STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0205

State of Minnesota,
Respondent,

vs.

Abdullahi Abshir Abdullahi,
Appellant.

Filed December 4, 2023
Affirmed
Bjorkman, Judge

Hennepin County District Court
File No. 27-CR-21-23988

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

Mary F. Moriarty, Hennepin County Attorney, Sarah J. Vokes, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Connolly, Presiding Judge; Bjorkman, Judge; and Klaphake, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant challenges his conviction and 72-month prison sentence for first-degree aggravated robbery, arguing that his guilty plea is invalid because it did not establish venue. He also contends that the district court abused its discretion by (1) imposing a 12-month sentencing enhancement, and (2) denying his motion for a downward dispositional and durational departure. We affirm.

FACTS

On December 28, 2021, police officers responded to a report of a carjacking. Officers spoke with the victim, who stated a young male, later identified as appellant Abdullahi Abshir Abdullahi, had approached her in a parking ramp with "a gun [positioned] in front of his stomach." He "demanded her keys, which she handed over in fear for her life," and drove away in her vehicle. The parking ramp's video surveillance showed Abdullahi "linger[ing] near the elevator just before the robbery."

Abdullahi was charged with one count of first-degree aggravated robbery.[1] In November 2022, Abdullahi pleaded guilty pursuant to a *Norgaard* plea,[2] admitting that on the day of the robbery he was under the influence of narcotics and could not "recall everything that [was] alleged in the complaint." Abdullahi agreed that if a jury were to

[1] Abdullahi was also charged with one count of financial transaction card fraud and one count of fleeing a peace officer in a motor vehicle. The state dismissed these charges as part of the plea agreement.

[2] *State ex rel. Norgaard v. Tahash*, 110 N.W.2d 867, 871 (Minn. 1961).

hear all the evidence, reflecting the facts as alleged in the complaint, and hear the testimony from the victim and police officers, there is a substantial likelihood that he would be found guilty beyond a reasonable doubt of first-degree aggravated robbery. Abdullahi's admissions were also recorded in his plea petition and *Norgaard* addendum. The district court accepted Abdullahi's guilty plea, finding it was knowing, voluntary, and intelligent, and that the *Norgaard* requirements were satisfied.

Before sentencing, the district court appointed an evaluator under Minn. R. Crim. P. 20.02 to assess Abdullahi's mental state at the time of the offense and directed probation to complete a presentence investigation (PSI).[3] The rule 20 evaluator noted Abdullahi's history of mental-health-related hospitalizations and that he had been described as having limited insight and judgment. But the evaluator concluded Abdullahi was not suffering from a mental or cognitive impairment at the time of the offense to support a mental-illness defense. The evaluator also noted Abdullahi's prior resistance to recommended treatment.

The PSI report likewise described Abdullahi's recurring mental-health issues, chemical dependency, and childhood trauma. It documented prior intervention efforts and criminal activity, including a 2020 extended jurisdiction juvenile (EJJ) adjudication of aiding and abetting first-degree aggravated robbery. The report recommended a guidelines sentence of 72 months' imprisonment based on an offense severity level of eight, a

[3] We are mindful of our obligation under Minn. R. Pub. Access to Recs. of Jud. Branch 4, subd. 1(b)(2), to protect the confidentiality of nonpublic information, and include in this opinion only information that Abdullahi presents in his brief.

criminal-history score of two, and a 12-month sentencing enhancement flowing from the 2020 EJJ adjudication.[4]

Abdullahi moved for a mitigated, 48-month stayed sentence. He argued that a downward dispositional departure is warranted because his age, remorse, cooperation, support from his family, probation officer and former juvenile case manager, as well as his community resources for treatment and education made him particularly amenable to probation. Abdullahi acknowledged that he was previously unwilling to participate in services but asserted that he had remained sober for a year and was "ready for change." He also pointed to his undiagnosed mental illnesses, childhood trauma, and "limited insight and judgment" as favoring a dispositional departure. And he argued for a downward durational departure on the ground that his offense is less serious than a typical first-degree aggravated robbery because he only *threatened* the use of force, and he did not use *actual* force in carrying out the offense.

