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STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1216

State of Minnesota,
Respondent,

vs.

Vance Diwayne Laster, Sr.,
Appellant.

Filed April 13, 2020
Affirmed
Larkin, Judge

Benton County District Court
File No. 05-CR-18-618

Keith Ellison, Attorney General, Peter Magnuson, Assistant Attorney General, St. Paul, Minnesota; and

Philip K. Miller, Benton County Attorney, Foley, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sara J. Euteneuer, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Florey, Presiding Judge; Worke, Judge; and Larkin, Judge.

U N P U B L I S H E D O P I N I O N

LARKIN, Judge

On appeal from his conviction and sentence for aiding an offender—accomplice after the fact, appellant challenges the district court's assignment of severity level nine when sentencing him for that offense and its denial of his presentence motion to withdraw his guilty plea. We affirm.

FACTS

In March 2018, respondent State of Minnesota charged appellant Vance Diwayne Laster Sr. with aiding and abetting second-degree murder, third-degree murder, first-degree assault, and second-degree arson.

The complaint alleged that J.D. and N.P. were shot near a Sauk Rapids residence during the early morning hours of February 16, 2018, and that Laster drove W.W. and N.J. from the crime scene in J.D.'s vehicle. J.D. died from multiple gunshot wounds. The complaint alleged that shortly after the shooting, W.W., N.J., and a third person arrived at a gas station in a vehicle registered to P.L. W.W. and N.J. purchased a gas can, filled it with gas, and then left the gas station without paying for the gas. Less than ten minutes later, the St. Cloud Fire Department responded to a call of a vehicle on fire nearby, which police later learned was J.D.'s vehicle.

In June 2018, a grand jury indicted Laster on 15 counts, including first-degree murder, second-degree murder, attempted second-degree murder, first-degree assault, second-degree arson, and crime committed for the benefit of a gang. In October 2018, the state moved to amend the indictment to add a charge of aiding an offender—accomplice

after the fact under Minn. Stat. § 609.495, subd. 3 (2016). In November 2018, Laster agreed to plead guilty to aiding an offender—accomplice after the fact "with the understanding that it would be sentenced at a severity level 9" and to testify at his codefendants' trials. In exchange, the state agreed to dismiss the other charges and cap Laster's sentence at 158 months of imprisonment.

At the plea hearing, Laster explained his involvement in the offense as follows. Laster, W.W., N.J., J.D., and N.P. drove to a bar in St. Paul in the late evening hours of February 15, 2018, and drove to J.D.'s sister's house in Sauk Rapids in the early morning hours the next day. Laster was asleep when they arrived at J.D.'s sister's house, but he woke when he heard J.D. call his name. Laster saw J.D. outside the vehicle struggling with W.W. Laster heard a gunshot and opened the door of the vehicle to investigate. Laster saw N.P. get out of the vehicle during the struggle between J.D. and W.W. and heard additional gunshots. Laster saw W.W. holding a gun and saw J.D. and N.P. lying on the ground. Laster drove W.W. and N.J. from the scene in J.D.'s vehicle, stopped in St. Cloud to switch to an acquaintance's vehicle, and then drove W.W. and N.J. to a gas station in St. Cloud. Laster denied helping W.W. and N.J. set J.D.'s vehicle on fire. However, Laster admitted that he saw W.W. holding a gas can when he left the gas station and that he drove W.W. and N.J. back to J.D.'s vehicle before W.W. and N.J. allegedly burned it. The district court found that Laster had established an adequate factual basis for his guilty plea, deferred acceptance of that plea, and scheduled a sentencing hearing.

Before sentencing, Laster submitted a "sentencing motion," requesting that the district court assign a severity level of eight to his aiding-an-offender offense, or, in the

alternative, allow him to withdraw his plea. At sentencing, Laster noted that N.J. had only been convicted of arson after his trial and received a 23-month stayed sentence. Laster argued that it was unfair to require him to serve 158 months in prison when the person who was convicted of the underlying arson received a much lighter sentence. The district court assigned a severity level of nine to Laster's aiding-an-offender offense, denied his motion to withdraw his guilty plea, and sentenced him to serve 158 months in prison, consistent with the plea agreement. Laster appeals.

D E C I S I O N

I.

