degree intentional murder under Minnesota Statutes section 609.19, subdivision 1(1) (2014).

The state and Case ultimately reached a plea agreement in which Case would enter a *Norgaard* plea (*see State ex rel. Norgaard v. Tahash*, 261 Minn. 106, 113–14, 110 N.W.2d 867, 872 (1961)) to the sole count of second-degree murder and would face a prison sentence anywhere in the presumptive guidelines range of 295 to 415 months, at the district court's discretion. The parties supported the plea with the probable-cause portion of the state's criminal complaint and 62 exhibits.

The parties submitted sentencing memoranda and appeared for sentencing in February 2016. The district court received a victim-impact statement, testimony from the medical examiner, the parties' arguments, and an oral statement from Case. The state asked

the district court to sentence Case to 415 months' imprisonment, which is the top of the guidelines range. The prosecutor emphasized several potentially aggravating factors that could have supported an even longer sentence based on a sentencing departure, which the state might have pursued if the parties had not agreed to a presumptive sentence. Case asked for a bottom-of-the-range prison sentence of 295 months, arguing that he was genuinely remorseful and would pose only a minimal risk to reoffend at the time of his eventual release. The district court sentenced Case to 415 months in prison without stating its reasons for the sentence.

Case appeals his sentence.

D E C I S I O N

Case argues that the 415-month prison sentence exaggerates the extent of his criminality because the district court ignored his mitigating remorse. He asks us to reverse his sentence. We decline the request.

We review a district court's sentencing decision for an abuse of discretion. *State v. Soto*, 855 N.W.2d 303, 307–08 (Minn. 2014). Soon after the sentencing guidelines became effective, the supreme court predicted that a sentence within the presumptive guidelines range would be reversed only in "rare" cases. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). This is consistent with the premise that a sentence within the presumptive range is appropriate. *See* Minn. Sent. Guidelines 2.D.1 (2014). In fact, the district court *must* impose a sentence within the presumptive range unless "substantial and compelling circumstances" warrant a departure. *Id.*; *State v. Jackson*, 749 N.W.2d 353, 360 (Minn. 2008). Case's criminal-history score and the guideline severity level of the second-degree murder crime

to which he pleaded guilty combine to lead to a presumptive sentence range between 295 and 415 months in prison. Minn. Sent. Guidelines 4.A (2014). Case concedes that his 415-month sentence falls within the presumptive range.

Despite the generally valid nature of a sentence within the presumptive range, a presumptive sentence is not unassailable; the supreme court has cautioned that the district court's broad sentencing discretion "is not a limitless grant of power." *State v. Warren*, 592 N.W.2d 440, 451 (Minn. 1999). It has recognized that an appellate court will exercise its authority to "modify a sentence that is within the presumptive sentence range" when "compelling circumstances" warrant it. *State v. Freyer*, 328 N.W.2d 140, 142 (Minn. 1982). But we are certain those circumstances do not present themselves here.

Case argues that compelling circumstances require us to reverse his sentence within the presumptive range. Relying on *State v. Hough*, 585 N.W.2d 393, 397 (Minn. 1998), Case maintains that "if the circumstances of the offense demonstrate a mitigated offense severity, then the district court can be seen as having abused its discretion in unfairly exaggerating the criminality of the defendant's conduct." *Hough* does not support Case's position. *Hough* addressed (and rejected) the appellant's argument that the district court's permissive imposition of consecutive sentences exaggerated the criminality of his criminal conduct. *Id*. That case, which involved upward durational departures in multiple consecutive sentences, says nothing to call into question the propriety of a single presumptive sentence based on alleged "mitigated offense severity."

Case also points to *State v. Solberg*, an opinion in which the supreme court stated "that a single mitigating factor, standing alone, may justify a downward durational

departure." 882 N.W.2d 618, 624–25 (Minn. 2016). But even a most liberal reading of *Solberg* contradicts Case's position on appeal. Case did not request a downward departure, and nothing in *Solberg* suggests that when factors exist that *might* support a downward departure but no departure is sought, the district court is prohibited from imposing a sentence at the high end of the presumptive range. *Solberg* is unhelpful to Case for another reason. After Solberg entered a *Norgaard* plea and the district court imposed a downward durational departure based on Solberg's remorse, the supreme court held that Solberg's remorse did *not* justify a departure, reasoning that "remorse is not relevant to a downward durational departure unless the remorse somehow diminishes the seriousness of the offense." *Id.* at 627. So Case's insistence that he "demonstrated a great deal of remorse by shooting himself" and thereby exceeded the remorse that Solberg exhibited misses *Solberg*'s point. *Solberg* teaches that, because durational departures focus on the offense rather than the offender, "a defendant's remorse generally does not bear on a decision to reduce the length of a sentence." *Id.* at 625. Case's argument suggests only that his remorse was sincere, not that his remorse mitigates his criminal conduct. And regardless of how sincere his remorse was, because he does not explain how his remorse mitigated his criminality, he does not show that his sentence exaggerates his criminality.

Case's attempted suicide and his later professed accountability for his actions do not in any way mitigate the conduct of the actual murder, which, again, involved him shooting Gregg with a hunting arrow and then allowing her to endure what was likely a lengthy, painful death. Case showed no remorse in his actions and omissions that caused and perpetuated Gregg's suffering.

The district court imposed a sentence within the presumptive range, honoring the parties' plea agreement. That sentence does not exaggerate Case's criminal conduct. No compelling circumstance for reversal exists.

Affirmed.