The state argued against a mitigated sentence, stating Abdullahi had been on probation at the time of the current offense, and had historically failed to take advantage of intervention efforts, making it unlikely he would decide to do so now. The state also contended that a durational departure was unwarranted because Abdullahi's conduct—

[4] The presumptive sentence, without modifiers, is 58 to 81 months' imprisonment. Minn. Sent'g. Guidelines 4.A (Supp. 2021). The "severe violent offense" enhancement shifts the presumptive sentence to 70 to 93 months' imprisonment. *See* Minn. Sent'g Guidelines 2.G.14.b (Supp. 2021).

waiting in the parking ramp for a victim and brandishing a weapon to steal her vehicle—was not less serious than conduct associated with a typical aggravated robbery.

Before sentencing Abdullahi, the district court stated that it considered the departure motion, the arguments of counsel, the victim impact statement, the PSI report, and Abdullahi's statements to the court. The district court noted that it had "thought a lot" about the case and the dispositional departure factors, and concluded Abdullahi is not amenable to probation. It explained that while Abdullahi "clearly [had] struggled with mental health issues, untreated, [and] undiagnosed over the years," these issues are common to many people in the prison system and do not rise to the level of "substantial and compelling" to justify a departure. And the court rejected Abdullahi's request for a durational departure, stating his offense was not "less serious than other crimes" because "[n]obody should be pointing guns at people." The court imposed the presumptive sentence of 72 months' imprisonment.

Abdullahi appeals.

DECISION

I. Abdullahi's guilty plea is accurate.

A defendant does not have an absolute right to withdraw a guilty plea. *State v. Mikulak*, 903 N.W.2d 600, 603 (Minn. 2017). But they must be allowed to do so if "withdrawal is necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. To avoid a manifest injustice, a guilty plea must be accurate, voluntary, and intelligent. *Taylor v. State*, 887 N.W.2d 821, 823 (Minn. 2016). The accuracy requirement focuses on the factual basis for the plea and ensures the defendant does not plead guilty to a greater

offense than what they could be convicted of after a trial. *State v. Theis*, 742 N.W.2d 643, 649 (Minn. 2007). The same standards apply to *Norgaard* pleas. *State v. Ecker*, 524 N.W.2d 712, 716-17 (Minn. 1994). A guilty plea is accurate when there are "sufficient facts on the record to support a conclusion that defendant's conduct falls within the charge to which he desires to plead guilty." *Kelsey v. State*, 214 N.W.2d 236, 237 (Minn. 1974). We review the validity of a guilty plea de novo. *Barrow v. State*, 862 N.W.2d 686, 689 (Minn. 2015).

Abdullahi argues that his guilty plea is inaccurate because the record is insufficient to establish that the offense occurred in Hennepin County. The record defeats this argument. Abdullahi's testimony at the plea hearing and his admissions in both his plea petition and *Norgaard* addendum fully demonstrate that the offense occurred "on December 28, 2021 . . . in Minneapolis, Hennepin County." Because there is a strong factual basis establishing venue, Abdullahi's *Norgaard* plea is valid and he is not entitled to withdraw it.

II. The district court did not abuse its discretion by including the severe-violent-offense enhancement as part of Abdullahi's presumptive sentence.

The Minnesota Sentencing Guidelines provide presumptive sentences based on the severity level of the offense and the offender's criminal-history score. Minn. Sent'g Guidelines 2 (Supp. 2021). The guidelines seek to "maintain uniformity, proportionality, rationality, and predictability in sentencing." Minn. Stat. § 244.09, subd. 5 (2022). We review sentences imposed by a district court for an abuse of discretion. *See State v. Delk*, 781 N.W.2d 426, 428 (Minn. App. 2010), *rev. denied* (Minn. July 20, 2010). But

interpretation of the sentencing guidelines is a question of law we review de novo, applying "the same principles as when interpreting statutes." *State v. Scovel*, 916 N.W.2d 550, 554 (Minn. 2018). If the language of the sentencing guidelines is plain and unambiguous, we will give it effect. *Id.* at 554-55. Only if the language of a sentencing guideline is susceptible of more than one reasonable interpretation will we look to other factors. *Id.* at 555.

