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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0159**

State of Minnesota,
Respondent,

vs.

Lucas Eastwood,
Appellant.

**Filed September 24, 2012
Affirmed
Wright, Judge**

Crow Wing County District Court
File No. 18-CR-11-546

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Donald F. Ryan, Crow Wing County Attorney, Bruce F. Alderman, Assistant Crow Wing County Attorney, Brainerd, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Sharon E. Jacks, Assistant State Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Wright, Presiding Judge; Schellhas, Judge; and Larkin, Judge.

UNPUBLISHED OPINION

WRIGHT, Judge

Following his conviction of aiding and abetting first-degree assault, appellant was sentenced to the maximum presumptive sentence of 103 months' imprisonment. On

appeal, he challenges the district court's sentencing decision because the presentence investigation report and the prosecutor recommended a sentence of 86 months' imprisonment, which is the midpoint of the sentencing guidelines range. Because the district court did not abuse its discretion by imposing a sentence of 103 months' imprisonment, we affirm.

FACTS

Appellant Lucas Eastwood and his friend Travis Campbell were drinking at a bar in Brainerd during the evening of February 5 and the early morning of February 6, 2011. They left the bar shortly before closing. W.N. also was patronizing the bar that night. According to the complaint, during the course of the evening, Eastwood told one of the bartenders that he wanted to beat up W.N., whom Eastwood referred to as "that motherf***ing black guy." The bartender, who told Eastwood not to start anything in the bar, later reported that W.N. left the bar at approximately 1:20 a.m.

W.N., who was extremely intoxicated by the time he departed, stumbled as he walked down the street. When W.N. stopped to lean against a building, Eastwood and Campbell approached him and began to punch and kick W.N. without provocation. The beating continued until a female passerby ran toward them.

W.N. was transported to the hospital by ambulance. He sustained severe injuries, including a torn left eyelid, multiple orbital fractures, and soft-tissue damage around the eye. W.N. spent four days in the hospital and received treatment in the intensive-care unit. W.N. suffers ongoing vision problems, headaches, dizziness, pain, swelling, and depression as a result of the assault.

After the assault, Eastwood and Campbell fled to the downtown Brainerd apartment of a mutual friend. When the police arrived at the apartment, they heard the apartment's occupants arguing about whether to open the door. When Eastwood's friend finally opened the door, the police observed a fresh injury on his mouth. Eastwood's friend reported that Eastwood physically prevented anyone from leaving the apartment and punched him when he attempted to open the door.

Eastwood was charged by amended complaint with aiding and abetting first-degree assault, kidnapping to facilitate a felony, third-degree assault, and fourth-degree assault. The state filed a notice of its intent to seek an upward departure from the presumptive guidelines range, citing aggravating factors that included (1) the defendant's particularly cruel treatment of the victim, (2) the defendant's intentional selection of the victim because of his actual or perceived race or color, and (3) the victim's particularly vulnerable condition.

Eastwood entered a guilty plea on September 19, 2011. At the guilty-plea hearing, the parties agreed that Eastwood would plead guilty to aiding and abetting first-degree assault and that the remaining charges would be dismissed. The parties also agreed that, although discussions regarding sentencing focused on 86 months' imprisonment, Eastwood's sentence could fall anywhere between 74 and 103 months' imprisonment—the presumptive guidelines range. The parties explained to the district court that the state would seek a mid-range sentence of 86 months' imprisonment and that Eastwood would argue for 74 months' imprisonment.

At several points during the guilty-plea hearing, the district court directly addressed Eastwood to ensure that he understood that the actual sentence imposed “could be anywhere between 74 and 103 months.” The district court specifically asked Eastwood whether he understood that, even though the state was recommending 86 months’ imprisonment, he could receive a sentence anywhere between 74 and 103 months’ imprisonment. Eastwood replied that his attorney “explained that to me very well. Yes, I do understand.” A presentence investigation (PSI) was ordered at the conclusion of the hearing. Contrary to the record, the PSI report erroneously stated: “It was agreed that the defendant would be committed to the Commissioner of Corrections for 86 months.” The probation agent recommended a sentence of that length.

