

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2018).

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1489**

State of Minnesota,
Respondent,

vs.

Chad Michael Gibson,
Appellant.

**Filed August 10, 2020
Affirmed
Johnson, Judge**

Rice County District Court
File No. 66-CR-17-475

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

John L. Fossum, Rice County Attorney, Terence Swihart, Assistant County Attorney, Faribault, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Chang Y. Lau, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Johnson, Judge; and Frisch, Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

Chad Michael Gibson rear-ended a vehicle at high speed, causing the death of the vehicle's driver and serious injuries to a passenger. Gibson pleaded guilty to criminal

vehicular homicide and criminal vehicular operation. The district court initially imposed a sentence of 105 months of imprisonment on the more-serious offense but granted Gibson's request for a downward dispositional departure and stayed execution of the sentence. This court reversed the downward departure and remanded for resentencing. The district court again imposed a top-of-the-box presumptive sentence of 105 months of imprisonment but executed the sentence. Gibson argues that the district court erred by not imposing a shorter presumptive sentence. We conclude that the district court did not err and, therefore, affirm.

FACTS

The amended complaint alleges that, on August 13, 2016, Gibson was driving south on interstate highway 35 in Rice County. Due to work on a bridge, several signs warned drivers of "road work ahead" and advised them to "be prepared to stop." Near the intersection of the freeway and state highway 60, a back-up caused traffic to slow to a stop. Gibson drove his Chevrolet Avalanche into the rear end of a Kia Sorrento, causing it to collide with the vehicles in front of it. The Kia Sorrento caught fire, and the two persons inside were extracted by first responders and airlifted to a hospital. The driver of the Kia Sorrento later died and the passenger, his wife, suffered multiple broken bones and other injuries. A forensic analysis indicated that Gibson's vehicle was travelling at 78 miles per hour just before the impact and that he never applied the brakes.

In its amended complaint, the state charged Gibson with criminal vehicular homicide, in violation of Minn. Stat. § 609.2112, subd. 1(a)(1) (2016); criminal vehicular operation, in violation of Minn. Stat. § 609.2113, subd. 1(1) (2016); reckless driving, in

violation of Minn. Stat. § 169.13, subd. 1(a) (2016); and careless driving, in violation of Minn. Stat. § 169.13, subd. 2.

In January 2018, Gibson pleaded guilty to criminal vehicular homicide and criminal vehicular operation, and the state dismissed the charges of reckless driving and careless driving. In light of Gibson's criminal-history score, the presumptive sentencing guidelines range for the criminal-vehicular-homicide conviction is 75 to 105 months of imprisonment. Gibson moved for a downward dispositional departure. He argued that he is amenable to probation and that other factors mitigated his culpability, such as the fact that he was not impaired by drugs or alcohol, was not using a cell phone, and had difficulty perceiving the speed of traffic in front of him. The state opposed Gibson's motion, citing his "significant record of traffic violations" and the lack of evidence that he is amenable to probation. The district court imposed sentences of 105 months and 43 months, respectively, on the two convictions but stayed execution of the sentences, placed Gibson on probation for 10 years, ordered him to serve 365 days in jail, and ordered him to pay \$16,958 in restitution. The district court stated that it departed downward because Gibson's actions were "less egregious than in the typical case" and because he cooperated with law enforcement, showed remorse, "maintained a cooperative and respectful attitude throughout the[] proceedings," and is amenable to probation.

The state appealed the sentence. This court reversed and remanded for resentencing after concluding that the district court abused its discretion by finding that Gibson's behavior was less egregious than that of a typical offender and that he is amenable to probation. *State v. Gibson*, A18-0936, 2019 WL 1510694, *3 (Minn. App. Apr. 8, 2019).

On April 16, 2019, approximately one week after this court’s opinion in the state’s appeal, a probation officer filed a probation-violation report. The report alleged that, on multiple occasions between January and early April of 2019, Gibson had tested positive for methamphetamine or had failed to appear when required to provide a urine sample. The report also stated that Gibson had violated the terms of his probation by not following his probation officer’s directives and not contacting his probation officer. In May 2019, a probation officer later filed two addenda alleging additional probation violations.