The guidelines include a sentencing enhancement for offenders convicted of "second or subsequent severe violent offenses." Minn. Sent'g Guidelines 2.G.14.b. The guidelines enumerate 16 severe violent offenses, including first-degree aggravated robbery. Minn. Sent'g Guidelines 8 (Supp. 2021). A district court must increase an offender's presumptive sentence for the current offense by 12 months for a prior severe violent offense. Minn. Sent'g Guidelines 2.G.14.b.

Abdullahi asserts that the district court abused its discretion by imposing a 12-month sentencing enhancement because: (1) a prior conviction for aiding and abetting first-degree aggravated robbery does not constitute a severe violent offense, and (2) the record is insufficient to show he previously committed a severe violent offense.[5] We address each argument in turn.

[5] Abdullahi also contends that the district court erred by imposing a five-year mandatory minimum sentence without a sufficient determination by the fact-finder that his prior conviction involved a firearm. Minn. Stat. § 609.11, subds. 5, 9 (Supp. 2021) (providing a five-year mandatory minimum for an offender's second conviction of first-degree aggravated robbery involving a firearm). It is clear from the record that the district court did not impose a five-year mandatory minimum, nor did it rely on section 609.11 in making its sentencing determination. Accordingly, Abdullahi's argument fails.

A. Aiding and abetting first-degree aggravated robbery is a severe violent offense.

The parties do not dispute that Abdullahi's current conviction of first-degree aggravated robbery qualifies as a severe violent offense. *See* Minn. Sent'g Guidelines 2.G.14.a(1); 8. But Abdullahi contends that a prior conviction of aiding and abetting first-degree aggravated robbery does not qualify because aiding and abetting is not one of the 16 enumerated severe violent offenses. *See id.* And he reasons that in the absence of a *prior* conviction for a severe violent offense, the district court erred by imposing the 12-month enhancement. We are not persuaded.

A defendant is "criminally liable for a crime committed by another if the person intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the crime." Minn. Stat. § 609.05, subd. 1 (2022). Aiding and abetting is a theory of criminal liability, not a separate substantive offense. *State v. Britt*, 156 N.W.2d 261, 263 (Minn. 1968); *see also State v. Ezeka*, 946 N.W.2d 393, 407 (Minn. 2020). Accordingly, one who aids another's crime is liable as a principal for that crime. *Ezeka*, 946 N.W.2d at 407. In *Browder v. State*, we rejected the offender's argument that he was not subject to the ten-year conditional-release period required by Minn. Stat. § 609.3455, subd. 6 (2012), because he was only convicted of aiding and abetting the violation of an enumerated sex-offense statute. 899 N.W.2d 525, 529 (Minn. App. 2017), *rev. denied* (Minn. Aug. 22, 2017). We construed the plain language of the statute, which requires an offender imprisoned "for a violation of" an enumerated statute to serve a conditional-

release term, to include a person who aids another person who directly violates one of the enumerated statutes. *Id.* (quoting Minn. Stat. § 609.3455, subd. 6).

The same analysis applies here. The 12-month sentencing enhancement is implicated when an offender is "convicted of" a second or subsequent severe violent offense. Abdullahi's 2020 EJJ adjudication for aiding and abetting first-degree aggravated robbery is an adjudication for first-degree aggravated robbery. Minn. Sent'g Guidelines 2.G.14.a(1); 8. Because first-degree aggravated robbery is an enumerated severe violent offense, a conviction based on aiding and abetting the same likewise constitutes commission of a severe violent offense. *Id.*

B. The record establishes that Abdullahi committed a prior severe violent offense.

As previously noted, an offender's presumptive sentence is based on the severity level of their current offense and their criminal-history score. Minn. Sent'g Guidelines 2. Application of the 12-month sentencing enhancement operates like any other aspect of a defendant's criminal-history score—it depends on the existence of a qualifying prior conviction. *See* Minn. Sent'g Guidelines 2.B., 2.G.14.a.

