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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2100**

State of Minnesota,
Respondent,

vs.

Shane Robert Gerads,
Appellant.

**Filed September 16, 2013
Affirmed
Halbrooks, Judge**

Stearns County District Court
File No. 73-CR-12-265

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

Janelle P. Kendall, Stearns County Attorney, Carl Ole Tvedten, Assistant County Attorney, St. Cloud, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Chelsie Willett, Special Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Stauber, Presiding Judge; Halbrooks, Judge; and Hooten, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

On appeal following his convictions of two counts of second-degree assault, appellant argues that the district court abused its discretion by (1) denying his motion for

a continuance to hire substitute counsel and (2) imposing the presumptive sentence without considering the factors outlined in *State v. Trog*, 323 N.W.2d 28 (Minn. 1982). We affirm.

FACTS

Appellant Shane Robert Gerads was charged with first-degree burglary in violation of Minn. Stat. § 609.582, subd. 1(c) (2010), and two counts of second-degree assault in violation of Minn. Stat. § 609.222, subd. 1 (2010). Pursuant to a plea agreement, Gerads pleaded guilty to two counts of second-degree assault in exchange for the presumptive sentence of 60 months' imprisonment and the state's dismissal of the burglary charge. Despite the parties' agreement as to the sentence, the plea agreement allowed Gerads to argue for a dispositional departure at sentencing.

Gerads was released from custody pending sentencing. As conditions of his release, Gerads was required to remain on electronic alcohol monitoring and to attend all court appearances. Gerads failed to remain on alcohol monitoring, at which point a warrant for his arrest was issued. He also failed to appear for sentencing.

Gerads turned himself in, and a sentencing hearing was held one week later. Defense counsel did not move for a dispositional departure prior to the hearing, explaining that he did not have the resources to prepare the motion on such short notice. When defense counsel asked for a continuance at the hearing, the district court denied the request on the ground that it had "made [it] very clear" at the plea hearing that a dispositional departure was contingent upon Gerads "fully complying" with the terms of his conditional release.

Near the close of the sentencing hearing, Gerads, himself, requested a continuance to hire substitute counsel because he was dissatisfied with the representation he had received. The district court denied the request and imposed the presumptive sentence of 60 months' imprisonment. This appeal follows.

D E C I S I O N

I.

Gerads challenges the district court's denial of his motion for a continuance to permit him to hire substitute counsel. Whether to grant or deny a continuance lies within the discretion of the district court. *State v. Lloyd*, 345 N.W.2d 240, 247 (Minn. 1984). In reviewing a continuance decision for abuse of discretion, we determine "whether the defendant was so prejudiced in preparing or presenting his defense as to materially affect the outcome of the [matter]." *Id.* A litigant must show that he was prejudiced by the denial of a continuance to justify reversal. *State v. Courtney*, 696 N.W.2d 73, 81 (Minn. 2005).

Gerads argues that a continuance was necessary for him to have the representation that he desired—an attorney to make a motion for a dispositional departure. But fatal to his appeal, Gerads fails to assert that he was materially prejudiced by not having a departure motion made on his behalf. He further fails to explain on what basis a departure motion would have been meritorious in light of the district court's warning that the possibility of a sentencing departure required Gerads's full compliance with his conditional release. Because Gerads has failed to meet his burden to establish prejudice

as a result of the district court's denial of his continuance motion, reversal of that decision is unwarranted.

II.

Gerads also challenges his sentence. The district court has substantial discretion in imposing sentences, and we will not disturb a sentence that is authorized by law. *State v. Munger*, 597 N.W.2d 570, 573 (Minn. App. 1999), *review denied* (Minn. Aug. 25, 1999). The district court must order the presumptive sentence unless “substantial and compelling circumstances” warrant a departure. *See State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). The district court need not explain its reason for imposing the presumptive sentence over a departure. *State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985). Provided that the district court “carefully evaluated all the testimony and information presented before making a [sentencing] determination,” we will not interfere with that decision. *Id.* at 81.

Gerads argues that the district court abused its discretion by imposing the presumptive sentence without considering the factors outlined in *State v. Trog*, 323 N.W.2d 28 (Minn. 1982). This argument is unpersuasive. We have previously held that a district court does not abuse its discretion by failing to address the *Trog* factors before imposing a presumptive sentence. *See State v. Pegel*, 795 N.W.2d 251, 254 (Minn. App. 2011) (clarifying that there is “no requirement” to address *Trog* or explain a sentencing decision when a departure is denied). Because the district court considered

the evidence and arguments presented at sentencing and acted well within its discretion when it imposed the presumptive sentence, we will not disturb Gerads's sentence.

Affirmed.