STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1352

State of Minnesota,
Respondent,

vs.

Aretina Tiaira Williams,
Appellant.

Filed June 29, 2020
Affirmed
Bryan, Judge

Hennepin County District Court
File No. 27-CR-17-17217

Keith Ellison, Attorney General, Kristi Nielsen, Assistant Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Bryan, Presiding Judge; Florey, Judge; and Smith, John, 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

BRYAN, Judge

Appellant challenges the sentences imposed by the district court for three reasons. First, appellant argues that the district court erred when it treated several of the convictions as separate offenses instead of part of the same behavioral incident. Second, appellant challenges her primary sentence as excessive given the conduct at issue in this case. Third, appellant argues that the district court erred when it denied her motion for a downward departure. We affirm the district court because we conclude that the challenged convictions did not arise out of the same behavioral incident, that the district court did not abuse its discretion when it imposed the sentences in this case, and that the district court acted within its discretion when it denied appellant's downward departure motion.

FACTS

Respondent State of Minnesota charged appellant Aretina Tiaira Williams with one count of attempted theft of public funds by swindle and ten counts of aiding and abetting theft by false representation. The state alleged that Williams and her mother overbilled the Department of Human Services (DHS) for Personal Care Assistant (PCA) services not actually provided, and gave kickbacks to the purported recipients of these services. Williams maintained her innocence, but entered an *Alford* plea[1] to the one theft-by-swindle count and to five of the theft-by-false-representation counts.

[1] An *Alford* plea allows the defendant to enter a guilty plea, while maintaining a claim of innocence. *State v. Goulette*, 258 N.W.2d 758, 761 (Minn. 1977) (adopting *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160 (1970)).

The parties do not dispute the facts underlying the offense and signed a written stipulation regarding the factual basis for the plea. The parties agreed that the state would prove the following facts beyond a reasonable doubt at trial. Williams worked as a manager, administrator, and the designated biller for her mother's business, Your Way Home Care (YWHC). YWHC was a personal care provider organization (PCPO) that contracted with Personal Care Assistants (PCAs) to provide services to Medicaid recipients at the recipient's home. As a PCPO, YWHC would pay its PCAs based on the hours reflected in the PCAs' timesheets. YWHC would then submit claims to DHS for reimbursement of these payments. Williams received training from the DHS on how to bill for a PCPO. Williams was taught not to submit any claims that lacked proper documentation. On over 1,200[2] occasions, however, Williams submitted claims to DHS for amounts that did not match the PCAs' timesheets. In addition, Williams instructed YWHC's PCAs to pay kickbacks to the Medicaid recipients that YWHC served. The state attached an exhibit to the stipulation that included the specific dates of YWHC's claims and that summarized the dollar amounts of fraudulent charges for each of the ten charged counts of aiding and abetting theft by false representation. The combined losses of the ten charged counts totaled $1,139,945.67. After DHS suspended YWHC from the Medicaid program, Williams worked with her father to gain approval for a new PCPO called DOTS

[2] At times, both the state and the district court refer to "12,000 claims," but the factual stipulation states that "On over 1,200 occasions, the total time reported on the timesheet did not match the claim submitted to the DHS."

Home Health Care. This conduct formed the basis for the charges against Williams in count 1 for attempted theft by swindle.

In the presentencing investigation report (PSI), Williams told the probation officer that she used the billing practices her mother taught her, even though she received training from the state. She expressed that she attempted to change how YWHC operated, but her ideas were rejected, and she acquiesced to her mother's practices. She denied that she "intentionally recorded PCA hours which were not worked, encouraged others to participate in fraudulent activity, or personally benefited financially from overbilling the State." She disagreed that her reason for attempting to open a second PCPO was to commit further acts of fraud. The author of the PSI concluded that Williams "portrayed herself as a passive participant in the offense."

Williams requested a downward dispositional departure from the presumptive guidelines sentence for the following offender-related reasons: (1) she cares for two young children, her mother, and her sister; (2) she was employed and just a few months away from finishing her bachelor's degree; (3) she had a difficult childhood, which included a history of trauma and sexual assault; (4) she did not benefit from the fraud; and (5) she expressed remorse for her actions. The state requested that that the district court calculate Williams's criminal-history scores by using the *Hernandez* method[3] and argued that the

[3] In *State v. Hernandez*, the Minnesota Supreme Court set forth a process for district courts to follow when sentencing an offender on the same day for multiple convictions, instructing courts to increase an offender's criminal-history score with each successive sentence. 311 N.W.2d 478, 481 (Minn. 1981).

district court should deny Williams's request for a downward dispositional departure and impose the guidelines sentence for each separate conviction.

