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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1703**

Edson Celin Benitez Dominguez, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed June 25, 2018
Affirmed
Larkin, Judge**

Carver County District Court
File No. 10-CR-15-426

Cathryn Middlebrook, Chief Appellate Public Defender, Lydia Maria Villalva Lijó,
Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Mark Metz, Carver County Attorney, David Hunt, Assistant County Attorney, Chaska,
Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Peterson, Judge; and Reilly,
Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges his 450-month prison sentence for aiding and abetting second-degree intentional murder, which was an upward durational departure. Appellant primarily argues that his sentence should be reduced because he was less culpable than his co-defendant, who received the same sentence. Appellant raises additional issues in a pro se brief. We affirm.

FACTS

On April 15, 2015, 90-year-old Earl Olander was found dead on the floor of his San Francisco Township home in Carver County. He had sustained multiple blunt-force injuries to his head, face, and body. There was a significant amount of blood on the carpet next to his body. His wrists and ankles were bound with duct tape, and his home had been ransacked.

Police received a tip that a bible and savings bonds belonging to Olander had been found in an apartment that was recently vacated by appellant Edson Celin Benitez Dominguez. The police arrested Dominguez, and he made three different statements in which he admitted varying degrees of participation in Olander's murder.

Dominguez's accomplice, Reinol Godines-Vergara, was also arrested. He provided a statement to the police, admitting that he participated in Olander's murder. Vergara claimed that he spent very little time in Olander's house and that Dominguez had the murder weapon during the burglary.

The state charged Dominguez and Vergara with aiding and abetting second-degree intentional and unintentional murder. In December 2015, a grand jury indicted Dominguez for aiding and abetting first-degree intentional murder while committing or attempting to commit burglary, as well as aiding and abetting first-degree intentional murder while committing or attempting to commit kidnapping.

Dominguez pleaded guilty to aiding and abetting second-degree intentional murder pursuant to a plea negotiation in which the state agreed to dismiss the other second-degree murder charge, as well as the charges for aiding and abetting first-degree murder. Dominguez agreed to a 450-month sentence, which was an upward durational departure. The departure was based on the following four aggravating factors, which were set forth in a Petition Regarding Aggravated Sentence: (1) “[Olander] was particularly vulnerable due to his age,” (2) “Olander was treated with particular cruelty during the crime,” (3) “Vergara, who was familiar with Mr. Olander selected Mr. Olander in whole or in part because of Mr. Olander’s advanced age,” and (4) “[t]he offense was committed in a location in which Mr. Olander had an expectation of privacy.”

At his plea hearing, Dominguez admitted that Vergara texted him on April 8 and asked him for a ride to Olander’s house. Vergara had painted Olander’s house months before the murder. Dominguez picked Vergara up at his home in Richfield and drove Vergara to Olander’s house. Dominguez knew that Vergara had previously robbed people at gunpoint and that he intended to burglarize Olander’s residence.

Dominguez explained that after he parked his car outside of Olander’s house, Vergara entered the house with a shotgun that he obtained from the trunk of Dominguez’s

car. After approximately 30 minutes, Vergara returned to the car and told Dominguez to come into the house. Upon entering the house, Dominguez saw that Vergara had restrained Olander with duct tape. Dominguez was unable to see Olander's face because his head was covered with a sheet. Dominguez realized that Olander was injured because there was blood on the floor of the living room. Dominguez admitted that he nonetheless provided Vergara with additional duct tape to restrain Olander.

Dominguez claimed that he left the house shortly after entering because Vergara threatened to kill Olander if Olander did not tell Vergara where his money was hidden. Vergara eventually returned to Dominguez's vehicle, and he and Dominguez drove away. As they drove away, Vergara told Dominguez that he had cut Olander's phone line. Dominguez acknowledged that it would take Olander some time to reach a neighbor's home because he lived alone in a rural area.

