STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1774

State of Minnesota,
Respondent,

vs.

Dean Robert Minnerath,
Appellant.

Filed June 15, 2020
Affirmed
Frisch, Judge

Becker County District Court
File No. 03-CR-17-2059

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

Brian W. McDonald, Becker County Attorney, Detroit Lakes, Minnesota (for respondent)

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

Considered and decided by Larkin, Presiding Judge; Rodenberg, Judge; and Frisch, Judge.

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

FRISCH, Judge

Following his conviction of first-degree assault, appellant argues that the district court abused its discretion by imposing a sentence at the top of the presumptive range as opposed to a sentence at the bottom of the presumptive range. We affirm.

FACTS

In September 2017, appellant Dean Robert Minnerath threatened patrons at a bar. Minnerath left the bar before police arrived. Police later located Minnerath and attempted to stop his vehicle. Minnerath did not comply with orders to stop and fled police.

A high-speed chase ensued, spanning over 12 miles. The chase ended only after Minnerath's vehicle hit stop sticks deployed by police. Minnerath then exited his vehicle with a loaded assault rifle and aimed the weapon at police. Officers fired at Minnerath, striking him eight times. Upon investigation, law enforcement discovered a live round of ammunition jammed in the chamber of the assault rifle.

The state charged Minnerath with (1) first-degree assault—use or attempted use of deadly force against a peace officer, (2) second-degree assault, (3) prohibited person in possession of a firearm, and (4) fleeing a peace officer in a motor vehicle.

On June 24, 2019, Minnerath entered a *Norgaard* guilty plea to first-degree assault, without an agreement as to sentencing.[1] At the plea hearing, Minnerath stated that he

[1] "A defendant enters a *Norgaard* plea if he claims a loss of memory, through amnesia or intoxication, regarding the circumstances of the offense but the record establishes that the defendant is guilty or likely to be convicted of the crime charged." *State v. Johnson*, 867

started drinking when he arrived at the bar, that he did not recall how much alcohol he consumed, that he remembered leaving a gas station before arriving at the bar, and that the next thing he remembered was waking up in Fargo. Although Minnerath testified at the plea hearing that he did not recall any other events regarding the incident, Minnerath described details of the incident to his wife during a phone call from jail, specifically telling his wife that he took the assault rifle out of the car because he "wasn't gonna leave it" and that he did not point the rifle at a certain officer who responded to the scene.

Minnerath faced a prison sentence in the range between 135 and 189 months given his criminal history and the offense to which he pleaded guilty. The presentence investigation report recommended that the district court sentence Minnerath at the midpoint of the presumptive range, or 158 months in prison. The district court imposed the maximum presumptive sentence, 189 months. This appeal follows.

D E C I S I O N

Minnerath challenges the decision by the district court to impose a top-of-the-box guidelines sentence rather than a bottom-of-the-box guidelines sentence.

The Minnesota Sentencing Guidelines establish the presumptive sentences for felony offenses. Minn. Sent. Guidelines 2.C (Supp. 2017). The guidelines set forth that 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 (Supp. 2017). "All three numbers in any given cell [on the sentencing guidelines grid]

N.W.2d 210, 215 (Minn. App. 2015) (quotations omitted), *review denied* (Minn. Sept. 29, 2015); *see also State ex rel. Norgaard v. Tahash*, 110 N.W.2d 867, 871-72 (Minn. 1961).

constitute an acceptable sentence based solely on the offense at issue and the offender's criminal history score—the lowest is not a downward departure, nor is the highest an upward departure." *State v. Jackson*, 749 N.W.2d 353, 359 n.2 (Minn. 2008). We "generally will not interfere with sentences that are within the presumptive sentence range." *State v. Freyer*, 328 N.W.2d 140, 142 (Minn. 1982). Although we may, in our discretion, modify a sentence that is within the presumptive range, we "generally will not exercise that authority absent compelling circumstances." *Id.* "Only in a 'rare' case will a reviewing court reverse imposition of a presumptive sentence." *State v. Delk*, 781 N.W.2d 426, 428 (Minn. App. 2010) (quoting *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981)), *review denied* (Minn. July 20, 2010).

Minnerath argues that the district court abused its discretion by failing to consider mitigating circumstances associated with his request to be sentenced at the bottom of the presumptive range. Minnerath asserts that he is entitled to a lower sentence because he is 57 years old; his mental-health condition caused his attempted suicide by inducing officers to shoot him; and therefore, he claims, "there are mitigating factors that amount to compelling circumstances that render the maximum presumptive sentence unreasonable." At the sentencing hearing, both Minnerath and his counsel reiterated these and other arguments in support of the request for a lower sentence.

The district court expressly considered all of these arguments before exercising its discretion to impose the maximum sentence allowable under the guidelines. The district court explained:

I have reviewed everything in this file, including the pre-sentence investigation [report recommending the presumptive sentence of 158 months], your dispositional advisor's memorandum in support of your sentencing request [for the minimum guidelines sentence of 135 months], the two separate squad videos capturing the events on September 28th of 2017, the jail phone call made on June 6th of 2019, and I relistened to your plea hearing on June 24th.

Mr. Minnerath, you were released from prison on March 19th of 2019 and six months later, while still on probation, you ended up at [a bar] drinking to the point that you claim it affects your memory of what occurred that evening, together with the injuries that you sustained as a result of what happened that day.

When law enforcement was called to investigate alleged threats that you had made to patrons of the bar, you led them on a high speed chase. Speeds were up to 95 miles per hour over a distance of approximately 12 miles. You passed 27 cars during that chase as you fled at high speeds. When you stopped, you . . . armed yourself with a loaded rifle. You attempted to point it at the officers. You are a person who is prohibited from possessing a firearm. You put many lives in danger that day, not only the occupants of those 27 vehicles that you passed at high rates of speed, but also the officers who encountered you when you stopped.

As to your remorse, I believe that you do have remorse here today, although I have to say that I'm—I do question prior to your plea [t]he phone call that you made on June 6th, just two weeks prior to your plea, seemed to show a different version of what you actually do remember that evening as to what you said at your plea [hearing]. . . . [N]owhere on that call did I hear you say, "I don't really remember what happened . . . ." I'm taking that into consideration.

I'm also taking into consideration not only the factors that I've just outlined here today, but also the fact that you have a lengthy criminal history, including violence related offenses. In fact, this is your eighth felony offense within seven years. . . . [Y]ou are . . . a danger to the public, which is the reason I'm imposing the sentence that I'm going to.

The record shows that the district court carefully considered all arguments and evidence submitted by Minnerath in support of his request for a sentence at the bottom of the guidelines range and determined that a top-of-the-box sentence was more appropriate under the circumstances. The district court acted well within its sentencing discretion.

Affirmed.