The district court denied Williams's dispositional departure motion based on the following offender-related conclusions: (1) Williams could have run a legitimate business, but chose not to; (2) Williams was not particularly amenable to probation because she minimized her role in the offense and did not take full responsibility for her actions; (3) Williams's childhood trauma does not support a departure because Williams subsequently worked with the very people who traumatized her to commit these offenses; and (4) although Williams cares for her children and others, "people can't evade responsibility for criminal acts based on their status as a parent." In addition, the district court denied the motion based on the following offense-related factors: (1) the nature of the offenses was "particularly egregious" because the offenses involved taking advantage of persons with disabilities; (2) the charged offenses included a very large number of claims totaling over a million dollars in theft of public funds; and (3) Williams continued with the fraudulent conduct even after the state suspended YHWC.

The district court concluded that the six offenses did not arise from a single behavioral incident because the offenses were committed at different times and were not committed to achieve the same, specific criminal objective. The district court *Hernandized* the offenses, starting with count seven, and working backward to count one, the most recent offense. Williams received concurrent sentences for these six offenses, as follows (listed in the order that the offenses occurred):

a) an executed sentence of 21 months for aiding and abetting theft of over $35,000 by false representation in count seven, which occurred from July 2013 through December 2013;

b) an executed sentence of 27 months for aiding and abetting theft of over $35,000 by false representation in count six, which occurred from January 2014 through June 2014;

c) an executed sentence of 39 months for aiding and abetting theft of over $35,000 by false representation in count five, which occurred from July 2014 through December 2014;

d) an executed sentence of 45 months for aiding and abetting theft of over $35,000 by false representation in count four, which occurred from January 2015 to June 2015;

e) an executed sentence of 57 months for aiding and abetting theft of over $35,000 by false representation in count three, which occurred from July 2015 to December 2015;[4] and

f) an executed sentence of one year and one day for attempted theft by swindle in count one, which occurred December 2016 through August 2017.

This appeal followed.

[4] Initially, the district court imposed a stay of execution for counts seven, six, and one. Given that the executed sentences would run concurrent with the stayed sentences, the district court asked whether Williams would prefer to execute these presumptively stayed sentences. Williams requested execution, and the district court imposed an upward dispositional departure for counts one, six, and seven. Williams does not challenge this decision.

D E C I S I O N

I. Multiple Behavioral Incidents

Williams argues that the five counts of aiding and abetting theft by false representation arose out of a single behavioral incident, and the district court erred by *Hernandizing* these convictions and imposing multiple sentences. We conclude that the district court properly treated each conviction as a separate incident.

The Minnesota Sentencing Guidelines Commission has promulgated sentencing guidelines to be used by a district court. *See* Minn. Stat. § 244.09 (2018). The guidelines set forth, among other things, the procedures by which the district court calculates an offender's criminal-history score. *See* Minn. Sent. Guidelines 2.B (2012). When an offender is sentenced for multiple convictions on the same day, district courts include the first conviction in calculating the criminal-history score for the next offense, repeating the process for each successive sentence. *State v. Williams*, 771 N.W.2d 514, 521 (Minn. 2009); *State v. Hernandez*, 311 N.W.2d 478, 481 (Minn. 1981). Generally, however, a district court cannot impose multiple sentences for separate convictions arising from a single behavioral incident. Minn. Stat. § 609.035, subd. 1 (2018); *State v. Kebaso*, 713 N.W.2d 317, 322 (Minn. 2006) ("[A] defendant will be punished for the most serious of the offenses arising out of a single behavioral incident . . . ." (quotation omitted)). District courts follow a similar practice for calculating criminal-history scores: "when a defendant is sentenced for multiple convictions based on a single behavioral incident . . . the district court is prohibited from using the *Hernandez* method to calculate the defendant's criminal-history score." *Williams*, 771 N.W.2d at 522; *see also, e.g.*, Minn. Sent. Guidelines

2.B.1.e.(1), (2) (prohibiting courts from using the *Hernandez* method when convictions arise from a single course of conduct).

"[W]e determine whether the crimes were part of a single behavioral incident by considering (1) whether the offenses occurred at substantially the same time and place, and (2) whether the conduct was motivated by an effort to obtain a single criminal objective." *State v. Bakken*, 883 N.W.2d 264, 270 (Minn. 2016) (citations and quotations omitted). When reviewing a district court's determination of whether the separate offenses arose out of a single behavioral incident, "we review the district court's findings of fact for clear error and its application of the law to those facts de novo." *Bakken*, 883 N.W.2d at 270.

