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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0247**

State of Minnesota,
Respondent,

vs.

Alfredo Darcourt Castellanos,
Appellant.

**Filed November 6, 2017
Affirmed in part, reversed in part, and remanded
Jesson, Judge**

Dakota County District Court
File No. 19HA-CR-16-413

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

James C. Backstrom, Dakota County Attorney, G. Paul Beaumaster, Assistant County Attorney, Hastings, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sharon E. Jacks, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Reilly, Judge; and Reyes,
Judge.

UNPUBLISHED OPINION

JESSON , Judge

Staff at a Holiday Inn were helping Alfredo Darcourt Castellanos find his room key when they saw that he had a pipe and syringe. Suspecting drug use, they called police who

responded and found more than 25 grams of methamphetamine in Castellanos's bag. Castellanos pleaded guilty and was convicted of first-degree controlled substance possession and sentenced to 138 months in prison. Castellanos challenges that sentence. We affirm in part, reverse in part, and remand.

FACTS

On February 2, 2016 Castellanos was staying at a Holiday Inn with a friend. Castellanos claimed that the friend had to leave for a time and asked him to keep his bag until he returned. Castellanos knew the bag contained methamphetamine. As the time to check out of the hotel approached, the friend had not returned and Castellanos started looking for his hotel room key. Hotel staff offered to help and while doing so, saw that Castellanos had a pipe and syringe. Staff alerted law enforcement who arrived shortly thereafter. Police confronted Castellanos and asked to search his bag. Castellanos consented and police found more than 25 grams of methamphetamine. Castellanos was arrested and admitted his possession of drugs to police, explaining he was holding the drugs for a friend.

Castellanos was charged with first-degree controlled substance possession, in violation of Minnesota Statutes section 152.021, subdivision 2(a)(1) (2015), and on September 19, 2016 he pleaded guilty to that crime. A pre-plea investigation was completed establishing Castellanos's criminal history score and the sentencing guidelines range for his conviction, 138 to 192 months, with a presumptive sentence of 161 months. That investigation recommended the presumptive 161-month sentence. At the sentencing hearing, the state asked for the lowest end of the guidelines range, a 138-month sentence.

Castellanos moved for a downward durational departure and a 48-month sentence, arguing that his crime was less serious than typical due to his cooperation with police and because the drugs were not his, but belonged to a friend.

The district court received the pre-plea investigation, a written motion for the downward durational departure, and heard from Castellanos at sentencing. The court denied Castellanos's motion for a downward durational departure, citing a history of drug offenses, and sentenced him to 138 months in prison.

Castellanos appeals.

D E C I S I O N

First, Castellanos argues that the court abused its discretion in denying his motion for a downward durational departure. Second, Castellanos argues that he is entitled to resentencing consistent with the Drug Sentencing Reform Act, which became effective while his case was pending on direct appeal. We affirm the district court's denial of the durational departure but reverse and remand for resentencing consistent with the Drug Sentencing Reform Act.

I. The court did not abuse its discretion by denying Castellanos's motion for a downward durational departure.

Castellanos argues that the district court abused its discretion by denying his motion for a downward durational departure. This court affords district courts "great discretion in the imposition of sentences and [will] reverse sentencing decisions only for an abuse of that discretion." *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014) (quotation omitted). The district court must impose a presumptive guidelines sentence unless the case involves

“substantial and compelling circumstances” to warrant a downward departure. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

When considering a durational departure, a court looks at whether the crime was significantly less serious than what would be considered typical. *State v. Cox*, 343 N.W.2d 641, 643 (Minn. 1984); *see also State v. Solberg*, 882 N.W.2d 618, 624 (Minn. 2016). The record must show that the sentencing court carefully evaluated all the testimony and information presented before deciding on a motion to depart. *State v. Pegel*, 795 N.W.2d 251, 255 (Minn. App. 2011). We examine whether such an evaluation was completed here.

