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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0010**

State of Minnesota,
Respondent,

vs.

Ali Joshua Jalil Robida,
Appellant.

**Filed December 2, 2019
Affirmed
Slieter, Judge**

Olmsted County District Court
File No. 55-CR-18-1349

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

Mark A. Ostrem, Olmsted County Attorney, Jennifer D. Plante, Senior Assistant County Attorney, Rochester, Minnesota (for respondent)

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

Considered and decided by Larkin, Presiding Judge; Reyes, Judge; and Slieter, Judge.

UNPUBLISHED OPINION

SLIETER, Judge

In this direct appeal from the judgment of conviction, appellant Ali Joshua Jalil Robida argues that the district court erred in denying his motion for a downward

dispositional or durational sentencing departure because he is particularly amenable to treatment and the district court did not explain its reasons for denying the durational departure. Because the district court imposed a presumptive guidelines sentence only after carefully considering the testimony and all evidence including that which supports appellant's departure motion, we affirm.

FACTS

The state charged Robida with aiding and abetting first degree assault, great bodily harm, in violation of Minn. Stat. § 609.221, subd. 1 (2016); aiding and abetting first degree aggravated robbery, in violation of Minn. Stat. § 609.245, subd. 1 (2016); and aiding and abetting second degree assault with a dangerous weapon, substantial bodily harm, in violation of Minn. Stat. § 609.222, subd. 2 (2016). Robida proceeded to a jury trial on the charges. On the second day of trial, Robida decided to enter a guilty plea based on a plea agreement. Robida pleaded guilty to aiding and abetting first degree assault, with the opportunity to request a downward dispositional departure and an agreement that the state would recommend "a lawful sentence."

Robida admitted the following information as part of the factual basis in support of his plea. Robida went to a store in Olmsted County with an accomplice to rob the business. Robida knew that his accomplice possessed a hammer when entering the store. While in the store, Robida's accomplice assaulted the store clerk with the hammer. Rather than assisting the store clerk, Robida stole merchandise during the assault. Robida denied that he intended to hurt the store clerk during the robbery, but he agreed that it was reasonably foreseeable that his accomplice would assault the store clerk. Robida also agreed that the

victim sustained severe and long-lasting disfigurement to his head as a result of the assault, and he was unable to work. Robida acknowledged understanding that his plea to first-degree assault would result in a presumptive prison sentence between 74 and 103 months.

Before the sentencing hearing, Robida filed a motion seeking a downward dispositional or durational sentencing departure. Specifically, Robida requested the district court either stay execution of the presumptive prison sentence or execute a 48 months' prison sentence.

The district court heard arguments from counsel about the departure motion, listened to a statement from Robida, considered information in the written victim impact statement, and reviewed the presentence investigation report. The district court explained on the record at sentencing:

[M]y decision is based on the evidence that is in the record, is in [district court record], that I heard at trial, that I read through these reports, that I saw in the complaint. That's what my decision is based on. So the entire record, the proceedings, the arguments of the attorneys, the presentence investigation report, the victim impact statement that was filed with the court earlier and also provided in the [presentence investigation], as well as the allocution of the defendant, that is what my decision is based on.

Then the district court identified the relevant factors related for dispositional and durational departures. Based on these factors, the district court made explicit factual findings.

The district court identified Robida's criminal history that started "in 2010 . . . [including] a fourth degree assault from December 2010, a fifth degree assault from January 2012, a fourth degree burglary from May 2016, and then August 2016 gross

misdemeanor domestic assault conviction.” Further, the district court noted that Robida “struggled while on juvenile probation. He failed to engage in programming at times, and at times when he did engage in programming, he did not successfully complete it.” And the district court commented that Robida “was asked this question: how do you feel about your behavior; and his answer was: people need to stop blowing it out of proportion.” Despite this background, the district court acknowledged that Robida recognized his guilty conscience for the offense and that Robida sent an apology letter to the victim of his own volition.

The district court also considered a doctor’s report about Robida while addressing sentencing. Specifically, the district court explained on the record at sentencing that, “[the doctor’s report] provides that the defendant was determined to be a person with no pro-social associates, a leader in antisocial behavior presenting a danger to other people, and a person that blames others for his aggressive behavior.” The district court explained that “[the doctor] wrote it would be unrealistic to expect additional mental illness treatment to correct his antisocial behaviors, and he presents a serious danger[] to other people, including lethality, without structure and supervision.” The district court acknowledged that Robida’s childhood included: “foster homes, parents in jail, parents using drugs, [and] abusive treatment to him.”

