

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0020**

State of Minnesota,
Respondent,

vs.

Michele Anne Reimann,
Appellant.

**Filed September 7, 2021
Affirmed
Gaïtas, Judge**

Hennepin County District Court
File No. 27-CR-18-15403

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

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

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

Considered and decided by Ross, Presiding Judge; Reilly, Judge; and Gaïtas, Judge.

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

Appellant Michele Anne Reimann, who was convicted of multiple counts of criminal vehicular homicide after a stipulated-facts court trial, appeals her sentences. Reimann argues that the district court abused its discretion by denying her requests for

downward dispositional and durational sentencing departures and by imposing consecutive rather than concurrent sentences. We affirm.

FACTS

On the evening of June 15, 2018, after using crack cocaine and alcohol, Reimann got into the driver's seat of a friend's van while they were stopped at a Minneapolis convenience store. With one friend in the convenience store and another friend, F.C., in the passenger seat, Reimann sped out of the parking lot. She hit a parked car but continued to drive at a high rate of speed. Eventually, Reimann barreled down an alley, crashing into another parked car before colliding with a utility pole. Two people had just exited the parked car in the alley, and the impact of the crash propelled the car into them. One of these individuals, T.O., died at the scene, and the second person was injured. F.C. was also killed. Subsequent testing of Reimann's blood confirmed that she had used cocaine. Her alcohol concentration was also over the legal limit for driving.

Respondent State of Minnesota charged Reimann with four counts of criminal vehicular homicide: two counts for causing F.C.'s death and T.O.'s death while driving with an alcohol concentration over 0.08 (counts I-II), and two counts for negligently causing both deaths with cocaine in her body (counts III-IV). Minn. Stat. § 609.2112, subs. 1(a)(3), 1(a)(6) (2016); *see also* Minn. Stat. § 152.02, subd. 3(a)(4) (2016) (categorizing cocaine under schedule II). She was also charged with criminal vehicular operation for injuring T.O.'s passenger while driving under the influence of alcohol and cocaine (count V). Minn. Stat. § 609.2113, subd. 3(2)(iii) (2016).

About one month after Reimann’s first court appearance, the district court ordered a psychological examination of her competency to proceed. *See* Minn. R. Crim. P. 20.01. A forensic psychologist deemed Reimann competent in an October 2018 report filed with the district court. Reimann disputed the psychologist’s opinion, and a contested hearing was set. On the day of the hearing, new concerns led the district court to order an updated psychological examination. The same psychologist prepared a second report in March 2019, opining that Reimann was now incompetent to proceed.¹ The psychologist’s second report documented concerns about Reimann’s mental health diagnoses, her cessation of prescribed medications, and recent observations of “bizarre perceptions” and “auditory hallucinations” (e.g., “believing jail staff moved into the [adjacent] housing unit and raised children there,” and “hearing ‘devil music’”). The psychologist also theorized that Reimann was experiencing “[t]ransient psychosis” in connection with a past traumatic brain injury and domestic abuse.

The district court issued an order finding Reimann incompetent and referred her for civil-commitment prepetition screening. Ultimately, however, Reimann did not qualify for civil commitment. She underwent another psychological examination in April 2019, and a second psychologist determined she had been restored to competency. The psychologist’s corresponding report notes that Reimann’s recent psychotic symptoms were likely attributable to her abrupt cessation of prescribed medications. Additionally, the report documented Reimann’s history of mental health diagnoses, including alcohol-use

¹ Because Reimann had refused to participate in the second examination, the psychologist noted that the updated report largely depended on collateral information from jail staff.

disorder, post-traumatic stress disorder, major depressive disorder, cognitive disorder due to traumatic brain injuries, and borderline personality disorder. But the psychologist concluded that Reimann’s functioning had improved since the May 2019 report and ultimately reasoned that Reimann was “able to rationally consult with counsel, understand the proceedings, and participate in her defense.” The district court found her competent to proceed.

In July 2019, the parties agreed to a stipulated-facts trial on counts I through IV. The state agreed to dismiss count V, and the parties agreed to a sentencing cap of 126 months if Reimann was found guilty. Reimann admitted to nine stipulated facts as her counsel read them into the record.² The district court found Reimann guilty on all four counts and, after denying her motion for downward sentencing departures, sentenced her to concurrent prison sentences of 117 months for count I and 126 months for count II.