The Minnesota Supreme Court has repeatedly stated that a broad criminal motive cannot unify separate crimes into a single course of conduct. *See State v. Bauer*, 792 N.W.2d 825, 830 (Minn. 2011) (affirming multiple sentences because sharing illegal drugs with friends is too broad to constitute a single criminal objective); *State v. Gould*, 562 N.W.2d 518, 521 (Minn. 1997) (affirming use of the *Hernandez* method because relieving financial hardship is too broad to constitute a single criminal objective); *State v. Soto*, 562 N.W.2d 299, 304 (Minn. 1997) (affirming use of *Hernandez* method because selling drugs to relieve financial hardship is too broad to constitute a single criminal objective); *State v. Gilbert*, 262 N.W.2d 334, 338 (Minn. 1977) (affirming multiple sentences because the identified criminal objective, "general hatred of women," is too broad to constitute a single criminal objective).

The mere fact that a defendant commits "multiple crimes over time for the *same* criminal objective does not mean [the defendant] committed those crimes to attain a *single*

criminal objective." *Bakken*, 883 N.W.2d at 271-72 (affirming multiple sentences because the identified criminal objective, satisfying sexual urges, did not constitute a single criminal objective). The Minnesota Supreme Court recently reiterated that our analysis does not end with a determination that separate convictions were motivated by the same objective because we also consider whether the commission of one offense was "in furtherance of, or even incidental to" the completion of the other offenses. *State v. Barthman*, 938 N.W.2d 257, 267 (Minn. 2020) (quoting *Bakken*, 883 N.W.2d at 271).

We have also previously affirmed the imposition of multiple sentences and the use of the *Hernandez* method where the separate offenses were specifically part of an ongoing scheme to defraud because the offenses were not unified by a single behavioral incident. *See, e.g.*, *State v. Medibus-Helpmobile, Inc.*, 481 N.W.2d 86, 92 (Minn. App. 1992) (affirming multiple sentences and use of the *Hernandez* method for seven counts of theft by false representation in a Medicare/Medicaid fraud scheme), *review denied* (Minn. March 19, 1992). "Making deceptive billings a continuing business practice does not transform them into a single behavioral incident." *Id.*; *see also, e.g.*, *State v. Eaton*, 292 N.W.2d 260, 267 (Minn. 1980) (stating that "one large plan to swindle as much as possible" is "too broad to be a single criminal goal"); *State v. O'Brien*, 429 N.W.2d 293, 297 (Minn. App. 1988) (affirming use of *Hernandez* method for each of four counts of theft by swindle arising out of the same ongoing fraudulent investment scheme), *review denied* (Minn. Nov. 16, 1988); *State v. Chidester*, 380 N.W.2d 595, 597-98 (Minn. App. 1986) (affirming fourteen separate concurrent sentences for theft by false representation and aggravated forgery because the identified criminal objective, obtaining money to cover expenses and

prevent overdrawing an account, was too broad to constitute a single criminal objective), *review denied* (Minn. March 21, 1986).

In this case, Williams argues that the offenses share a unity of time, place, and objective, which would prohibit using the *Hernandez* method to calculate her criminal-history score. We disagree for three reasons. First, we cannot conclude that the conduct in this case is unified by time and place because Williams admitted that the conduct spanned multiple years (from July 2013 through December 2015), involved multiple PCAs and Medicaid recipients, and 1,200 separate claims. Thirty months separate the offense conduct stipulated to in this case. Williams's argument runs counter to previous decisions regarding whether multiple offenses share or lack a unity of time. *See Gould*, 562 N.W.2d at 521 (concluding that there was no unity of time among three separate drug sales to the same person over the course of one week); *Soto*, 562 N.W.2d at 304 (concluding that there was no unity of time among four separate drug sales to the same person over the course of one month); *Eaton*, 292 N.W.2d at 266-67 (concluding that there was no unity of time among two illegal financial transactions committed over the course of three days); *O'Brien*, 429 N.W.2d at 297 (concluding that there was no unity of time among four separate theft-by-swindle offenses over the course of a month and a half); *Chidester*, 380 N.W.2d at 597-98 (concluding that there was no unity of time among fourteen separate theft-by-false-representation and aggravated-forgery offenses over the course of eight months). We have also previously approved using the *Hernandez* method to calculate an offender's criminal-history score when the state aggregated the conduct in an ongoing fraud scheme into successive six-month intervals. *Medibus-Helpmobile*, 481 N.W.2d at 92. Given these

decisions, we cannot conclude that the offenses in this case share a unity of time because they involve claims that Williams submitted in 2013, 2014, and 2015.