Based on its consideration of the record, the district court concluded that Robida failed to establish reasons to justify a departure:

Departure is warranted when a defendant is particularly amenable to probation compared with other defendants, and there needs to be substantial and compelling circumstances to

support the same. I do not find that he played a reduced role in the commission of the offense. I've made some statements about his mental illness, his age and his maturity. The vulnerability to a prison setting is something that the Court takes into consideration. This is a 20-year-old individual. It's most unfortunate that life has dealt him the hand that it did. No one deserves to have the childhood that he had, but he is an adult now. He has received probationary [sentences] for many, many years. The reports from the professionals that were consulted do not support that this is an individual that would do well on probation or that there are substantial and compelling circumstances that would support either a dispositional or a durational departure. The defendant made the comment to the Court that he was choosing to be around the wrong crowd. I think that's the quote I wrote down. Sometimes there are individuals that are in the wrong crowd, but they are really the ones that are orchestrating the behavior, leading the antisocial behavior that presents a danger to others within the community, and to me, it appears that defendant is that person.

Based on the entire record, my findings, the Court, again, is denying the motion that is before the Court, and I'll move forward with sentencing.

The district court sentenced Robida to an executed 86 months' imprisonment—a presumptive sentence for the offense. *See* Minn. Sent. Guidelines 4.A, 5.A (2017). This appeal follows.

DECISION

Appellate courts “review the sentence imposed or stayed to determine whether the sentence is inconsistent with statutory requirements, unreasonable, inappropriate, excessive, unjustifiably disparate, or not warranted by the findings of fact issued by the district court.” Minn. Stat. § 244.11, subd. 2(b) (2016). “This court will not generally review a district court’s exercise of its discretion to sentence a defendant when the sentence

imposed is within the presumptive guidelines range.” *State v. Delk*, 781 N.W.2d 426, 428 (Minn. App. 2010), *review denied* (Minn. July 20, 2010). “A district court’s departure decision will not be reversed absent a clear abuse of discretion.” *State v. Abrahamson*, 758 N.W.2d 332, 337 (Minn. App. 2008), *review denied* (Minn. Mar. 31, 2009). And “[a] district 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.” *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019) (quotation omitted).

“Accordingly, a sentencing court can exercise its discretion to depart from the guidelines, *only if* aggravating or mitigating circumstances are present, and those circumstances provide a substantial[] and compelling reason not to impose a guideline sentence.” *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014) (alteration in original) (quotations and citations omitted). “When factors that may justify departing from the presumptive sentence are present, a court must exercise its discretion and consider the factors.” *State v. Kier*, 678 N.W.2d 672, 677 (Minn. App. 2004). But “the presence of mitigating factors does ‘not obligate the court to place [a] defendant on probation or impose a shorter term than the presumptive term.’” *Wells v. State*, 839 N.W.2d 775, 781 (Minn. App. 2013) (alteration in original) (quoting *State v. Wall*, 343 N.W.2d 22, 25 (Minn. 1984)), *review denied* (Minn. Feb. 18, 2014). “We will affirm the imposition of a presumptive guidelines sentence when ‘the record shows [that] the sentencing court carefully evaluated all the testimony and information presented before making a determination.’” *State v. Johnson*, 831 N.W.2d 917, 925 (Minn. App. 2013) (alteration in original) (quoting *State v. Van Ruler*, 378 N.W.2d 77, 81 (Minn. App. 1985)), *review*

denied (Minn. Sept. 17, 2013). “However, the district court is not required to explain its reasons for imposing a presumptive sentence.” *Id.*

When a district court considers a dispositional departure, the question turns on whether “a defendant’s *particular* amenability to individualized treatment in a probationary setting will justify departure in the form of a stay of execution of a presumptively executed sentence.” *Soto*, 855 N.W.2d at 308 (quoting *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982)). The supreme court in *Trog* identified several “factors that can be relevant in determining if a defendant is particularly amenable to probation, including ‘the defendant’s age, his prior record, his remorse, his cooperation, his attitude while in court, and the support of his friends and/or family.’” *Id.* at 310 (quoting *Trog*, 323 N.W.2d at 31). These factors, however, are “not the only factors that can bear on a defendant’s amenability to probation, and they may not all be relevant in any given case.” *Id.* But, “even if there is evidence in the record that the defendant would be amenable to probation,” a district court is not required to depart. *State v. Olson*, 765 N.W.2d 662, 663 (Minn. App. 2009).