In addition to those admissions, Dominguez agreed that the district court could receive a packet of evidence to supplement the record for his guilty plea. The packet included Dominguez's three statements to the police. In his first statement, Dominguez admitted that he had possessed Olander's bible and bonds, but he claimed that he had received them from a friend.

In his second statement, Dominguez told the police that Vergara told him about an older man who lived by himself, from whom they could obtain money. According to Dominguez, Vergara wanted to use Dominguez's car because he was concerned that someone might recognize his car. After traveling from Richfield to Olander's home, they parked on Olander's street and noticed that his living-room lights were on. Dominguez

admitted that he entered Olander's home and saw him bound with duct tape with a sheet over his head. Dominguez also admitted that he held the duct tape while Vergara applied more to prevent Olander from freeing himself.

In his third statement, Dominguez admitted that his involvement in the crime was greater than he had acknowledged in his first two statements. For example, he admitted that he handled the shotgun during the burglary. He also admitted that he entered the residence with Vergara and saw Olander sleeping on the couch in the living room. As Olander woke up, Dominguez and Vergara attempted to restrain him, and Vergara took the shotgun out of Dominguez's hands and struck Olander in the head several times. The blows caused Olander to collapse. Dominguez admitted that he ripped off several pieces of duct tape so he could bind Olander's arms and legs.

The evidence offered in support of Dominguez's guilty plea also included information from an inmate who was housed with Dominguez in jail after his arrest. This inmate contacted police and reported that Dominguez told him that Dominguez struck Olander with a shotgun twice and pointed the shotgun at Olander while Vergara searched the house for money and other valuables.

Vergara's statement to the police was also admitted in support of Dominguez's guilty plea. Vergara admitted that he participated in the burglary, but he shifted blame to Dominguez, saying that Dominguez brought the shotgun into the house.

Dominguez ultimately acknowledged that by driving Vergara to Olander's home, assisting Vergara to restrain Olander, and bringing a loaded shotgun, he had aided and abetted Vergara in committing second-degree intentional murder.

Pursuant to the plea agreement, the district court imposed a 450-month sentence based on aggravating factors of particular vulnerability of the victim, particular cruelty, and invasion of the victim's zone of privacy. The presumptive guidelines sentencing range was 261-367 months. The district court made several factual findings in support of its upward durational departure. The district court found that Olander was "particularly vulnerable due to his age [and] corresponding reduced physical capacity" and that "[p]rior to this offense, the defendants were aware of this vulnerability . . . [and] Mr. Olander was targeted by the defendants in this case because of this particular vulnerability."

Regarding the particular cruelty of the crime, the district court found that Olander "suffered at least four distinct impact injuries" and that this case represented a "gratuitous infliction of pain that is not usually associated with this [type of] crime." The district court also found that Dominguez and Vergara bound Olander with duct tape and left him "in a helpless position on the floor" and that they knew or should have known "that no help would be forthcoming."

Lastly, the court found that "the offense was committed in a location in which Mr. Olander had an expectation of privacy," and that "[t]he defendants invaded this most private and safe place of Mr. Olander, brutally beating him with the intention of killing him, and then left him for dead. And all of this occurred in what we commonly refer to as a man's castle."

The Minnesota State Public Defender's Office petitioned for postconviction relief on Dominguez's behalf, challenging his sentence, and Dominguez submitted a pro se supplemental brief, raising several issues. The postconviction court denied Dominguez's

requests for relief, finding that “[t]he trial court’s sentence was proportional and properly supported,” “[m]itigating factors [did] not exist to support a downward departure,” “[t]he record supports [that Dominguez] acted with the requisite intent,” and Dominguez’s counsel “was not ineffective and Dominguez was not coerced.”

Dominguez appeals.

DECISION

I.