At the sentencing hearing, the prosecutor stated that the state sought a sentence consistent with the PSI recommendation, 86 months’ imprisonment. In support of its position, the state emphasized the severity of the injuries inflicted, the victim’s continuing and future health-related problems resulting from the injuries, and Eastwood’s apparent failure to accept full responsibility for his role in the assault. The state argued that Eastwood, who was the “primary aggressor,” is “more culpable” than his co-defendant. But the state acknowledged that Eastwood “step[ped] up to the plate, pled guilty to the top count in the complaint, [and] spared [W.N.] the agony of having to relive the nightmare one more time by having to testify at trial.”

W.N. neither opposed nor supported an 86-month sentence. Rather, W.N. asked for “some kind of justice.”

Eastwood's attorney argued for a 74-month sentence because Eastwood had accepted responsibility for his role in the assault and understands that W.N. will live with the physical and emotional scars of that evening for the rest of his life. Eastwood's attorney also argued that Eastwood is a young man, he cooperated with probation, and he would like to enter treatment.

Prior to imposing the sentence, the district court acknowledged having "spent a considerable amount of time" on the sentencing issue. Observing that imposing a sentence between 74 and 103 months' imprisonment was within its discretion, the district court determined that the maximum presumptive sentence was warranted. Citing the severity of the assault, its unprovoked nature, and the continuing emotional and physical problems it has inflicted on W.N., the district court imposed the maximum presumptive sentence of 103 months' imprisonment. This appeal followed.

D E C I S I O N

We review a district court's sentencing decision for an abuse of discretion. *State v. Franklin*, 604 N.W.2d 79, 82 (Minn. 2000). An abuse of discretion occurs when the district court imposes a sentence that "unfairly exaggerates the criminality of the defendant's conduct." *State v. McLaughlin*, 725 N.W.2d 703, 715 (Minn. 2007) (quotation omitted). When reviewing a district court's sentencing decision, we will not interfere with a sentence within the presumptive guidelines range even if grounds exist that would justify a departure. *State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006). Rather, we will reverse a sentence within the presumptive guidelines range only in a "rare case." *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981) (rejecting defendant's claim that

circumstances in his favor were so “compelling and substantial” that district court erred by refusing to depart and impose more lenient sentence); *State v. Delk*, 781 N.W.2d 426, 428 (Minn. App. 2010), *review denied* (Minn. July 20, 2010).

Eastwood argues that substantial and compelling circumstances exist for reversal and reduction of his sentence because the prosecutor, the victim, and the probation agent who conducted the PSI supported or recommended imposition of an 86-month sentence. This argument mischaracterizes the victim’s position. He neither objected to the state’s agreement to recommend a sentence of 86 months nor endorsed it. Rather, the victim asked for “some kind of justice.” Eastwood’s reliance on the PSI report also is misplaced because it relies on the false premise that an 86-month sentence was a condition of a binding plea agreement. It was not. The record establishes that it was clear to the parties and the district court that an 86-month sentence was merely a *recommendation* that the district court was free to accept or reject. The district court and both counsel made it clear to Eastwood during the guilty-plea hearing and at sentencing that the district court was not compelled to sentence Eastwood to 86 months’ imprisonment, that the sentencing decision was within the district court’s sound discretion, and that the district court was free to impose a sentence between 74 and 103 months’ imprisonment.

At the sentencing hearing, the district court clearly understood the positions of the parties as well as its responsibility to impose a just sentence. *See State v. Curtiss*, 353 N.W.2d 262, 263-64 (Minn. App. 1984) (reversing and remanding sentence within guidelines range when district court did not exercise its discretion by failing to consider arguments for downward departure rather than considering them along with valid reasons

not to depart). The district court emphasized that it had carefully considered the facts, the statements contained in the district court record, and the information in the PSI report. The district court concluded that the unprovoked and vicious nature of the attack and the severity of the injuries suffered by the victim justified a sentence of 103 months' imprisonment. Although a district court is not required to give reasons when it imposes a sentence within the presumptive guidelines range, the district court did so here. The district court's rationale makes it abundantly clear that its sentencing decision was the product of careful consideration of factors weighing in favor of a sentence greater than the one endorsed by the parties. The district court exercised its sound discretion when it imposed a presumptive guidelines sentence of 103 months' imprisonment.

Affirmed.