Laster contends that the district court abused its discretion by assigning a severity level of nine to the unranked offense of aiding an offender—accomplice after the fact.[1]

Before a district court sentences a defendant for a felony-level offense, the district court must calculate a presumptive sentence based on the severity level of the offense and the offender's criminal history. *State v. Bertsch*, 707 N.W.2d 660, 666 (Minn. 2006); *see* Minn. Sent. Guidelines 2.C.1 (Supp. 2017) ("The presumptive sentence for a felony conviction is found in the appropriate cell on the applicable [sentencing guidelines] Grid located at the intersection of the criminal history score (horizontal axis) and the severity level (vertical axis)."). Although most offenses have an assigned severity level, certain offenses have not been assigned a severity level because "(1) the offense is rarely prosecuted; (2) the offense covers a wide range of underlying conduct; or (3) the offense

[1] We address the issues in the order that they were presented to this court.

is new and the severity of a typical offense cannot yet be determined." Minn. Sent. Guidelines cmt. 2.A.04 (Supp. 2017). Aiding an offender—accomplice after the fact is designated as an unranked offense under the Minnesota Sentencing Guidelines. *See* Minn. Sent. Guidelines 5.A (Supp. 2017).

When a district court sentences an offense that is designated as an unranked offense, the court "must assign an appropriate severity level for the offense and specify on the record why that particular level was assigned." Minn. Sent. Guidelines 2.A.4 (Supp. 2017). When assigning a severity level, the district court may consider:

> a. the gravity of the specific conduct underlying the unranked offense;
> b. the severity level assigned to any ranked offense with elements that are similar to the elements of the unranked offense;
> c. the conduct of and severity level assigned to other offenders for the same unranked offense; and
> d. the severity level assigned to other offenders engaged in similar conduct.

Id. "No single factor is controlling nor is the list of factors meant to be exhaustive." *State v. Kenard*, 606 N.W.2d 440, 443 (Minn. 2000). This court reviews a district court's severity-level determination for an abuse of discretion. *Bertsch*, 707 N.W.2d at 666.

Gravity of the Underlying Conduct

The district court based its severity ranking, in part, on the gravity of the underlying conduct, which it described as follows:

> The gravity of Mr. Laster's actions were great in this case. Other cases in which courts have determined that aiding an offender merits a high severity level, as pointed out in the State's memorandum, mention or cite as grounds for the higher sentencing the presence of the defendant at the time of the

> underlying offense or his participation in that offense or his participation in covering [up] the offense.
>
> In this case, I note that we have evidence, and by Mr. Laster's own admissions, he willingly and intentionally drove off in a car stolen from a man who had just been shot before his eyes. The shooter of the man that died and of another man who survived was in the car driven by [Laster] as they fled the scene at high speeds. The shooter presumably had the gun with him, and Mr. Laster's actions were of danger to public safety because the shooter was clearly armed and dangerous at that time.
>
> The defendant, Mr. Laster, not only did not aid those who were shot, but actively and consciously assisted the murderer of [J.D.] to flee the scene and avoid capture. He assisted in the destruction of evidence after the crime by facilitating the burning of the car. He also assisted in the fleeing of the other codefendant from the scene. All of those actions posed a great risk to public safety.
>
> I think it's clear that, although Mr. Laster professes his friendship and affinity for the victims and for [J.D. in particular]—and I have no reason to doubt that he did have feelings for him—he essentially drove away from the scene and left two men in the street to die, and one of them unfortunately did.

Laster argues that his conduct, "while serious, did not justify ranking his offense at a severity level of nine." He argues that he "did not anticipate [the] incident," that "[J.D.] was his friend," and that "he did not clean the crime scene, provide false information to the police or later interfere with the investigation." But as the district court soundly reasoned, Laster "willingly and intentionally drove off in a car stolen from a man who had just been shot before his eyes" and helped the shooter flee the scene. Laster "assisted in the destruction of evidence after the crime by facilitating the burning of the car" by switching vehicles, driving W.W. and N.J. to the gas station, and then driving them back to J.D.'s

vehicle with a gas can. And as the district court's statements suggest, it considered Laster's conduct especially egregious because there were two victims. Because Laster's underlying conduct was particularly grave, the district court appropriately relied on it when assigning a severity level of nine.

Severity Level Assigned to Ranked Offenses with Similar Elements

The district court noted that "[t]here are no closely analogous offenses on a sentencing guidelines severity table to compare this offense to." The district court reasoned:

> I would note that aiding an offender under subdivision 1 of this same statute [Minn. Stat. § 609.495 (2016)] has a severity level of only 1; but, as noted in the case law and is obvious from the [Minnesota Sentencing Guidelines Commission] notes, the Sentencing Guidelines Commission considers this offense much more serious than one that would be sentenced under subdivision 1 of the same statute.
>
> I think that tampering with a witness may be considered comparable as that offense involves taking action to obstruct an investigation or conceal evidence of a crime. That is, under our guidelines, a severity level 9, if it's aggravated, if it's accompanied by violence or the threat of violence. Similarly, here, [Laster] took actions to assist the shooter of two victims to flee the scene of the crime and took actions to destroy evidence that may be found or discovered in [J.D.'s] car by assisting others in setting that car on fire.