Second, we cannot conclude that the offenses arose out of the same criminal objective. The motive in this case, obtaining money through an ongoing, deceitful business practice, is too broad to constitute a single criminal objective. *See Eaton*, 292 N.W.2d at 267; *O'Brien*, 429 N.W.2d at 297; *Chidester*, 380 N.W.2d at 597; *Medibus-Helpmobile*, 481 N.W.2d at 92.

Third, the claims submitted in completion of one offense do not relate to the claims submitted for the completion of any other offense. We cannot, on these facts, conclude that the submission of a fraudulent claim in 2013 was completed "in furtherance of, or incidental to" the submission of the other fraudulent claims in 2014 or 2015. *See Barthman*, 938 N.W.2d at 267; *Bakken*, 883 N.W.2d at 271. Because the convictions do not share a unity of time, place, or objective, we conclude that they arose out of separate behavioral incidents and, therefore, we affirm the use of the *Hernandez* method to calculate Williams's criminal-history score and to impose multiple sentences.

II. Duration of William's Sentences

Williams argues that using the *Hernandez* method to calculate her criminal-history score resulted in an excessive sentence, exaggerating the criminality of her conduct. We conclude that the district court did not abuse its discretion when it used the *Hernandez* method resulting in the imposition of a 57-month prison term.

"We review a district court's determination of whether a sentence exaggerates the criminality of the defendant's behavior for an abuse of discretion." *State v. Alger*, 941

N.W.2d 396, 403 (Minn. 2020) (citations omitted). In making this determination, "we are guided by past sentences received by other offenders for similar offenses." *Id.* (quotation omitted); *see also State v. Vazquez*, 330 N.W.2d 110, 111-12 (Minn. 1983). This court may also "reduce a defendant's sentence in order to make it more equitable with the sentence that a similarly situated codefendant received." *State v. Back*, 341 N.W.2d 273, 277 (Minn. 1983).

In this case, Williams asserts that the district court imposed an excessive sentence because her a codefendant, Williams's mother, received a stay of execution. A review of the record and of other sentences for similar offenses supports the district court's sentencing decision in this case. *See State v. Thompson*, 720 N.W.2d 820, 823, 830-31 (Minn. 2006) (reversing the court of appeals and affirming a double upward durational departure sentence of 114 months for nine theft-by-swindle convictions relating to embezzlement of $600,000); *State v. Rott*, 313 N.W.2d 574, 574-75 (Minn. 1981) (upholding departure, but reducing sentence to 24 months for five theft-by-check convictions relating to theft of $20,000); *O'Brien*, 429 N.W.2d at 295 (affirming sentence of 82 months and an upward departure for theft-by-swindle convictions relating to a deceptive investment scheme totaling $136,000 in losses to the victims).

In light of these cases, we cannot agree with Williams that her sentence of 57-months is excessive. Williams pleaded guilty to five theft-by-false-representation offenses relating to a million-dollar fraud scheme. The losses in this case are far more extensive than the losses in *Thompson*, *Rott*, and *O'Brien*. Nevertheless, Williams received a lower sentence than those affirmed for the offenders in the cited cases. In addition, Williams

acknowledged that the state would prove beyond a reasonable doubt that she instructed other individuals, such as PCAs, how to perpetuate the fraud scheme by paying kickbacks to Medicaid recipients. This conduct justifies treating Williams differently from her mother. Therefore, we conclude that the district court did not abuse its discretion when it imposed an executed sentence of 57 months, concurrent with the other sentences.

III. Denial of Downward Dispositional Departure

Williams argues that the district court abused its discretion by denying her motion for a downward dispositional departure because it considered offense-related factors rather than offender-related factors.[5] Alternatively, Williams also argues that the district court abused its discretion when it denied the departure motion.

The sentencing guidelines provide "a nonexclusive list of factors that may be used as reasons for departure." *State v. Hicks*, 864 N.W.2d 153, 157 (Minn. 2015) (quotation omitted). The "district court may depart from the presumptive guidelines sentencing range only if there exist identifiable, substantial, and compelling circumstances to support a sentence outside the range on the grids." *Tucker v. State*, 799 N.W.2d 583, 586 (Minn. 2011) (quotation omitted). "Substantial and compelling circumstances are those circumstances that make the facts of a particular case different from a typical case." *State v. Peake*, 366 N.W.2d 299, 301 (Minn. 1985).

[5] Williams also argues that the district court improperly considered the fact that she entered an *Alford* plea as a reason to deny her departure motion. The argument, however, misstates the district court's statements. The district did not deny the departure request because Williams entered an *Alford* plea. Instead, the district court concluded that Williams had minimized her culpability throughout the case, including when she rejected an earlier offer to plead guilty and in her statements to the probation officer who completed the PSI.

