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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0306**

State of Minnesota,
Respondent,

vs.

Jameson Damarus Smith,
Appellant.

**Filed January 16, 2018
Affirmed
Smith, Tracy M., Judge**

Steele County District Court
File No. 74-CR-16-628

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

Daniel A. McIntosh, Steele County Attorney, Owatonna, Minnesota (for respondent)

Charles F. Clippert, St. Paul, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Larkin, Judge; and Smith,
Tracy M., Judge.

UNPUBLISHED OPINION

SMITH, TRACY M., Judge

Appellant Jameson Smith argues that his aggravated sentence for aiding and abetting first-degree assault must be reversed because (1) the state did not make a motion for an aggravated departure and (2) the district court failed to give him notice that it was

considering an aggravated departure, violating a statute and a rule of criminal procedure. Because we conclude that neither the statute nor the rule was violated, we affirm.

FACTS

On July 10, 2015, Smith and three of his acquaintances picked up the victim and drove him to a cornfield, where he was stabbed 107 times and abandoned. Smith was subsequently charged with conspiracy to commit first-degree murder and aiding and abetting first-degree assault. On September 14, 2016, Smith pleaded guilty to aiding and abetting first-degree assault and stipulated to two aggravating sentencing factors: (1) that he committed the assault as part of a group of three or more people and (2) that the victim was treated with particular cruelty. In exchange, the state agreed to dismiss the conspiracy charge. There was no agreement as to a sentence or whether a sentencing-guidelines departure was appropriate. Upon accepting the plea, the district court informed Smith that, “if you agree to the aggravating factors, it permits the state to seek a greater sentence than would be the presumptively proper sentence under the Minnesota Sentencing Guidelines.”

A sentencing hearing was held on November 28. The state argued for a 103-month sentence, which represented the top of the presumptive range of 74 to 103 months’ imprisonment under the sentencing guidelines. Smith argued for a probationary sentence, which represented a downward dispositional departure. After the parties concluded their arguments, the district court rejected Smith’s request for a downward dispositional departure and sua sponte concluded that the aggravating factors that Smith had admitted

warranted an upward durational departure. The court sentenced Smith to 118 months in prison.

Smith appeals.

DECISION

Smith argues that his sentence must be reversed because it violated Minn. Stat. § 244.10 (2016) and Minn. R. Crim. P. 27.03.¹ We review the interpretation of statutes and the rules of criminal procedure de novo. *State v. Houx*, 709 N.W.2d 280, 281 (Minn. App. 2006).

I. The district court did not err in imposing an aggravated departure without a motion by the state.

Smith argues that Minn. Stat. § 244.10 precluded the district court from imposing an aggravated sentence because the state did not move for a departure. Minn. Stat. § 244.10 sets out the following procedural requirements for aggravated sentences:

Subdivision 1. **Sentencing hearing.** Whenever a person is convicted of a felony, the court, upon motion of either the defendant or the state, shall hold a sentencing hearing. . . . At the conclusion of the sentencing hearing or within 20 days thereafter, the court shall issue written findings of fact and conclusions of law regarding the issues submitted by the parties, and shall enter an appropriate order.

Subd. 2. **Deviation from guidelines.** Whether or not a sentencing hearing is requested pursuant to subdivision 1, the district court shall make written findings of fact as to the reasons for departure from the Sentencing Guidelines in each

¹ We note that Smith does not argue that he was denied due process because the state did not give him notice that it was seeking an aggravated sentence (it was not seeking such a sentence), and, regardless, Smith had notice at the time the district court accepted his plea that admitting the aggravating factors “permits the state to seek a greater sentence than would be the presumptively proper sentence under the Minnesota Sentencing Guidelines.”

case in which the court imposes or stays a sentence that deviates from the Sentencing Guidelines applicable to the case.

. . . .

Subd. 4. **Aggravated departures.** In bringing a motion for an aggravated sentence, the state is not limited to factors specified in the Sentencing Guidelines provided the state provides reasonable notice to the defendant and the district court prior to sentencing of the factors on which the state intends to rely.

Subd. 5. **Procedures in cases where state intends to seek an aggravated departure.** (a) When the prosecutor provides reasonable notice under subdivision 4, the district court shall allow the state to prove beyond a reasonable doubt to a jury of 12 members the factors in support of the state's request for an aggravated departure from the Sentencing Guidelines or the state's request for an aggravated sentence under any sentencing enhancement statute or the state's request for a mandatory minimum under section 609.11 as provided in paragraph (b) or (c).

. . . .

Subd. 7. **Waiver of jury determination.** The defendant may waive the right to a jury determination of whether facts exist that would justify an aggravated sentence. Upon receipt of a waiver of a jury trial on this issue, the district court shall determine beyond a reasonable doubt whether the factors in support of the state's motion for aggravated departure or an aggravated sentence under any sentencing enhancement statute or a mandatory minimum sentence under section 609.11 exist.