Laster argues that the district court erred by comparing the offense in this case, aiding an offender—accomplice after the fact, to aggravated tampering with a witness because "[t]ampering with a witness is a much more serious offense than what occurred here." Laster further argues that, unlike witness tampering, the underlying offense here did not involve the use of "coercion, force or threats of injury to intentionally prevent a

witness from testifying" and that there was "no indication that [he] acted to intentionally obstruct an investigation or conceal evidence."

According to *Kenard*, the relevant comparison is between the elements of the unranked offense and the elements of a ranked offense. *See* 606 N.W.2d at 443-44 (referring to element-based similarity between ranked and unranked offenses); *see also* Minn. Sent. Guidelines 2.A.4.b (Supp. 2017) (stating that the court may consider "the severity level assigned to any ranked offense with elements that are similar to the elements of the unranked offense").

A person is guilty of aiding an offender—accomplice after the fact if the person "intentionally aids another person whom the actor knows or has reason to know has committed a criminal act, by destroying or concealing evidence of that crime, providing false or misleading information about that crime, receiving the proceeds of that crime, or otherwise obstructing the investigation or prosecution." Minn. Stat. § 609.495, subd. 3. A person is guilty of aggravated first-degree witness tampering if the person threatens great bodily harm or death to another in the course of intentionally: (1) preventing, dissuading, or attempting to prevent or dissuade a potential witness from attending or testifying at any criminal trial or proceeding; (2) coercing or attempting to coerce a potential witness to testify falsely; (3) retaliating against a person who was a witness at a criminal trial or proceeding; (4) preventing, dissuading, or attempting to prevent or dissuade a person from providing information to law enforcement regarding a crime; (5) coercing or attempting to coerce a person to provide false information to law enforcement regarding a crime; or (6) retaliating against a person who has provided information to law enforcement regarding

a crime. Minn. Stat. § 609.498, subd. 1b(a) (2016). The elements of first-degree tampering with a witness and aiding an offender—accomplice after the fact are not sufficiently similar for the purpose of assigning a severity ranking.

Relying on *Kenard*, Laster argues that aiding an offender under Minn. Stat. § 609.495, subd. 1(a), a severity-level-one offense, is the most similar ranked offense. 606 N.W.2d at 443-44. Kenard was convicted of aiding an offender—accomplice after the fact based on her efforts to conceal a murder. *Id.* at 441. She cleaned the crime scene, held doors open so the murderer could dispose of the body, and initially provided false information to the police. *Id.* at 443. The district court assigned a severity level of seven when sentencing Kenard. *Id.* at 441. On appeal, the supreme court concluded that the district court abused its discretion in assigning a severity level of seven in part because the district court "did not indicate on the record what factors, if any, it considered when it assigned offense severity level [seven] to Kenard's offense" and it was therefore "almost impossible for a reviewing court to evaluate the [district] court's exercise of discretion." *Id.* at 442-43.

The supreme court went on to analyze the appropriate severity level for Kenard's offense. *Id.* at 443-44. The supreme court determined that "[t]he ranked offense most similar to Kenard's offense [was] aiding an offender under Minn. Stat. § 609.495, subd. 1(a)," which was ranked at severity level one under the guidelines. *Id.* The supreme court noted that the primary differences between aiding an offender under Minn. Stat. § 609.495, subd. 1(a), and offender—accomplice after the fact under Minn. Stat. § 609.495, subd. 3, are "that subdivision 3's application is limited to certain enumerated offenses while

subdivision 1 is not so limited; and that subdivision 3 provides that those convicted thereunder may be sentenced to up to one-half of the statutory maximum of the aided offense." *Id.* at 444. The supreme court reasoned that based on those differences, the legislature obviously "considers convictions under subdivision 3 more serious than those under subdivision 1." *Id.*

In analyzing the appropriate severity level for Kenard's offense, the supreme court considered the severity rankings assigned in six other cases of aiding an offender—accomplice after the fact. *Id.* In four of the cases, the underlying offense was an attempted or completed murder and the district court assigned a severity level of eight. *Id.* at 444-45. In the other two cases, the underlying offense was a robbery and the district court assigned a severity level of seven. *Id.* at 445. Because at the time of *Kenard* the highest severity level was ten, and not eleven as it is now, severity levels of seven and eight were similar to what would now be severity levels eight and nine. *Compare* Minn. Sent. Guidelines IV (Supp. 1997) (providing presumptive sentences of 48 and 86 months of imprisonment, respectively, for severity levels seven and eight when a person has a criminal-history score of zero), *with* Minn. Sent. Guidelines 4.A (Supp. 2017) (providing presumptive sentences of 48 and 86 months of imprisonment, respectively, for severity levels eight and nine when a person has a criminal-history score of zero).