Castellanos contends that his crime was less serious than a typical first-degree controlled substance possession crime. He gives two reasons. The first is that he was holding drugs for a friend. The second is that he cooperated with police when he consented to their search of the bag and admitted to his drug possession. These arguments were orally asserted by counsel at sentencing and included in Castellanos’s written motion for a durational departure. The facts underlying these assertions were recorded in the pre-plea investigation. The district court explicitly noted its review of both the motion and pre-plea investigation, containing these facts and arguments, prior to making its sentencing decision. As a result, the court completed the careful evaluation required before deciding on a motion to depart. *See State v. Pegel*, 795 N.W.2d at 255. Additionally, the court is under no obligation to depart just because a mitigating factor exists. *Id.* at 253-54 (internal citations omitted).

Castellanos further argues that the district court impermissibly relied on his criminal history to deny his departure motion. Criminal history is used to calculate a presumptive

sentence for any particular defendant's crime. *State v. Magnan*, 328 N.W.2d 147, 149-50 (Minn. 1983). Therefore criminal history may not be used as a basis to *depart* from that presumptive sentence. *See id.* But the court did not rely on Castellanos's criminal history to depart here. It used the history to support the imposition of a sentence within the presumptive sentencing range, a range Castellanos's criminal history helped establish. This is permissible.

The court completed a careful evaluation of testimony and evidence and did not rely on an impermissible factor in denying Castellanos's departure motion. It did not abuse its discretion.

II. Castellanos is entitled to resentencing under the Drug Sentencing Reform Act.

Castellanos alternatively argues he is entitled to resentencing under the Drug Sentencing Reform Act (DSRA) because his case was not yet final on the DSRA's effective date. Whether to apply the DSRA to Castellanos's conviction is a question of statutory interpretation that this court reviews *de novo*. *State v. Basal*, 763 N.W.2d 328, 332, 335 (Minn. App. 2009).

The sentencing sections of the DSRA became effective May 23, 2016. 2016 Minn. Laws ch. 160, § 18 at 590-91 (stating it is effective the day following final enactment). Changes made through that act would reduce Castellanos's applicable sentencing range from 138 to 192 months to 110 to 153 months. *Compare* Minn. Sent. Guidelines 4.A.

(2015), *with* Minn. Sent. Guidelines 4.C. (2016).¹ In order for Castellanos to be resentenced under the DSRA, the amelioration doctrine must apply in his case, a doctrine that allows for mitigating punishment in cases that are not yet final. *State v. Kirby*, 899 N.W.2d 485, 488 (Minn. 2017). The amelioration doctrine applies when: “(1) there is no statement by the Legislature that clearly establishes the Legislature’s intent to abrogate the amelioration doctrine; (2) the amendment mitigates punishment; and (3) final judgment has not been entered as of the date the amendment takes effect.” *Id.* at 490.

In applying this analysis to the sentencing sections of the DSRA, the Minnesota Supreme Court concluded that the amelioration doctrine applies and “requires the resentencing of a person whose conviction was not yet final on the effective date of section 18(b) of the Drug Sentencing Reform Act.” *Kirby*, 899 N.W.2d at 486. *Kirby*’s case was still pending on appeal on that effective date, and he too, faced the same reduced sentencing range for a first-degree controlled substance crime if the act were to apply to him. The court vacated *Kirby*’s sentence and remanded his case for resentencing consistent with the DSRA. *Id.* at 496.

Castellanos’s case is analogous to *Kirby*. While Castellanos committed his offense prior to the DSRA’s effective date, he did not plead guilty until September 2016 and was not sentenced until November 2016. Castellanos filed his notice of appeal in February 2017. His case was therefore not yet final. *See State v. Losh*, 721 N.W.2d 886, 893-94

¹ This calculation is made based on Castellanos’s criminal history score, which is higher than six, plus an additional three months for his custody-status point. *See* Minn. Sent. Guidelines 2.B.2.c (2015).

(Minn. 2006) (stating that a case is pending until the availability of direct appeal has been exhausted). Castellanos is entitled to the same application of the amelioration doctrine and to be resentenced, consistent with the DSRA. The district court is in the best position to determine the sentence to impose on remand. *See Massey v. State*, 352 N.W.2d 487, 489 (Minn. App. 1984).

Affirmed in part, reversed in part, and remanded.