A postconviction court’s denial of relief will withstand review unless the court abused its discretion, exercised its discretion arbitrarily or capriciously, or based its ruling on an erroneous view of the law. *Dobbins v. State*, 788 N.W.2d 719, 725 (Minn. 2010). This court reviews a decision to depart from the presumptive sentence under the Minnesota Sentencing Guidelines for an abuse of discretion. *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014). We will affirm if the district court’s reasoning is legally permissible and factually supported by the record. *Vickla v. State*, 793 N.W.2d 265, 269 (Minn. 2011) (quotation omitted). We give greater deference to a decision regarding the proper length of a sentencing departure if the sentence imposed is less than double the presumptive sentence, as is the case here. *Dillon v. State*, 781 N.W.2d 588, 596 (Minn. App. 2010), review denied (Minn. July 20, 2010).

Dominguez contends that his sentence is “unreasonable, excessive, inappropriate, and unjustifiably disparate.” He asserts that his sentence should be reversed and modified. Dominguez’s main argument is that his sentence should accurately reflect that he was less culpable than Vergara. See *State v. Williams*, 337 N.W.2d 387, 390 (Minn. 1983) (noting

that fairness and uniformity in sentencing requires consideration of the sentences received by an accomplice and other similar offenders).

As support for his assertion that he was less culpable than Vergara, Dominguez relies on the version of the events that he proffered in his admissions in support of his guilty plea. However, Dominguez and Vergara accepted identical plea agreements from the state, and each man claimed that he was less culpable than the other when providing a factual basis for his guilty plea. Because the case was not tried, we will never know if one man was less culpable than the other.

The postconviction court described Dominguez's attempt to minimize his culpability as "self-serving." The postconviction court was not compelled to accept Dominguez's version of the facts proffered in support of his guilty plea, especially when the entire plea record does not necessarily suggest that Dominguez was less culpable than Vergara. For example, the plea record indicates that in Dominguez's third statement to the police, he admitted that he entered Olander's house with Vergara and pointed the shotgun at Olander. The plea record also indicates that Dominguez's cellmate reported that Dominguez said he was the one who had struck Olander with the shotgun.

Moreover, equity and fairness in sentencing requires more than simply comparing the sentence that a defendant received with the sentence of his co-defendant. *State v. Vasquez*, 330 N.W.2d 110, 112 (Minn. 1983). It also involves comparing the sentences of other similarly situated offenders. *Id.* Dominguez presented data to the postconviction court indicating that 60 offenders received nonconsecutive sentences for second-degree intentional murder from 2010 to 2015. Of those 60 offenders, 15 offenders received

aggravated durational departures. Eight of those 15 offenders had a sentence equal to or exceeding Dominguez's sentence. Thus, the postconviction court correctly concluded that Dominguez's sentence was "proportional compared to similarly situated defendants."

In conclusion, we discern no error in the postconviction court's refusal to grant Dominguez relief from his sentence. Nonetheless, we note that even if Dominguez's sentence was improper, we would not automatically remand for a modified sentence because Dominguez was convicted and sentenced pursuant to a plea negotiation in which the state dismissed more serious charges and Dominguez agreed to an upward durational departure based on specific departure grounds. Dominguez does not address the procedural posture of his sentence or explain why he should be allowed to retain the benefit of his bargain regarding the offense of conviction if the state were to lose the benefit of its bargain regarding the negotiated sentence. Caselaw indicates that vacating the conviction and plea agreement could be an appropriate remedy in this case, instead of resentencing. *See State v. Lewis*, 656 N.W.2d 535, 539 (Minn. 2003) (noting that if the conviction and sentencing components of a plea agreement are interrelated, "the district court should be free to consider the effect that changes in the sentence have on the entire plea agreement"). But because we discern no error, we do not grant Dominguez sentencing relief.

II.

Dominguez filed a pro se supplemental brief in which he argues that the postconviction court "erred in Denying Relief on Claims not argued by the State," "erred in Ruling the Upward Departure was justified," "erred in Ruling there was sufficient

evidence of Intent to Kill,” and “erred in Ruling Defendant was not coerced into plea and that plea was voluntary.” We address each argument in turn.