The supreme court explained that in each of the six cases, "the offender was either present at the time of the underlying offense, participated to some degree in the underlying offense, or readily participated in covering up the underlying offense." *Kenard*, 606 N.W.2d at 445. The supreme court contrasted those circumstances with Kenard's offense,

noting that she was "neither present at the time of, nor participated in, [the] murder" and "did not choose to become involved in concealing [the] murder, rather she walked into her own home with two young children to find blood on the walls and floor and took steps to hide the murder from her 4-year old son." *Id.* The supreme court concluded, "With these cases in mind, we remand to the [district] court for a determination of the severity level of Kenard's offense, consistent with this opinion." *Id.*

Laster argues that "[i]n contrast to the cases examined in *Kenard*, while [he] was present when the victims were shot, he did not participate in the offense or readily participate in covering up the offenses." The record refutes that argument. Again, Laster admitted that he drove the murderer from the crime scene—using the victim's car—and then facilitated the destruction of the victim's car. Laster's conduct is akin to the conduct involved in the four attempted or completed murder cases discussed in *Kenard* and therefore warrants a similar ranking.

Conduct and Severity Level Assigned to Other Offenders for Same Unranked Offense

The district court explained that it had "reviewed the records maintained by the Minnesota Sentencing Guidelines Commission for other persons that have been sentenced for the offense of aiding an offender, accomplice after the fact in the years between 2015 and 2017." The district court noted that "three of those offenders who were sentenced for that crime were assigned a severity level 7 by the sentencing court, six have been assigned a severity level 9; and nine offenders were assigned a severity level 8."

Laster argues that a severity level of nine was "only assigned in a minority of the cases" that the district court considered. Laster further argues that his conduct was significantly less serious than the conduct of other defendants who have been convicted of aiding an offender—accomplice after the fact. Again, he relies on *Kenard*, 606 N.W.2d at 445, in support of that argument. As explained above, that reliance is unavailing because a higher ranking is justified when his conduct is compared to Kenard's.

Moreover, the state points out that this court recently affirmed the district court's assignment of a severity level of nine in a case involving very similar conduct. In that case, *Cooper v. State*, the defendant went into a residence to retrieve personal belongings. No. A17-0994, 2018 WL 1787689, at *1 (Minn. App. Apr. 16, 2018), *review denied* (Minn. June 27, 2018). Another person entered the residence and shot a third person. *Id.* The defendant left the residence, aware that the third person had been shot. *Id.* As the defendant pulled away, the shooter jumped into the defendant's vehicle. *Id.* Even though the defendant believed he was the shooter and that he likely had the gun in his possession, the defendant drove the shooter to his home. *Id.* The defendant pleaded guilty to aiding an offender—accomplice after the fact and the district court assigned a severity level of nine. *Id.* This court affirmed, reasoning that the district court correctly described the defendant's conduct as extremely serious and that the offense was similar to the "aiding-in-a-murder offenses" described in *Kenard*. *Id.* at *2-3. We reach the same conclusion here.[2]

[2] *Cooper* is an unpublished case, and unpublished cases are not precedential; but they may be persuasive. Minn. Stat. § 480A.08, subd. 3 (2018); *Dynamic Air, Inc. v. Bloch*, 502 N.W.2d 796, 800-01 (Minn. App. 1993). Reliance on an unpublished opinion is appropriate here because the goal of the sentencing guidelines is to assure "uniformity,

In sum, unlike the circumstances in *Kenard*, the district court here made a record showing that it considered the relevant permissive factors and provided sufficient reasons for its assignment of severity level nine to Laster's offense of aiding an offender—accomplice after the fact. That severity level corresponds with assignments for similar conduct in comparable cases, and it is appropriate given the gravity of Laster's conduct. The district court did not abuse its discretion by assigning a severity level of nine.

II.

Laster contends that the "district court abused its discretion by denying [his] pre-sentencing motion to withdraw his guilty plea."