The standard of review applied depends on the nature of the challenge to the district court's departure decision. We apply a de novo standard of review to questions of law, such as the validity of the stated reason for departure. *State v. Jackson*, 749 N.W.2d 353, 357 (Minn. 2008); *see also Dillon v. State*, 781 N.W.2d 588, 595 (Minn. App. 2010) (observing that a de novo standard of review applies "when reviewing whether a particular reason for an upward departure is permissible") *review denied* (Minn. July 20, 2010). We apply an abuse-of-discretion standard of review to other aspects of the decision. For example, we review for an abuse of discretion the district court's conclusion that the factual record supports a legally permissible departure grounds. *Hicks*, 864 N.W.2d at 163. Abuse-of-discretion review also applies to the district court's decision whether to depart. *Dillon*, 781 N.W.2d at 595 ("Once we determine as a matter of law that the district court has identified proper grounds justifying a challenged departure, we review its decision *whether* to depart for an abuse of discretion."). Likewise, we review the extent of the departure for an abuse of discretion. *Id.* at 596 ("We have generally deferred entirely to the district court's judgment on the proper length of departures that result in sentences of up to double the presumptive term."). Where a district court makes factual findings in order to apply the provisions of the sentencing guidelines, we review those facts for clear error. *See State v. Critt*, 554 N.W.2d 93, 95 (Minn. App. 1996) (stating the general rule that district court findings of fact are subject to review for clear error), *review denied* (Minn. Nov. 20, 1996). In applying these standards of review, we have previously observed that only "a rare case . . . would warrant reversal of the refusal to depart" on appeal. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

In this case, Williams first argues that the district court denied her departure motion for a legally impermissible reason because courts are prohibited from considering offense-related reasons when deciding dispositional departure motions. Contrary to Williams's argument, we have repeatedly held that district courts may consider both offense-related and offender-related factors when deciding whether to grant a request for dispositional departure. *State v. Walker*, 913 N.W.2d 463, 468 (Minn. App. 2018) ("For a downward dispositional departure, a district court may consider both offender- and offense-related factors."); *see also, e.g.*, *State v. Allen*, 706 N.W.2d 40, 46 (Minn. 2005) ("Upward dispositional departures under the guidelines may be based on either offender- or offense-related aggravating factors."); *State v. Chaklos*, 528 N.W.2d 225, 228 (Minn. 1995) (stating that "offense-related aggravating factors may be used to support not only such a dispositional departure but, alternatively, an upward durational departure" (emphasis omitted)). Here, the district court properly relied on both offense-related and offender-related factors to deny Williams's departure motion.

Williams alternatively argues that the district court abused its discretion in denying the departure request. We disagree and conclude that the district court gave careful consideration to the stated grounds for Williams's departure motion. The district court denied the departure request because it did not agree with all of the factual characterizations contained in the departure motion and it did not find convincing Williams's arguments regarding the offender-related factors listed in the departure motion. The district court also denied the motion because it concluded the following about Williams: (1) she could have run a legitimate business, but chose not to; (2) Williams was not particularly amenable to

probation because she minimized her role in the offense and did not take full responsibility for her actions; (3) Williams's childhood trauma does not support a departure because Williams subsequently worked with the very people who traumatized her to commit these offenses; and (4) although Williams cares for her children and others, "people can't evade responsibility for criminal acts based on their status as a parent." In addition, the district court determined the following about the offenses: (1) the nature of the offenses was "particularly egregious" because the offenses involved taking advantage of persons with disabilities; (2) the charged offenses included a large number of claims totaling over a million dollars; and (3) Williams continued with the fraudulent conduct even after the state suspended YHWC. Because the district court's conclusions were well-reasoned and factually supported by the parties' lengthy written stipulation,[6] the district court did not abuse its discretion in denying Williams's motion for a downward dispositional departure.

Affirmed.

[6] Williams appears to implicitly challenge the district court's factual findings as well. For example, Williams disagrees with the finding that she minimized her role when speaking with the probation officer. Williams stipulated, however, that she instructed others to pay kickbacks to recipients and that she was involved in the submission of over 1,200 claims. These stipulations conflict with the denials that Williams made to the probation officer and indicate that her role was not as passive as described in Williams's statement in the PSI. The district court agreed with the assessment of the probation officer, who wrote that Williams "portrayed herself as a passive participant in the offense." We conclude that the district court's factual findings are supported by the record and not clearly erroneous.