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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1010**

State of Minnesota,
Respondent,

vs.

Antonyo White,
Appellant.

**Filed June 19, 2017
Affirmed
Reyes, Judge**

Olmsted County District Court
File No. 55-CR-15-5328

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

Mark A. Ostrem, Olmsted County Attorney, James P. Spencer, Assistant County Attorney,
Rochester, Minnesota (for respondent)

Bradford Colbert, Saint Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Hooten, Judge; and Reyes,
Judge.

UNPUBLISHED OPINION

REYES, Judge

Appellant challenges his 93-month sentence, arguing that the district court abused its discretion by implicitly relying on improper factors when it imposed a sentence at the top of the presumptive sentencing range. We affirm.

FACTS

On July 22, 2015, while at his house, appellant Antonyo White and three others devised a plan to commit a robbery. The other individuals were W.A. and D.A., appellant's brothers, and V.K., whom appellant met that day. Appellant suggested the victim of the robbery and noted that the victim was an easy target. The plan was for V.K. to commit the robbery because the victim did not know V.K.

Appellant, W.A., and W.A.'s girlfriend led the way to the victim's house because appellant knew its location. D.A., D.A.'s girlfriend, and V.K. followed in a separate vehicle. Upon arrival, V.K. exited the other vehicle carrying a gun. Appellant, W.A., and W.A.'s girlfriend drove away and were not present during the robbery. When the group reconvened at appellant's house, appellant learned that V.K. shot the victim in the knee during the offense.

Respondent State of Minnesota charged appellant with aiding and abetting first-degree aggravated robbery, first-degree assault, first-degree burglary, second-degree assault, and felon in possession of a firearm. Pursuant to a plea agreement, appellant entered a guilty plea to aiding and abetting aggravated robbery in the first degree in violation of Minn. Stat. § 609.245, subd. 1 (2014). In exchange, the state agreed to dismiss the remaining charges. The plea agreement also called for a joint recommendation that appellant receive an executed 67-month sentence, which was the bottom-of-the-box sentence for a severity-level eight offense and a criminal-history score of three. Appellant also agreed to testify consistently with his guilty plea against D.A. and to abide by the conditions of his release.

At the plea hearing, the district court informed appellant that the joint recommendation meant that the state and defense were bound to recommend a 67-month sentence, but that the sentencing court was not bound to this recommendation and could sentence appellant within the presumptive sentencing range of 67 to 93 months. The district court also informed appellant that, if he violated any of the plea agreement's conditions, the state would no longer be bound by the agreement's terms. Appellant told the district court that he understood the terms of the plea agreement. The district court deferred acceptance of appellant's plea because the plea agreement required that appellant testify against D.A. and be law abiding. Appellant was then released from custody and placed on electronic home monitoring.

Initially, appellant complied with the conditions of his release. However, appellant was subsequently charged with giving a false name to a peace officer, a gross misdemeanor. Appellant also admitted to drug use while on electronic home monitoring. In addition, appellant removed his monitoring bracelet and absconded prior to his sentencing hearing. Appellant was eventually arrested in Pennsylvania where he faced a new criminal charge. Further, the state did not call appellant to testify at D.A.'s trial because, after appellant entered his guilty plea, he gave a conflicting statement to law enforcement.

At the sentencing hearing, the state requested a top-of-the-box sentence of 93 months because appellant did not comply with all of the plea agreement's conditions. Appellant requested a 75-month sentence. The district court entered judgment of

conviction for the aggravated robbery charge and sentenced appellant to 93 months in prison. This appeal follows.

D E C I S I O N

Appellant argues that the district court abused its discretion when it imposed a top-of-the-box sentence because the court implicitly relied on appellant's subsequent actions in contravention to the plea agreement as its reason for the sentence. Appellant asserts that the district court "did not rely on [his] offense and criminal history score in sentencing him" as required by the sentencing guidelines. We disagree.

This court reviews a sentence imposed by a district court for an abuse of discretion. *State v. Delk*, 781 N.W.2d 426, 428 (Minn. App. 2010), *review denied* (Minn. July 20, 2010). The primary relevant sentencing criteria used in the guidelines are the offense of conviction and the offender's criminal history. *State v. Misquadace*, 644 N.W.2d 65, 68 (Minn. 2002). "All three numbers in any given cell [of the sentencing-guidelines grid] constitute an acceptable sentence." *State v. Jackson*, 749 N.W.2d 353, 359 n.2 (Minn. 2008). Moreover, it would be a rare case that would warrant reversal of the imposition of a presumptive sentence. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

Here, appellant's plea agreement called for a joint recommendation for a bottom-of-the-box, 67-month sentence. At the sentencing hearing, the state noted that the joint recommendation was contingent upon appellant abiding by the conditions of release during the period between the plea and sentencing and testifying consistently with his plea against D.A. Appellant's counsel reiterated that the plea agreement called for a joint

recommendation for a bottom-of-the-box sentence. After considering the statements from both parties, the district court imposed a top-of-the-box sentence of 93 months without further explanation.

Appellant's argument that the district court implicitly relied on appellant's subsequent actions in contravention to the plea agreement as its reason for the imposed sentence lacks merit. Appellant acknowledges that the district court did not provide any reasoning to impose a presumptive sentence; and, it was not required to do so. *See State v. Van Ruler*, 378 N.W.2d 77, 80-81 (Minn. App. 1985) (noting that district court is not required to explain its reasoning for imposing sentence within presumptive range). In addition, appellant recognizes that "because [he] did not comply with all the conditions of his plea, he was not entitled to be sentenced according to the plea agreement." Further, at the plea hearing, the district court informed appellant that, despite the joint recommendation, he could receive a sentence anywhere within the presumptive range of 67 to 93 months.

Next, appellant's contention that the district court relied on improper factors in imposing the sentence because the court did not read the plea transcript is unavailing. At the sentencing hearing, the district court stated to appellant, "Well the problem is that you've pled guilty in this case and that's not going to change. . . . You made a deal. And I have not seen the transcript, but I'm assuming that you laid out facts in your plea of guilty that they expected you to testify to." This statement was made in response to appellant's request that the district court "review this case and review the details" because, as appellant claimed, the prosecutor was using him as a "scapegoat." The

district court's statement does not indicate that it relied on improper factors in imposing the presumptive sentence. The district court heard and considered arguments from the state, defense counsel, and appellant. The state and defense counsel separately presented the terms of the plea agreement to the district court. And, the district court imposed a guideline sentence.

Finally, appellant's reliance on *State v. Kunshier*, 410 N.W.2d 377 (Minn. App. 1987), *review denied* (Minn. Oct. 21, 1987), to assert that the district court could not rely on appellant's actions in contravention to the plea agreement's conditions when imposing the sentence is misguided. In *Kunshier*, this court held that the district court abused its discretion in denying the defendant's motion to withdraw his guilty plea because the defendant had the right to withdraw his plea where the district court exercised its discretion not to follow the plea agreement. 410 N.W.2d at 379-80.

Here, appellant does not assert that the sentencing court violated his right to withdraw his guilty plea. Further, the district court was not required to allow appellant to exercise his right to withdraw his guilty plea because, unlike in *Kunshier*, the district court did not reject the plea agreement. Rather, the district court imposed a top-of-the-box sentence, which was within the district court's discretion even if appellant had complied with the plea agreement's conditions. Accordingly, appellant's efforts to persuade this court to "reverse the sentence imposed and impose the presumptive sentence" fail because the district court already imposed a presumptive sentence.

Affirmed.