Months later, the parties agreed to resentence Reimann with a reduced criminal history score.³ At resentencing, Reimann again moved for downward sentencing

² Reimann also submitted a “*Norgaard* Addendum” and advised the district court that she could not remember certain details from the night of the offenses. A *Norgaard* addendum generally accompanies a guilty plea when a defendant cannot remember all or part of the offense because of amnesia or intoxication. *State ex rel. Norgaard v. Tahash*, 110 N.W.2d 867 (Minn. 1961); *see also State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994) (explaining that when the defendant pleads guilty with a *Norgaard* plea, “the record must establish that the evidence . . . is sufficient to persuade the defendant and his or her counsel that the defendant is guilty or likely to be convicted of the crime charged”).

³ Reimann appealed her sentences in December 2019, claiming that the district court miscalculated her criminal history score and erroneously denied her departure requests. But then Reimann’s 2010 conviction for first-degree DWI test refusal was vacated pursuant to *Birchfield v. North Dakota*, 136 S. Ct. 2160 (2016), effectively reducing her criminal history score and invalidating a statutory sentencing enhancement factored into the district

departures. She argued that she has a serious and persistent mental illness that warranted an alternative placement to prison. Additionally, she argued that she lacked substantial capacity for judgment at the time of her offenses due to her mental illness. *See* Minn. Stat. § 609.1055 (2016); Minn. Sent. Guidelines 2.D.3.a(3) (2016). In support of her motion, Reimann submitted multiple documents regarding her mental health, including an independent neuropsychological evaluation report discussing her reduced functional capacity. The district court denied Reimann’s downward departure requests, sentencing her to the presumptive sentence of 48 months in prison for count I and imposing a permissive consecutive term of 42 months for count II.

Reimann appeals.

DECISION

The Minnesota Sentencing Guidelines aim to foster “uniformity, proportionality, rationality, and predictability in sentencing.” *State v. Misquadace*, 644 N.W.2d 65, 68 (Minn. 2002). Sentences prescribed by the sentencing guidelines—or presumptive sentences—are “presumed to be appropriate” in every case. Minn. Sent. Guidelines 2.D.1 (2020); *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014). A district court must impose the presumptive sentence or a sentence within the presumptive range unless there are

court’s original sentences in this case. We granted the parties’ joint motion to stay the appeal and to remand to the district court for resentencing. *State v. Reimann*, No. A19-2061 (Minn. App. July 29, 2020) (order). After resentencing, we dismissed Reimann’s first appeal at her request. *State v. Reimann*, No. A19-2061 (Minn. App. Oct. 23, 2020) (order).

“identifiable, substantial, and compelling circumstances” that support a departure from the guidelines. Minn. Sent. Guidelines 2.D.1; *Soto*, 855 N.W.2d at 308.

Here, the district court followed the sentencing guidelines in sentencing Reimann’s two convictions for criminal vehicular homicide. But Reimann argues that the district court should have imposed less serious sentences because there were substantial and compelling circumstances to support departures from the sentencing guidelines.

A district court has broad discretion in sentencing. *State v. Walker*, 913 N.W.2d 463, 468 (Minn. App. 2018). As the appellate court, we must give significant deference to the district court’s sentencing decision. *Id.* We only reverse sentencing decisions in rare cases when the district court has abused its discretion. *See id.* If the record shows that the district court carefully evaluated all of the information presented before sentencing, we will not disturb the district court’s decision. *State v. Pegel*, 795 N.W.2d 251, 255 (Minn. App. 2011).

Reimann contends that this is one of the rare cases where a district court’s sentencing decisions should be reversed. She argues that the district court abused its discretion by refusing to depart from the sentencing guidelines based on her mental health and cognitive impairments, and by imposing permissive consecutive sentences that unfairly exaggerate the criminality of her conduct. For the reasons discussed below, we disagree.

I. The district court did not abuse its discretion by rejecting Reimann’s requests for downward departures from the sentencing guidelines.

To depart from the sentencing guidelines, the district court must find that “aggravating or mitigating circumstances are present and those circumstances provide a substantial and compelling reason not to impose a guidelines sentence.” *Soto*, 855 N.W.2d at 308 (quotations and citations omitted). Substantial and compelling circumstances are those that “overcome the presumption in favor of the guidelines sentence” by making the case distinguishable. *Id.* Because “[a] departure is not mandatory,” we are reluctant to reverse a district court’s refusal to grant a departure. *Walker*, 913 N.W.2d at 468.

Reimann moved for both dispositional and durational departures. We first examine her requests for downward dispositional departures.

