STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1984

State of Minnesota,
Respondent,

vs.

Monroe Leshawn Harrell,
Appellant.

Filed October 21, 2019
Affirmed
Stauber, Judge[*]

Hennepin County District Court
File No. 27-CR-18-6256

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Brittany D. Lawonn, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Rodenberg, Presiding Judge; Larkin, Judge; and Stauber, 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

STAUBER, Judge

In this direct appeal from the judgment of conviction, appellant argues that the district court erred by sentencing him to 78 months' imprisonment because, although the court intended to sentence him at the bottom of the sentencing-guidelines range (77 months), it imposed 78 months due to the simplicity of dividing that number by three. Because the district court reviewed the sentencing information and considered other factors, in addition to divisibility, in sentencing appellant within the presumptive range, we affirm.

FACTS

In March 2018, the state charged appellant Monroe Leshawn Harrell with promoting the prostitution of a person under 18 years of age in violation of Minn. Stat. § 609.322, subd. 1(a)(2) (2016). At that time, appellant had another pending charge for aggravated robbery. The state offered appellant a plea deal, a 60-month executed sentence and dismissal of the robbery charge. He chose to enter a "straight plea," and in August 2018, he pleaded guilty to the promoting-prostitution charge.

The presumptive sentencing range for the offense was 77 to 108 months. The state requested a 90-month sentence. Appellant requested probation, which was a dispositional departure.

At sentencing, the victim gave a detailed statement on how appellant had negatively impacted her life. The district court sentenced appellant to 78 months' imprisonment. In denying appellant's request for a dispositional departure, the court discussed appellant's

juvenile record and treatment history, and concluded that appellant was not amenable to probation. The court then stated as follows:

> The presumptive range is 77 to [108] . . . months with 90 being sort of a presumptive number. I actually considered going down to the [prior] offer in this case, and I may have been able to justify that before I heard the victim impact today. And before I found out about how young your first child['s] mother was when she got pregnant. And when I read how involved your—even in your version of what happened with this young girl.
>
> And so . . . you are convicted of promoting prostitution of an individual under the age of l8 years. You are sentenced . . . for a period of 78 months. I go toward the bottom not out of any disrespect to anyone, but because you took responsibility and this young lady did not have to testify in front of jurors who she didn't know, and you did—and so I've taken a year off of your commitment from the presumptive down to the near bottom. *And I picked that number because it's the first one divisible by three.*

(Emphasis added.) This appeal followed.

D E C I S I O N

Appellant challenges his sentence. He asserts that the district court abused its discretion by sentencing him to 78 months, rather than 77 months, because the district court's justification that 78 is divisible by three is arbitrary. He requests a 77-month sentence. The state contends that the district court relied "upon several considerations," not just the divisibility of 78. The state argues that, in sentencing appellant near the bottom of the presumptive range, the district court also considered that appellant took responsibility for his actions, which relieved the need for the victim to testify.

We review a sentence imposed by the district court for an abuse of discretion. *State v. Ford*, 539 N.W.2d 214, 229 (Minn. 1995). The Minnesota Sentencing Guidelines limit

a district court's sentencing discretion by prescribing a sentencing range that is presumed to be appropriate. *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014). Any number within that range is a presumptive sentence under the guidelines. *State v. Delk*, 781 N.W.2d 426, 428 (Minn. App. 2010), *review denied* (Minn. July 20, 2010). Presumptive sentences are seldom overturned, and we will reverse the imposition of a presumptive sentence only in "rare" cases. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981); *see also Delk*, 781 N.W.2d at 428 ("This court will generally not exercise its authority to modify a sentence within the presumptive range absent compelling circumstances." (quotation omitted)).

This court has previously stated that a district court is not required to explain its reasons for imposing a presumptive sentence so long as it considers the proposed reasons for departure, and we may not interfere with the district court's exercise of discretion so long as "the record shows the sentencing court carefully evaluated all the testimony and information presented before making a determination." *State v. Van Ruler*, 378 N.W.2d 77, 80-81 (Minn. App. 1985); *see State v. Johnson*, 831 N.W.2d 917, 925 (Minn. App. 2013) ("[T]he district court is not required to explain its reasons for imposing a presumptive sentence."), *review denied* (Minn. Sept. 17, 2013).

Appellant fails to cite any caselaw indicating that ease of divisibility cannot be considered in sentencing a defendant within the presumptive range. He points to the nonexhaustive list of sentencing factors in the sentencing guidelines, such as the defendant's amenability to probation and the seriousness of the crime, but these factors relate to departures, not presumptive sentences. *See* Minn. Sent. Guidelines 2.D.3 (Supp. 2017).

The record indicates that the district court carefully considered the information available when sentencing appellant near the bottom of the presumptive sentencing range. While the district court relied on the divisibility of the number 78, divisibility was not the sole factor relied upon. The district court also considered the fact that appellant "took responsibility."

The district court could have sentenced appellant to as few as 77 months, and as many as 108 months, without the need to provide any justification. *See Johnson*, 831 N.W.2d at 925. Because the district court carefully considered the sentencing information and relied on factors, in addition to divisibility, in imposing a sentence within the presumptive range, the court's reliance on the divisibility of the sentencing number is not an abuse of discretion or compelling circumstance requiring interference with the sentence imposed. *See Delk*, 781 N.W.2d at 428

Affirmed.