Unlike a dispositional departure, “[d]urational departures may be justified by offense-related reasons only.” *State v. Rund*, 896 N.W.2d 527, 533 (Minn. 2017). “Offender-related reasons—such as particular amenability to probation or treatment, remorse that does not reduce the seriousness of the offense, or age—are not legally permissible reasons for a downward durational departure.” *Id.* “Substantial and compelling circumstances are those demonstrating that the defendant’s conduct in the offense of conviction was *significantly* more or less serious than that typically involved in

the commission of the crime in question.” *State v. Jones*, 745 N.W.2d 845, 848 (Minn. 2008) (quotation omitted). A downward or upward durational departure may be justified by either a single mitigating or a single aggravating factor. *See, e.g., State v. Solberg*, 882 N.W.2d 618, 627 (Minn. 2016); *State v. Hicks*, 864 N.W.2d 153, 159 (Minn. 2015). One such factor may be an offender’s minor or passive role in the crime. *State v. Stempfley*, 900 N.W.2d 412, 418 (Minn. 2017).

Beginning with the dispositional departure, the district court considered the *Trog* factors in reaching its determination that Robida was not particularly amenable to probation after reviewing all the evidence presented on the motion. Robida asks this court to reweigh the evidence and reach a different result. This we may not do. As the supreme court recognized in *Stempfley*, “[e]ven if we might have come to a different conclusion had we been weighing the evidence ourselves, that is not the applicable standard upon appellate review.” *Id.* at 419 (footnote omitted). The district court provided its rationale for denying the dispositional departure on the record identifying Miller’s prior failure to complete programming, and considered his age, maturity, and mental illness, but it concluded that he was not particularly amenable to probation. We conclude the district court’s decision was not an abuse of discretion. *See Johnson*, 831 N.W.2d at 925.

As to the durational departure, Robida argues “[t]he district court did not explain why it was denying the durational departure.” Robida misconstrues the district court’s explanations at sentencing. The district court acknowledged Robida’s counsel’s arguments that Robida played “a minor or passive role;” and Robida lacked a “substantial capacity for

judgment due to physical or mental impairment.” The district court addressed these arguments in its sentencing comments.

First, the district court disagreed “that [Robida] played a reduced role in the commission of the offense.” Robida’s own admissions during his guilty plea support the court’s conclusion. Robida acknowledged going to the store knowing his accomplice possessed a hammer, intending to rob the store, and failing to intervene when the accomplice used the weapon. Robida also admitted that it was reasonably foreseeable that his accomplice would use the hammer in committing the robbery. The district court rejected Robida’s claim that he played a reduced role in the offense to justify a durational departure and imposed a presumptive durational sentence based on the law and facts that it determined. *See State v. Kindem*, 313 N.W.2d 6, 7-8 (Minn. 1981) (affirming imposition of a presumptive sentence for aiding and abetting a robbery).

Second, the district court acknowledged Robida’s claims regarding his mental health. An offender’s lack of substantial capacity for judgment based on a mental illness may permit a district court to grant a durational departure. *See State v. McLaughlin*, 725 N.W.2d 703, 716 (Minn. 2007). But the district court made no findings that Robida lacked substantial capacity for judgment which demonstrated its rejection of this claim.

Robida also argues for application of post-offense remorse and vulnerability in a prison setting as grounds this court should reverse and direct resentencing. We are not convinced that either claim is valid. As a matter of law, an offender’s “remorse that does not reduce the seriousness of the offense” is not relevant for a durational departure. *Rund*, 896 N.W.2d at 533. The district court acknowledged Robida sent an apology letter to the

victim, which suggested he had a guilty conscience. Robida's feeling of remorse after the criminal conduct was completed does not reduce the seriousness of the offense to merit consideration for a durational departure. *Id.* Next, a defendant's vulnerability has been considered grounds for permitting a *dispositional* departure not a *durational* departure. *See State v. Wright*, 310 N.W.2d 461, 462-63 (Minn. 1981) (affirming a district court's dispositional departure because a defendant was particularly vulnerable in the prison setting); *see also Solberg*, 882 N.W.2d at 624 (recognizing the holding in *Wright* as addressing factors for dispositional departures). Even so, the district court considered Robida's vulnerability in the prison setting and exercised proper discretion and determined the presumptive sentence was appropriate.

The district court considered Robida's motion for a dispositional or durational departure and acted within its discretion to deny the request and impose the presumptive sentence. We affirm.

Affirmed.