At sentencing, the state bears the burden of proving by a fair preponderance of the evidence, that a prior conviction qualifies for inclusion in a defendant's criminal-history score. *State v. Maley*, 714 N.W.2d 708, 711 (Minn. App. 2006). A fair preponderance of the evidence means that the evidence of the conviction must lead the district court to believe it is more likely than not that it exists. *See State v. Wahlberg*, 296 N.W.2d 408, 418 (Minn. 1980). A sentence based on an incorrect criminal-history score is an illegal

sentence that may be corrected at any time. *State v. Maurstad*, 733 N.W.2d 141, 147 (Minn. 2007). If the state's evidence does not support the score used at sentencing and the defendant did not object, the case must be remanded to allow the state the opportunity "to further develop the sentencing record so that the district court can appropriately make its determination." *State v. Outlaw*, 748 N.W.2d 349, 356 (Minn. App. 2008), *rev. denied* (Minn. July 15, 2008). We review a district court's determination of a defendant's criminal-history score for an abuse of discretion. *Maley*, 714 N.W.2d at 711.

Abdullahi argues that the record is insufficient because the state did not prove the existence of his 2020 EJJ adjudication and he did not admit he had been adjudicated. This argument is unavailing.

As an initial matter, the state is not required to provide a certified copy of a conviction or adjudication to establish an offender's criminal-history score. *See* Minn. R. Evid. 1005 (stating "an official record . . . if otherwise admissible, . . . may be proved by copy, certified as correct in accordance with Rule 902 or testified to be correct by a witness who has compared it with the original"). Rather, the state must submit persuasive evidence that sufficiently substantiates the information that would be proved through a certified record of conviction. *Maley*, 714 N.W.2d at 712. Persuasive evidence may take different forms. In *State v. Jackson*, we concluded a probation officer's in-court description of the documents he reviewed regarding the defendant's prior out-of-state conviction was sufficient under rule 1005. 358 N.W.2d 681, 683 (Minn. App. 1984); *see also State v. Griffin*, 336 N.W.2d 519, 525 (Minn. 1983) (concluding the state had met its burden by offering "considerable documentation" of the defendant's prior conviction). In contrast, in

Maley, we concluded the state had not met its burden when it relied primarily on a sentencing worksheet. 714 N.W.2d at 712 (concluding nothing in the transcripts of the proceedings as they developed over multiple hearings, as well as the documents discussed at those hearings, was sufficient to prove the existence of two prior convictions).

The record convinces us that the state provided sufficient evidence of Abdullahi's 2020 EJJ adjudication. First, at the bail hearing, the state noted that Abdullahi was "on EJJ supervision for another aggravated robbery." Abdullahi's juvenile probation officer responded that he had submitted "a probation violation report with a warrant to [detain Abdullahi] should he be released due to his EJJ status." The district court acknowledged that Abdullahi's current offense is "similar to [his EJJ conviction] in Juvenile Court," where, at the time, he had "48 months hanging over [his] head."

Second, at an omnibus hearing, the state reported it had made an initial plea offer under which Abdullahi would plead guilty to first-degree aggravated robbery and receive a sentence "of 60 months to the Commissioner of Corrections, concurrent with revocation of a[n] EJJ sentence." Abdullahi advised the district court that he understood the state's offer but rejected it.

Third, at Abdullahi's guilty-plea hearing, his lawyer told the court there was "a pending probation violation matter that [was] also tagging with [the current] case" and that he was "work[ing] with EJJ judge" in juvenile court. Abdullahi's lawyer also confirmed that Abdullahi understood that the state was seeking the 12-month enhancement for a subsequent severe violent offense. And it is apparent from the record that counsel was referring to Abdullahi's 2020 EJJ adjudication.

Finally, the PSI report details Abdullahi's EJJ adjudication for aiding and abetting first-degree aggravated robbery that occurred in Hennepin County in January 2020. The PSI report states Abdullahi was adjudicated as an EJJ for this offense in March 2020, received a stayed 48-month sentence, and was placed on probation until December 2023. Abdullahi did not challenge this portion of the PSI report or the prosecutor's argument at sentencing that the district court should deny Abdullahi's departure motion because "the defendant was on EJJ probation."

