STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0498

Adalberto Sevilla, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed August 28, 2017
Affirmed
Reyes, Judge

Ramsey County District Court
File No. 62-CR-15-4649

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

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

John J. Choi, Ramsey County Attorney, Laura Rosenthal, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Considered and decided by Reyes, Presiding Judge; Jesson, Judge; and Toussaint, Judge.[*]

[*] Retired judge of the Minnesota Court of Appeals, serving 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

REYES, Judge

Appellant argues in this postconviction appeal that his 280-month sentence for his conviction of first-degree criminal sexual conduct should be reduced because it unfairly exaggerates the criminality of his conduct. We affirm.

FACTS

On June 21, 2015, appellant Adalberto Sevilla found himself alone in a house with a 13-year-old girl. Appellant entered the 13-year-old's bedroom, threatened her with a knife, removed her clothing, and penetrated her anus and vagina. Appellant stopped when the girl's mother entered the room.

Respondent State of Minnesota charged appellant with three counts of first-degree criminal sexual conduct in violation of Minn. Stat. § 609.342, subd. 1(c) (great bodily harm), subd. 1(d) (dangerous weapon), subd. 1(e)(i) (personal injury) (2014). Prior to trial, the state filed a notice of intent to seek an upward durational departure, asserting as aggravating factors particular vulnerability, zone of privacy, particular cruelty, and appellant's prior criminal-sexual-conduct conviction.

Pursuant to a plea agreement, appellant pleaded guilty to one count of first-degree criminal sexual conduct in violation of Minn. Stat. § 609.342, subd. 1(d) (dangerous weapon). In exchange, the state dismissed the other charges, and the parties agreed to a sentencing cap of 280 months in prison if appellant had four or fewer criminal-history points. Appellant also waived his right to have a trial on the aggravating factors and

admitted that he has a prior criminal-sexual-conduct conviction from 1997 involving a 13-year-old girl.

The presentence investigation report determined that appellant had two criminal-history points and recommended a 280-month sentence. The state requested a 280-month sentence, and the district court sentenced appellant to 280 months in prison with lifetime conditional release. The presumptive sentence is 168 months. Minn. Sent. Guidelines 4.B (2014). The district court's reasons for the sentence and upward departure were that "this is a subsequent sex offense, it was a violent offense, and . . . [appellant] pose[s] an unjust risk of public safety and a danger to children in the community."

Appellant filed a petition for postconviction relief seeking a reduction in his sentence, arguing that it exaggerates the criminality of his conduct. The postconviction court denied appellant's petition for relief. This appeal follows.

D E C I S I O N

Appellant argues that the postconviction court abused its discretion in affirming his 280-month sentence because the sentence exaggerates the criminality of his conduct, and appellant requests a reduction in his sentence to 249 months. We are not persuaded.

We review a postconviction court's decision to deny a petition for relief for an abuse of discretion. *Carpenter v. State*, 674 N.W.2d 184, 189 (Minn. 2004). "A postconviction court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012) (quotation omitted).

A departure is justified where the reasons supporting it are proper and the severity of the sentence is within the district court's broad discretion. *State v. Shattuck*, 704 N.W.2d 131, 139-40 (Minn. 2005). "[G]enerally in a case in which an upward departure in sentence length is justified, the upper limit will be double the presumptive sentence length." *State v. Evans*, 311 N.W.2d 481, 483 (Minn. 1981) (emphasis omitted); *see also Dillon v. State*, 781 N.W.2d 588, 596 (Minn. App. 2010) ("We have found no cases in which an appellate court has held that adequate grounds to depart exist but that the district court abused its discretion by extending the sentence up to twice its presumptive term."), *review denied* (Minn. July 20, 2010). To determine whether a sentence exaggerates the criminality of a defendant's conduct, courts will compare the defendant's sentence to those received by other offenders for similar offenses. *State v. Norris*, 428 N.W.2d 61, 70 (Minn. 1988).

Appellant does not dispute that a departure is justified based on his prior criminal-sexual-conduct conviction, but argues that the postconviction court improperly compared his sentence to those of other offenders because appellant's sentence is not proportional to other departures based on a prior sex offense. Appellant supports his argument with unpublished decisions, which are not binding on this court. Minn. Stat. § 480A.08, subd. 3 (2016).

This court has previously affirmed a double-durational sentencing departure for a first-degree criminal-sexual-conduct conviction where the offender had a prior sex offense. *See, e.g.*, *State v. Dalsen*, 444 N.W.2d 582, 583-84 (Minn. App. 1989), *review denied* (Minn. Oct. 13, 1989). Appellant's 280-month sentence is 1.67 times the presumptive sentence. Accordingly, appellant has not established that his sentence exaggerates the

criminality of his conduct because appellant's sentence is not disproportionate to those received by other offenders for a similar offense. The postconviction court did not abuse its discretion in denying appellant's request for relief.

Affirmed.