STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0589

State of Minnesota,
Respondent,

vs.

Travis James Zander,
Appellant.

Filed January 31, 2022
Affirmed
Reyes, Judge

Douglas County District Court
File No. 21-CR-21-91

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

Chad M. Larson, Douglas County Attorney, Timothy S. Hochsprung, Assistant County Attorney, Alexandria, Minnesota (for respondent)

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

Considered and decided by Bratvold, Presiding Judge; Reyes, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

Appellant argues in this direct appeal that the district court abused its discretion by not sua sponte dispositionally departing downward from the presumptive guidelines sentence. In the alternative, appellant argues that the district court abused its discretion by

imposing a middle-of-the-box sentence rather than a bottom-of-the-box sentence. We affirm.

FACTS

On January 16, 2021, a police officer attempted to pull over appellant Travis James Zander for driving at night without his headlights on. Appellant sped away. Initially, appellant did not pull over because he knew that he had a warrant out for his arrest for leaving a treatment center in violation of his probation. After about two minutes of pursuit, appellant pulled over.

On January 19, 2021, respondent State of Minnesota charged appellant with three offenses: (1) fleeing a police officer in a motor vehicle in violation of Minn. Stat. § 609.487, subd. 3 (2020); (2) driving after cancellation in violation of Minn. Stat. § 171.24, subd. 5 (2020); and (3) reckless driving in violation of Minn. Stat. § 169.13, subd. 1(a) (2020). At his bail hearing, the district court encouraged appellant to speak with an attorney and, because appellant expressed his intention to plead guilty, to then complete a preplea worksheet.

On February 3, 2021, the district court held a combined probation-violation hearing, plea hearing, and sentencing hearing for appellant's multiple probation violations and the three charges stemming from the January 16 incident. The parties entered into a plea agreement in which appellant admitted to six probation violations and pleaded guilty to count 1 of the three charges. The parties also agreed to request a middle-of-the-box guidelines sentence for appellant of 22 months in prison.

Appellant did not make a motion for a downward dispositional departure before the district court. Nor did he argue for a sentence at the bottom of the guidelines range.

The district court sentenced appellant to 22 months in prison, a presumptive commit under the Minnesota Sentencing Guidelines and consistent with appellant's plea agreement with the state. This appeal follows.

DECISION

I. The district court did not abuse its discretion by not sua sponte considering mitigating factors for a downward dispositional departure.

Appellant appears to argue that the district court abused its discretion by not sua sponte considering his amenability to probation and other mitigating factors under *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982), for a downward dispositional departure. We are not persuaded.

District courts have great discretion when imposing sentences, and appellate courts reverse sentencing decisions only when a district court abuses that discretion. *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014). Only in a "rare" case will this court reverse the district court's refusal to depart from a presumptive sentence under the sentencing guidelines. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). This is not that rare case.

Here, the district court imposed a guideline sentence consistent with the parties' plea agreement to request a 22-month sentence. We therefore discern no abuse of discretion.

II. The district court did not abuse its discretion by imposing a middle-of-the-box presumptive sentence.

Appellant alternatively argues that the district court abused its discretion by imposing a middle-of-the-box guidelines sentence rather than a bottom-of-the-box guidelines sentence. Appellant's argument fails.

The Minnesota Sentencing Guidelines establish the presumptive sentences for felony offenses. Minn. Sent. Guidelines 2.C (2020). 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 (2020). The Minnesota Supreme Court has noted that "All three numbers in any given cell [on the sentencing guidelines grid] 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). Appellate courts "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.*

Appellant asserts that he is entitled to a lower sentence because his fleeing conviction "is the least severe under the guidelines" and his actions during the offense constitute "compelling circumstances." Specifically, appellant points to the district court's statements that "And I know you stopped. It's not like they had to put out stop sticks or other maneuvers to get you to stop." We disagree.

As we noted above, appellant agreed to the middle-of-the-box guidelines sentence as part of his plea agreement with the state. In exchange, the state agreed to dismiss counts 2 and 3. Plea agreements are similar to contracts; "[a]n unqualified promise made as part of a plea agreement must be honored." *State v. Meredyk*, 754 N.W.2d 596, 603 (Minn. App. 2008) ("The essence of plea agreements . . . is that they represent a bargained-for understanding between the government and criminal defendants in which each side forgoes certain rights and assumes certain risks in exchange for a degree of certainty as to the outcome of criminal matters." (quotation omitted)). Appellant's contention that compelling circumstances warranted a bottom-of-the-box guidelines sentence ignores his plea agreement with the state, which took into account his particular circumstances. We therefore conclude that the district court acted well within its sentencing discretion.

Affirmed.