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STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1652

State of Minnesota,
Respondent,

vs.

Robert Scott Wood,
Appellant.

Filed July 3, 2017
Affirmed
Larkin, Judge

Ramsey County District Court
File No. 62-CR-15-91

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

John Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, John Donovan, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Larkin, Judge; and Kalitowski, Judge.*

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

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges his sentence for first-degree assault, arguing that the district court abused its discretion by denying his request for a downward departure from the presumptive sentence under the Minnesota Sentencing Guidelines. Appellant argues that his history of mental-health issues and his suicidal ideation at the time of the offense justified a downward departure. We affirm.

FACTS

Appellant Robert Scott Wood has a long history of mental illness. He has had numerous mental-health-treatment providers, has struggled with medication compliance, and has tried to commit suicide on multiple occasions. On January 1 and 2, 2015, Wood expressed suicidal ideation to his fiancée and reportedly began preparations to end his life. Wood's fiancée called Wood's treating psychologist, who in turn called law enforcement to request a welfare check. When the police arrived at Wood's home, Wood pushed his fiancée out of the home, locked the door, and, according to his comments at his plea hearing, prepared to commit "suicide by cop."

Wood brandished an air-pellet gun at responding officers and yelled threats to kill them out of his window. Officers reported that Wood said, "All I need is an inch" of an exposed officer to shoot. At one point, Wood came out of his home wearing a ski mask and threatened to kill a canine officer if one were released. At another point, Wood shot the air-pellet gun in the direction of Officer Michael Talley, who was struck in the cheek very close to a main blood vessel. As a result, shrapnel is permanently embedded in Officer

Talley's face and neck. Wood eventually came out of his home unclothed, surrendered to officers, and was taken into custody.

Respondent State of Minnesota charged Wood with attempted first-degree murder, first-degree assault, second-degree assault, and terroristic threats. Wood pleaded guilty to first-degree assault pursuant to a plea agreement under which the state agreed to dismiss the remaining charges, Wood agreed to waive his right to a jury trial on aggravated sentencing factors, and both parties would argue for a sentencing departure.

As support for a downward departure, Wood submitted a sentencing memorandum from a public-defender dispositional advisor, five character-reference letters, a description of a proposed outpatient treatment program, a description of chemical-dependency treatment in Minnesota prisons, a drawing depicting Wood's understanding of his support network, a letter from a treatment provider, a letter from Wood, and a report from Dr. Mary Kenning in support of a departure under Minn. Stat. § 609.1055 (2014) (allowing alternative placements for offenders with serious and persistent mental illnesses). The district court also received a presentence-investigation report and a victim-impact statement. The district court heard testimony from Wood's fiancée and a doctor who treated Officer Talley in the emergency room, as well as a statement from Officer Talley, and oral arguments of counsel. After considering all of this information, the district court imposed a presumptive guidelines sentence of 97 months in prison and explained its reason for doing so on the record. Wood appeals, challenging his sentence.

D E C I S I O N

A district court must order the presumptive sentence provided under the Minnesota Sentencing Guidelines unless the case involves "substantial and compelling circumstances" that justify a downward departure. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). The district court may depart from the guidelines where "[t]he offender, because of physical or mental impairment, lacked substantial capacity for judgment when the offense was committed." Minn. Sent. Guidelines 2.D.3.a.(3) (2014). "Mental impairment that causes an offender to lack substantial capacity for judgment when the offense was committed will support a downward departure." *State v. Martinson*, 671 N.W.2d 887, 891 (Minn. App. 2003), *review denied* (Minn. Jan. 20, 2004). But the supreme court has limited the application of this factor to cases in which a defendant's impairment is "extreme to the point that it deprives the defendant of control over his actions." *State v. McLaughlin*, 725 N.W.2d 703, 716 (Minn. 2007) (quotation omitted).

Appellate courts "afford the [district] court great discretion in the imposition of sentences and reverse sentencing decisions only for an abuse of that discretion." *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014) (quotation omitted). An appellate court will reverse a district court's refusal to depart only in a "rare" case. *Kindem*, 313 N.W.2d at 7. "[A]s long as the record shows the sentencing court carefully evaluated all the testimony and information presented before making a determination," this court will not interfere with the district court's decision to impose the presumptive guidelines sentence. *State v. Pegel*, 795 N.W.2d 251, 255 (Minn. App. 2011) (quotation omitted).

Wood argues that "[t]he district court abused its discretion because [his] lack of substantial capacity for judgment based on his extreme mental impairment justified a downward departure." But the presence of a mitigating factor "[does] not obligate the [district] court to place [a] defendant on probation." *State v. Wall*, 343 N.W.2d 22, 25 (Minn. 1984). Moreover, the record shows that the district court "carefully evaluated all the testimony and information presented before making a determination." *Pegel*, 795 N.W.2d at 255 (quotation omitted). Although a district court need not provide an explanation if it "considers reasons for [a] departure but elects to impose the presumptive sentence," *State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985), the district court here did so, explaining:

> Well, Mr. Wood, you know I find myself in a really difficult position. Part of what sentencing is supposed to do is to, at least I hope, in some respect hold people responsible for their actions. And I think that you have to be held responsible for your actions. And based on the information that I've read, and I've, as we talked about, received a lot of information from all sorts of different people, I've struggled with what the appropriate sentence is in this case.
>
> And I tend to agree with the prosecutor's assessment of things in that you've had the opportunity over many, many, many years to have help, to have services. And for whatever reason, you haven't always availed yourself of those and you've made decisions that led you to be here today and where you were on January 2nd, of 2015. You're chemically dependent, but you still used alcohol on that day. And you knew the potential that that was going to do if you did that and you still chose to do that. You knew what a danger guns were. And you could have avoided this situation, but you're the one that created the situation.
>
> And I find myself where I'm in a position that I do not believe that I can grant your counsel's request for a departure either durationally or dispositionally. I do not find substantial or compelling reasons to do that. And, believe me, I'm

> sensitive to mental health issues, but I believe that you have to be held responsible for what you did.

The district court then imposed a 97-month executed prison sentence, stating,

> Mr. Wood, I know that you probably don't want to hear this from me, but I certainly hope that you are able to going forward get the services that you need so you don't have to find yourself or your family in a position like this. I hope that you will do that not just for yourself but for the community that you live in. Your actions put everybody at risk and I believe that you have to be held responsible. Good luck.

The record establishes that the district court considered the proffered mitigating factor, as well as the attendant information and arguments for and against departure. Although we are sympathetic to Wood's history of mental illness, this is not a rare case in which we would reverse the district court's refusal to depart.

Affirmed.