At a hearing on the alleged probation violations, Gibson admitted that he had violated the terms of his probation as outlined in the probation violation report. With respect to resentencing, the district court stated that this court’s opinion was “very clear” and had left “no wiggle room for anything other than a commit to the Commissioner of Corrections.” At a subsequent resentencing hearing, the district court again imposed sentences of 105 months and 43 months of imprisonment and executed the sentences. Gibson appeals.

D E C I S I O N

Gibson argues that the district court erred by imposing the longest presumptive sentence for his conviction of criminal vehicular homicide.

The Minnesota Sentencing Guidelines specify presumptive sentences for felony offenses. Minn. Sent. Guidelines 2.C (2016). For any particular offense, the presumptive sentence is “presumed to be appropriate for all typical cases sharing criminal history and offense severity characteristics.” Minn. Sent. Guidelines 1.B.13 (2016). The state’s appellate courts “generally will not interfere with a sentencing court’s decision to impose

a term within the presumptive sentence range.” *State v. Kangbateh*, 868 N.W.2d 10, 14 (Minn. 2015). Rather, an appellate court should reverse a sentence within the presumptive sentencing range only in “rare” cases and only if there are compelling circumstances. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981); *State v. Delk*, 781 N.W.2d 426, 428 (Minn. App. 2010), *review denied* (Minn. July 20, 2010). This court applies an abuse-of-discretion standard of review to a sentence that is imposed within the presumptive sentencing range. *Kangbateh*, 868 N.W.2d at 14.

In this case, Gibson contends that the district court abused its discretion by imposing the longest presumptive sentence “solely because [he] violated the terms of his probation.” We note the obvious fact that, at resentencing, the district court imposed a sentence whose duration is identical to the duration of the original sentence. That fact makes it difficult for Gibson to establish that the district court imposed the sentence “solely because” he had violated the terms of his probation.

Gibson’s argument is based on the following statements by the district court at the resentencing hearing, which he quotes in his brief:

Okay. Well, Mr. Gibson, here is what I’m going to tell you. My original sentence was aimed at hoping that you would become a productive member of society. And you could honor [the decedent’s] legacy by becoming a productive member of society, by paying your debt back, by becoming a good man, as [the decedent] was.

Clearly, that didn’t happen. And clearly you are here not only for resentencing based upon my original sentence but for violating the terms and conditions of your probation. I set very strict terms because I wanted to give you the opportunity to, as I said, honor [the decedent’s] legacy. You didn’t do that.

And frankly, I'll be blunt. When I heard that you had probation violations, I was upset that nobody notified me beforehand. Because . . . I set these with a short leash for you. And for some reason that didn't get to me right away.

When I originally sentenced you, I sentenced you to the top of the box because if you did not complete probation, I thought it was fair that you had the most sentence that I could give you pursuant to the law. And I'm going to do that today.

This excerpt does not convince us that the district court's selection of a sentence was based on Gibson's probation violation. The district court referred to the fact that Gibson had violated the terms of his probation, but that fact does not appear to have motivated the district court's selection of the sentence that it imposed. Rather, the district court explained that it was selecting the same sentence that it had imposed earlier, which it had selected because the district court "thought it was fair that you had the most sentence that I could give you pursuant to the law." That reason for imposing a top-of-the-box presumptive sentence does not reflect an abuse of the district court's broad discretion. *See Kangbateh*, 868 N.W.2d at 14; *Kindem*, 313 N.W.2d at 7; *State v. Johnson*, 831 N.W.2d 917, 925 (Minn. App. 2013), *review denied* (Minn. Sept. 17, 2013).

Gibson also contends that the district court abused its discretion by not considering the same factors that previously had caused the district court to order a downward dispositional departure. But this court reversed the district court's initial sentence, noting that "[t]he record does not support the district court's conclusion that Gibson's actions were less egregious than those of a typical offender." *Gibson*, 2019 WL 1510694, at *3. This court specifically stated that the district court "abused its discretion when it compared Gibson's grossly negligent driving conduct to another situation where a defendant violates

the statute by driving negligently while intoxicated,” and we rejected the district court’s finding that Gibson’s gross negligence was not due to a “volitional act” but instead a momentary distraction. *Id.* at *4. The district court expressly recognized that it could not rely on the factors on which it previously had relied. The district court did not abuse its discretion by not repeating the mistake that this court previously had identified and corrected.

Thus, the district court did not err by imposing the longest sentence within the presumptive guidelines sentencing range.

Affirmed.