Smith argues that these sentencing provisions limit a district court's authority to impose an aggravated sentence to cases where the state has moved for such a sentence. This is so, according to Smith, because Minn. Stat. § 244.10, subd. 1, requires a sentencing hearing "upon motion of . . . the state," and because Minn. Stat. § 244.10, subd. 7, requires

the district court to “determine beyond a reasonable doubt whether the factors *in support of the state’s motion* for aggravated departure exist.” (Emphasis added.) Smith also analogizes to mandatory-minimum sentencing laws, arguing that, just as the legislature has limited district courts’ authority to impose a mitigated departure, Minn. Stat. § 244.10 limits district courts’ ability to impose an aggravated departure.

We reject Smith’s argument. Nothing in Minn. Stat. § 244.10 limits the district court’s ability to impose an aggravated sentence, even though the state did not move for one, when the aggravated sentence was supported by factual findings that were admitted by Smith and found by the district court at the plea hearing. Subdivision 1 of the statute requires a district court to hold a sentencing hearing upon a motion by the state or defendant, but there is nothing indicating the court cannot choose to hold a sentencing hearing, even when none is requested by the parties. And although subdivisions 4, 5, and 7 address procedural requirements when the state *does* seek an aggravated sentence, they do not indicate in any way that courts are prohibited from considering aggravated departures sua sponte when the defendant has admitted to, and the district court has found, aggravating factors. We therefore conclude that the district court did not err in imposing an aggravated sentence despite the lack of a motion on the part of the state to do so.

II. The district court did not err in imposing an aggravated departure despite not providing Smith notice after the plea hearing that it was considering such a departure.

Smith also argues that the Minnesota Rules of Criminal Procedure required the district court to give him notice that the court was considering an aggravated sentence

before imposing such a sentence. Minn R. Crim. P. 27.03, subd. 1(B), sets out procedural requirements for felony sentencing:

(2) Within the same three days [of a plea . . . of guilty], the court must:

- (a) order completion of a sentencing guidelines worksheet;
- (b) set a date for sentencing;

. . . .

(3) If the court intends to consider a mitigated departure from the sentencing guidelines, the court must advise the parties. This notice may be given when the presentence investigation is completed or when the presentence investigation is forwarded to the parties.

Additionally, “If the court is considering a departure from the sentencing guidelines, and no contested sentencing hearing was held, and no notice was given to the parties that the court was considering a departure, the court must allow either party to request a sentencing hearing.” *Id.*, subd. 4(D).

Smith argues that rule 27.03 “requires both a sentencing hearing and notice.” Additionally, Smith notes that this court has previously held that “[t]he rules of criminal procedure are clear; the court must give notice when considering a departure from the sentencing guidelines. Minn. R. Crim. P. 27.03, subd. 1(A)(4), (C).” *State v. Brennan*, 674 N.W.2d 200, 208 (Minn. App. 2004), *review denied* (Minn. Apr. 20, 2004).

We are unpersuaded by Smith’s arguments. With respect to whether Minn. R. Crim. P. 27.03 requires a hearing and notice, subdivision 4 of that rule requires a court to allow the parties to request a sentencing hearing only when (1) the court is considering an upward departure, (2) no contested sentencing hearing was held, and (3) the court had not

previously given the parties notice that it was considering an upward departure. Minn. R. Crim. P. 27.03, subd. 4(D). In this case, Smith concedes that there was a sentencing hearing. Therefore Minn. R. Crim. P. 27.03 cannot serve as a basis for relief.

Brennan does not compel a contrary result. At the time *Brennan* was decided, the Minnesota Rules of Criminal Procedure required a district court to notify the parties if the court was considering an aggravated departure. See Minn. R. Crim. P. 27.03, subd. 1(A)(4), (C) (2002) (requiring notice when the district court considers *any* sentencing guidelines departure). This was before the United States Supreme Court decided *Blakely v. Washington*, holding that defendants are entitled to a jury trial to determine whether the state has proved beyond a reasonable doubt the existence of aggravating factors. 542 U.S. 296, 313-14, 124 S. Ct. 2531, 2542-43 (2004). Minn. R. Crim. P. 27.03 has since been amended to remove the notice requirement for aggravated departures, and now requires notice only for mitigated departures. See Minn. R. Crim. P. 27.03, subd. 1(B)(3) (2016) (requiring notice when the district court considers a *downward* sentencing guidelines departure). The district court therefore did not err in imposing an aggravated sentence without first providing Smith notice that it was considering doing so after Smith had waived his right to a *Blakely* trial and admitted to two aggravating factors.

Affirmed.