"A defendant has no absolute right to withdraw a guilty plea after entering it." *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010). However, withdrawal is permitted in two circumstances. *Id.* First, "[a]t any time the court must allow a defendant to withdraw a guilty plea upon a timely motion and proof to the satisfaction of the court that withdrawal is necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. Second, "[i]n its discretion the court may allow the defendant to withdraw a plea at any time before sentence if it is fair and just to do so." *Id.*, subd. 2. Although the district court considered Laster's plea-withdrawal motion under both the manifest-injustice and fair-and-just standards, his arguments on appeal are limited to the fair-and-just standard.

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proportionality, rationality, and predictability in sentencing." *See* Minn. Stat. § 244.09, subd. 5 (2016); *see also State v. Misquadace*, 644 N.W.2d 65, 68 (Minn. 2002) ("In light of a court's discretion in sentencing, the sentencing guidelines were created to assure uniformity, proportionality, rationality, and predictability in sentencing."). An examination of sentences imposed for unranked offenses in unpublished cases may be necessary to achieve that goal.

Although the fair-and-just standard is "less demanding than the manifest injustice standard, it does not allow a defendant to withdraw a guilty plea for simply any reason." *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007) (quotation omitted).

> The fair and just standard requires district courts to give due consideration to two factors: (1) the reasons a defendant advances to support withdrawal and (2) prejudice granting the motion would cause the State given reliance on the plea. A defendant bears the burden of advancing reasons to support withdrawal. The State bears the burden of showing prejudice caused by withdrawal.

Raleigh, 778 N.W.2d at 97 (citations and quotation omitted). Appellate courts review a district court's decision to deny a plea-withdrawal motion under the fair-and-just standard for abuse of discretion, "reversing only in the rare case." *Id.* (quotation omitted). "Guilty pleas facilitate the efficient administration of justice, and more than a change of heart is needed to withdraw a guilty plea." *State v. Lopez*, 794 N.W.2d 379, 382 (Minn. App. 2011).

Laster argues that the "severity level nine and 158-month cap agreed to in the plea agreement were excessive and inconsistent with the interests of justice in this case" because N.J. received a "stayed 23-month sentence." Laster complains that although he "was not convicted of any of the actual offenses, but merely of aiding an offender after the fact," his "sentence is notably more severe than the sentence [N.J.] received, despite [N.J.'s] key role in the arson and destruction of the decedent's vehicle." Laster argues that it would have been fair and just to allow him to withdraw his plea based on N.J.'s sentence.

The facts of this case are similar to those in *State v. Townsend*. 872 N.W.2d 758 (Minn. App. 2015). Townsend agreed to plead guilty to an amended offense of aiding an

offender after the fact for a murder committed by a codefendant and to testify against that codefendant. *Id.* at 761. Before Townsend was sentenced, he testified at the codefendant's trial, and the jury found the codefendant not guilty. *Id.* Townsend moved to withdraw his guilty plea under the manifest-injustice and fair-and-just standards based on the codefendant's acquittal. *Id.* at 761-62. The district court denied Townsend's plea-withdrawal motion. *Id.* at 761.

On appeal, Townsend's "sole reason for asking to withdraw his plea" under the fair-and-just standard was that he "face[d] punishment for an after-the-fact role in a murder that a jury determined could not be proved beyond a reasonable doubt." *Id.* at 764. This court rejected that argument for two reasons. *Id.* First, we explained that the offense of aiding an offender—accomplice after the fact did not require that the other person actually be convicted of the crime. *Id.* Second, we reasoned that "Townsend had the opportunity to present his case to a jury but chose to waive his trial rights to take advantage of a favorable plea negotiation." *Id.* We determined that "[t]he district court did not abuse its discretion by concluding that Townsend's realization that he made a bad bargain did not provide him with a fair and just reason to withdraw his guilty plea." *Id.*

Laster similarly "had the opportunity to present his case to a jury but chose to waive his trial rights to take advantage of a favorable plea negotiation." *See id*. The fact that he now believes he made a bad bargain given the sentence N.J. received after trial does not establish a fair-and-just reason to withdraw his guilty plea. *See id.*; *see also Lopez*, 794 N.W.2d at 382 (stating that "more than a change of heart is needed to withdraw a guilty plea").

III.

In pro se supplemental briefs, Laster claims (1) that the sentence he received was "excessive and unjust" given his conduct and (2) that the district court judge who sentenced him was biased because that judge "had previously signed warrants that were used in this case" and "was the judge presiding over the trial."

Laster's argument that the sentence he received was excessive and unjust is addressed in our discussion of the arguments in his principal brief. As to Laster's argument that the sentencing judge was biased, "[p]revious adverse rulings by themselves do not demonstrate judicial basis." *Hannon v. State*, 752 N.W.2d 518, 522 (Minn. 2008). Laster's bias argument therefore does not provide a basis for relief.

Affirmed.