“A dispositional departure is one that stays a presumptively executed sentence, or executes a presumptively stayed sentence.” *State v. Stempfley*, 900 N.W.2d 412, 415 n.5 (Minn. 2017). Reimann argues that she was entitled to downward dispositional departures for her two criminal vehicular homicide convictions—in other words, probation instead of the prison sentences called for by the sentencing guidelines. At sentencing, Reimann identified two grounds for her dispositional-departure requests.

First, under the authority of Minnesota Statutes section 609.1055, Reimann argued that she has a serious and persistent mental illness requiring treatment in a probationary setting rather than prolonged incarceration. Under section 609.1055, a district court may place an offender with a serious and persistent mental illness on probation instead of in prison, conditioned on successful completion of “an appropriate supervised alternative

living program [with] a mental health treatment component,” so long as the arrangement is “consistent with public safety.” Minn. Stat. § 609.1055.

At resentencing, the district court carefully evaluated this proposed departure ground. The district court noted that it had thoroughly reviewed the many documents and reports that Reimann had submitted in support of her departure requests. It weighed Reimann’s mental health and need for treatment against her criminal history and the severity of the crimes being sentenced. The district court noted that Reimann had not submitted a proposal for a placement that would satisfy section 609.1055. And the district court stated that “the public is simply in danger when [Reimman] is not in a secure setting.” The district concluded, based on its review of the record and the statute, that dispositional departures were unwarranted. Because the district court evaluated the facts and the law, and reached a reasoned decision regarding the applicability of section 609.1055 to Reimann’s case, there was no abuse of discretion. *See State v. Johnson*, 831 N.W.2d 917, 925 (Minn. App. 2013) (explaining no abuse of discretion generally occurs when the district court carefully considers information in the record before imposing a guideline sentence), *review denied* (Minn. Sept. 17, 2013).

Reimann argues that the district court abused its discretion by also noting that she is not particularly amenable to probation. According to Reimann, she was not required to establish her particular amenability to probation to obtain a dispositional departure under section 609.1055. Although Reimann correctly observes that amenability to probation is not a prerequisite for a departure under the statute, we see no abuse of discretion in the district court’s remark. Section 609.1055 requires a district court to conclude that

probation would be “consistent with public safety.” The district court’s comment that Reimann is not amenable to probation parallels its finding that Reimann is a threat to public safety when she is not in a secure setting.

As a second basis for her requested downward dispositional departures, Reimann argued to the district court that she lacked substantial capacity for judgment due to her mental health and cognitive impairments when she committed the offenses. *See* Minn. Sent. Guidelines 2.D.3.a(3). This is a recognized departure ground under the sentencing guidelines. *Id.* “The degree to which [a defendant] lack[s] substantial capacity for judgment is the type of factual issue best decided by the [district] court.” *State v. Barsness*, 473 N.W.2d 325, 329 (Minn. App. 1991), *review denied* (Minn. Aug. 29, 1991).

The district court considered and acknowledged Reimann’s mental health and cognitive challenges before and during the offenses. But the district court ultimately rejected Reimann’s requests for probation on this ground. The district court explained that Reimann’s “long documented intellectual deficits” were exacerbated by her “voluntary drug and alcohol use.” Furthermore, the district court remarked that despite opportunities for treatment, Reimann had not improved. Finally, the district court noted that placing Reimann on probation “would significantly undermine the seriousness of this case.”

Again, the district court—which was in the best position to evaluate the proposed departure ground—did not abuse its discretion. The district court considered Reimann’s requests, determined that the circumstances did not justify a departure, and explained the bases for its decision.

Reimann also argues that the district court abused its discretion by denying her requests for downward durational departures. “[A] durational departure is a sentence that departs in length from the presumptive guidelines range.” *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016). At sentencing, Reimann argued that her crimes were less serious because her brain injury and mental illness made her less culpable. Citing two cases for the proposition that severe mental illness is a mitigating factor that supports a sentencing departure—*State v. Martinson*, 671 N.W.2d 887 (Minn. App. 2003), *review denied* (Minn. Jan. 20, 2004), and *Barsness*, 473 N.W.2d at 329—Reimann contends that the district court erred in imposing the presumptive prison terms.

The district court gave Reimann’s motion due consideration and, in its discretion, chose not to depart. The caselaw that Reimann offers does establish that severe mental health diagnoses may provide substantial and compelling grounds for a departure. *Martinson*, 671 N.W.2d at 891-92; *Barsness*, 473 N.W.2d at 329. In both cases, we affirmed decisions to depart based on severe mental illness. But these cases do not require a district court to grant a departure on this ground. A district court has discretion to deny a departure motion, even in the presence of a valid basis for departure. *See State v. Wall*, 343 N.W.2d 22, 25 (Minn. 1984) (“The fact that a mitigating factor [is] clearly present [does] not obligate the court to place [a] defendant on probation or impose a shorter term than the presumptive term.”). The district court therefore did not abuse its discretion by sentencing Reimann to the presumptive sentences provided by the sentencing guidelines.⁴

⁴ Reimann also argues that the district court clearly erred by concluding that she initially failed to accept responsibility for her offenses because she had a stipulated-facts court trial.

