

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1263**

State of Minnesota,
Respondent,

vs.

Clarence James Dickens,
Appellant.

**Filed March 16, 2010
Affirmed
Lansing, Judge**

Cass County District Court
File No. 11-CR-08-2074

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

Christopher J. Strandlie, Cass County Attorney, Walker, Minnesota (for respondent)

Marie L. Wolf, Interim Chief Appellate Public Defender, Sara J. Euteneuer, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Lansing, Presiding Judge; Halbrooks, Judge; and
Schellhas, Judge.

UNPUBLISHED OPINION

LANSING, Judge

The district court accepted Clarence Dickens's guilty plea to possession of a firearm by an ineligible person and imposed a five-year sentence. On appeal, Dickens argues that the district court abused its discretion by not granting Dickens's motion for a downward dispositional departure. Because the sentence was both within the presumptive guidelines range and in compliance with the mandatory minimum sentence required by statute, we affirm.

FACTS

The state charged Clarence Dickens with first-degree assault, second-degree assault, and ineligible person in possession of a firearm. The charges resulted from an incident in Cass Lake on August 30, 2008, in which Dickens was confronted by a group of young men in a parking lot. One of the men punched Dickens in the side of the head, and Dickens returned to the car in which he had been an occupant and removed a semi-automatic handgun from the trunk. Dickens discharged the gun three times, resulting in gunshot wounds to two people. In plea negotiations, the state agreed to dismiss the two assault charges if Dickens entered a guilty plea to the firearm-possession charge. Dickens entered the guilty plea to the firearm-possession charge, and the district court ordered a presentence investigation.

The presentence investigation listed Dickens's prior offenses, which resulted in a criminal history score of seven and a presumptive sentence of five years' imprisonment. The past offenses that provided a factual basis for his ineligibility to possess a weapon

were his 1980 conviction of one count of first-degree manslaughter and two counts of second-degree assault. The current offense, together with the 1980 convictions, also triggered a statutory minimum sentence of five years' imprisonment under Minn. Stat. § 609.11 (2008).

Dickens moved for a downward dispositional departure. He and his attorney presented information on mitigating factors that included his current, serious medical condition that had required brain surgery related to cancer; his stable and supportive family situation; his amenability to probation; his account of the confrontation as self-defense; and the fact that he had not been the initial aggressor in the confrontation. The state opposed a departure. Both the state and Dickens agreed to the accuracy of the factual section of the presentence investigation. That section described the 1980 convictions as arising from an altercation between Dickens and his father in which they struggled over a pistol. The pistol discharged, killing Dickens's father.

The district court imposed a sentence of five years' imprisonment. In the course of the sentencing hearing, the district court expressed sympathy for Dickens's medical condition and acknowledged that Dickens's more recent criminal record showed fewer offenses and indicated that he had made efforts to correct past problems and change his life. But the district court also stated that the current charge resulted in physical injury to others and that this conviction together with his past offenses required imposition of a mandatory minimum sentence of five years' imprisonment. Dickens appeals the denial of a dispositional departure.

DECISION

A district court has broad discretion in imposing a sentence. *State v. Franklin*, 604 N.W.2d 79, 82 (Minn. 2000). We review decisions on sentencing departure for an abuse of discretion and ordinarily will sustain a sentence that is within the presumptive guidelines range even if grounds exist that would justify a dispositional or durational departure. *State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006). Only a rare case would warrant reversal of a refusal to depart. *Id.*

Under Minn. Stat. § 624.713, subd. 1(2) (2008), a person who has a past conviction for a crime of violence is prohibited from possessing a firearm. If this prohibition is violated, the person “shall be committed to the commissioner of corrections for not less than five years.” Minn. Stat. § 609.11, subd. 5(b) (2008). In limited and defined circumstances, a district court may impose a sentence for ineligibility to possess a firearm that does not require compliance with the five-year minimum required in subdivision 5(b), but it may not do so if the defendant has a prior conviction in which he “used or possessed” a firearm for certain enumerated offenses. *See id.*, subd. 8(a)-(b) (2008); *see also State v. Sheppard*, 587 N.W.2d 53, 55 (Minn. App 1998) (interpreting subdivision 8(b) to withhold district court’s discretion to depart from statutory minimum), *review denied* (Minn. Jan. 27, 1999). The enumerated offenses are set forth in subdivision 9, and they include second-degree assault and first-degree manslaughter. Minn. Stat. § 609.11, subd. 9 (2008).

Dickens’s argument on appeal is that the district court abused its discretion by failing to consider a downward dispositional departure when it sentenced him to five

years' imprisonment. The range of the district court's discretion is limited, however, in imposing sentence on the crime to which Dickens pleaded guilty. Dickens admitted that he violated the provisions of section 624.713. The factual section of his presentence investigation described his 1980 convictions for two counts of second-degree assault and one-count of first-degree manslaughter as involving the death of his father following a struggle over a pistol. Dickens agreed that the facts in the presentence investigation were correct. The facts are, therefore, undisputed that Dickens used or possessed a firearm in the commission of offenses enumerated in section 609.11, subdivision 9. Consequently, under subdivision 8(b), the district court had no discretion to disregard the five-year minimum mandatory sentence. The district court, therefore, did not abuse its discretion by imposing the statutory minimum of five years' imprisonment.

Affirmed.