In short, the record convinces us that the state submitted ample evidence that Abdullahi had previously been adjudicated for a severe violent offense. As in *Jackson*, Abdullahi's probation officer spoke to the veracity, character, and status of Abdullahi's prior EJJ adjudication. *Jackson*, 358 N.W.2d at 683. In contrast to *Maley*, the transcripts of the proceedings, and the documents discussed at the hearings in this case, establish the existence of the 2020 EJJ adjudication. *Maley*, 714 N.W.2d at 712. And, unlike the precedent involving out-of-state convictions, Abdullahi's prior EJJ offense was charged and adjudicated in Hennepin County—the same jurisdiction in which Abdullahi pleaded guilty and faced sentencing with respect to the current offense. Because the state proved by a preponderance of the evidence that Abdullahi has a prior EJJ adjudication for first-degree aggravated robbery, we discern no abuse of discretion by the district court by imposing the 12-month sentencing enhancement the guidelines require.

III. The district court did not abuse its discretion by imposing a presumptive sentence.

A district court must impose a sentence within the Minnesota Sentencing Guidelines' presumptive range unless it finds substantial and compelling circumstances to depart. *State v. Barthman*, 938 N.W.2d 257, 270 (Minn. 2020). A court need not explain its decision to impose a presumptive sentence so long as it "carefully evaluate[s] all the testimony and information presented before making a determination" not to depart. *State v. Van Ruler*, 378 N.W.2d 77, 80-81 (Minn. App. 1985). We review a district court's decision to impose a presumptive sentence for an abuse of discretion. *State v. Olson*, 765 N.W.2d 662, 664 (Minn. App. 2009).

A. The district court did not abuse its discretion by denying Abdullahi's motion for a downward dispositional departure.

A dispositional departure is premised on the defendant's characteristics, and "on whether the presumptive sentence would be best for him and for society." *State v. Heywood*, 338 N.W.2d 243, 244 (Minn. 1983). A defendant's particular amenability to probation may support a dispositional departure. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). When assessing a defendant's particular amenability to probation, a district court may consider "the defendant's age, his prior record, his remorse, his cooperation, his attitude while in court, and the support of friends and/or family." *Id.* The presence of mitigating factors authorizes the district court to depart but does not require it to do so. *Wells v. State*, 839 N.W.2d 775, 781 (Minn. App. 2013), *rev. denied* (Minn. Feb. 18, 2014).

Abdullahi argues the district court abused its discretion because his age, cooperation, support from his family and community, and plan to participate in services

make him particularly amenable to probation. We are not persuaded for two reasons. First, the presence of any mitigating factor does not require the district court to depart. *Id.* Second, the district court announced its decision after stating on the record that it considered the victim impact statement, the PSI report, Abdullahi's departure motion, the arguments presented by counsel, and Abdullahi's statements to the court. The district court found Abdullahi's actions had negatively affected the community and that he was not particularly amenable to probation.

B. The district court did not abuse its discretion by denying Abdullahi's motion for a downward durational departure.

"A durational departure must be based on factors that reflect the seriousness of the *offense*, not the characteristics of the offender." *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016). It cannot be based on facts already accounted for as elements of the offense. *State v. Meyers*, 869 N.W.2d 893, 897 (Minn. 2015); *see, e.g.*, *Solberg*, 882 N.W.2d at 626-627 (rejecting an argument that using coercion to commit third-degree criminal sexual conduct was less serious than using force when both satisfy the statute). And although a district court may depart based on a single mitigating factor, the defendant's conduct must be "significantly less serious than that typically involved in the commission of the offense." *Solberg*, 882 N.W.2d at 624-25 (quotation omitted).

Abdullahi urges us to conclude that the district court abused its discretion because his offense is less serious than the typical first-degree aggravated robbery offense. We are not convinced. The record contains no evidence of offense-based factors that would justify a downward durational departure. To the contrary, the record establishes Abdullahi had

been waiting in the parking ramp before approaching the victim, pointing a firearm at her, and causing her to surrender her car keys "in fear for her life." We disagree that first-degree aggravated robbery accomplished by threat of force is less serious than when accomplished by using actual force because both satisfy the elements of the offense. Minn. Stat. § 609.245, subd. 1 (2020); *see Solberg*, 882 N.W.2d at 626-27. In sum, our careful review of the record persuades us that this is not a "rare" case in which we should disturb the presumptive sentence. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

Affirmed.