II. The district court did not abuse its discretion by imposing consecutive sentences.

When a defendant commits separate offenses against separate victims, a district court may impose consecutive sentences for each offense. *State v. Rhoades*, 690 N.W.2d 135, 139 (Minn. App. 2004). Whether to impose permissive consecutive sentences under these circumstances is a decision within the district court’s discretion that we review for an abuse of discretion. *State v. Ali*, 855 N.W.2d 235, 258 (Minn. 2014); *see* Minn. Stat. § 609.15 (2016). Appellate courts are reluctant to interfere with a district court’s decision to sentence consecutively unless the aggregate sentence “is disproportionate to the offense or it unfairly exaggerates the criminality of the defendant’s conduct.” *Ali*, 855 N.W.2d at 259; *see also* Minn. Stat. § 244.11, subd. 2(b) (2016). “In cases with *multiple victims*, consecutive sentences are rarely, if ever, disproportionate to the offense.” *Ali*, 855 N.W.2d at 259 (emphasis added); *see also State v. McLaughlin*, 725 N.W.2d 703, 715-16 (Minn. 2007). The appellate court determines whether consecutive sentencing unfairly exaggerates the criminality of a defendant’s actions by considering sentences in similar cases. *State v. Lee*, 491 N.W.2d 895, 902 (Minn. 1992).

She suggests that the district court improperly used this finding as a basis for denying her downward dispositional departure requests. We see no error in the remarks, which were made in passing while the district court articulated its many reasons for imposing the presumptive sentences. The record supports the district court’s finding. Reimann did elect to have a stipulated-facts court trial. Moreover, the record shows that Reimann initially denied she was the driver of the vehicle when she spoke with police at the scene of the crash. We also note that the district court credited Reimann’s ultimate acceptance of responsibility following the verdicts.

Reimann argues that the district court's consecutive sentences unfairly exaggerate her culpability. She contends that a 90-month prison sentence—the aggregate duration of her two consecutive sentences—ignores her underlying mental health struggles. She also highlights other cases where defendants charged with similar crimes received lighter sentences. *See State v. Chaklos*, 528 N.W.2d 225, 226 (Minn. 1995); *State v. Johnson*, No. A19-0041, 2020 WL 413345, at *1 (Minn. App. Jan. 27, 2020), *review denied* (Minn. Apr. 14, 2020). And she maintains that the reduction of her original sentence from 126 months to 90 months is unfairly disproportionate because her criminal history score was effectively reduced to zero when she was resentenced.

We disagree with Reimann that the aggregate sentence of 90 months in prison unfairly exaggerates her culpability. Although Reimann has experienced trauma in her life and she has a documented history of mental health and cognitive issues, these challenges do not mitigate the severity of her crime. Reimann killed two people while driving after she had voluntarily consumed alcohol and cocaine. In each of the cases Reimann cites, there was one life lost. *See Chaklos*, 528 N.W.2d at 226; *Johnson*, 2020 WL 413345, at *1. And we have affirmed lengthier aggregate sentences in cases involving multiple victims. *See State v. Watson*, No. A18-1362, 2019 WL 2415016 (Minn. App. June 10, 2019) (affirming 111-month aggregate sentence where defendant was convicted of criminal vehicular homicide and two counts of criminal vehicular operation for killing one person and injuring two others), *review denied* (Minn. Sept. 17, 2019); *see also State v. Fredrickson*, No. A14-0689, 2015 WL 1959695, at *3 (Minn. App. May 4, 2015) (affirming 96-month aggregate sentence imposed for two criminal vehicular homicide

convictions, 48 months for each death), *review denied* (Minn. Oct. 20, 2015). Because Reimann's aggregate sentence is not disproportionate to her crimes, the district court did not abuse its discretion by imposing consecutive sentences.

Finally, we reject Reimann's contention that the district court was required to apply a specific formula upon resentencing to ensure that Reimann's new sentences were proportional to her original sentences, which were based on an incorrect criminal history score. Reimann cites no authority to support this argument and we are unaware of any case or rule that imposes such an obligation.

Affirmed.