Claims Not Argued by the State

Dominguez argues that “the court abused its discretion in arguing for the state claims it chose to implicitly waive.” The State counters that it opposed Dominguez’s requests for relief. We need not resolve this dispute because “it is the responsibility of appellate courts to decide cases in accordance with the law.” *State v. Hannuksela*, 452 N.W.2d 668, 673 n.7 (Minn. 1990). We do so here.

Ruling on Upward Departure

As part of his plea agreement with the state, Dominguez waived his right to a trial on the facts in support of an aggravated sentence and submitted a Petition Regarding Aggravated Sentence, in which he admitted “that the following facts constitute aggravating factors”:

- (a) [Mr. Olander] was particularly vulnerable due to his age, 90 years, and I knew or should have known of this vulnerability based on conversations I had with . . . Vergara and observations I made once at the residence . . .
- (b) . . . Mr. Olander suffered at least four distinct impact injuries to the back of his head, his eye and lip. He also suffered a fractured shoulder blade. These injuries were caused during the burglary of his residence in which I aided and abetted . . . Vergara in committing. Mr. Olander was duct taped and left in a helpless position on the floor of his living room, where he ultimately succumbed to the injuries and died. [He] may have been alive for up to two days.
- (c) . . . Vergara, who was familiar with Mr. Olander selected [him] in whole or in part because of Mr. Olander’s

advance[d] age of 90 years as this would make him easier to victimize than a younger person . . .

- (d) The offense was committed in a location in which Mr. Olander had an expectation of privacy, namely his home on his farm where he lived alone in an isolated rural area . . .

Despite his admissions, Dominguez argues, “In no way can the victim’s age or physical capacity be considered particularly important in light of the offense.” We disagree. A victim’s particular vulnerability is an aggravating factor that can support an upward deviation. Minn. Sent. Guidelines 2.D.3.b.(1) (2014). Caselaw reflects this principle. See *State v. Rodriguez*, 505 N.W.2d 373, 377 (Minn. App. 1993) (affirming particular-vulnerability upward departure based on the murder of an elderly woman with deteriorating physical health), *review denied* (Minn. Oct. 19, 1993).

Dominguez also argues that there is “no reason to believe that age played a factor in selecting the victim.” The record refutes this argument. Dominguez admitted that Vergara “selected Mr. Olander in whole or in part because of Mr. Olander’s advance[d] age of 90 years as this would make him easier to victimize than a younger person.” In addition, Dominguez told the police in his second interview that he and Vergara targeted Olander because he was elderly.

Dominguez further argues that treating “a crime against an elderly person as more severe . . . violates . . . the Equal [P]rotection [C]lause,” but he does not set forth the law that governs an equal-protection challenge or frame his argument in the context of that law. An assignment of error based on mere assertion and not supported by any argument or authorities is waived and will not be considered on appeal unless prejudicial error is

obvious on mere inspection. *State v. Yang*, 774 N.W.2d 539, 552 (Minn. 2009). We have considered Dominguez’s equal-protection challenge in light of the applicable analytical framework and do not discern obvious prejudicial error. We therefore deem Dominguez’s equal-protection challenge waived.

Dominguez next argues that the postconviction court erred in considering particular cruelty as an aggravating factor. Dominguez’s argument ignores the record, which shows that Olander was bound, beaten, and left to die from numerous blunt-force injuries, alone in his home in a remote area. Caselaw supports the postconviction court’s reliance on particular cruelty as an aggravating factor under these circumstances. *See State v. Vogelpohl*, 326 N.W.2d 635, 636 (Minn. 1982) (affirming upward departure based on particular cruelty where defendant killed the victim by repeatedly hitting the victim on the head with two different hammers and stuffing her mouth with paper); *State v. Weaver*, 733 N.W.2d 793, 803 (Minn. App. 2007) (Courts have “found ‘particular cruelty’ to exist when a defendant leaves the victim to die alone without notifying emergency personnel.”)

Dominguez also argues that the postconviction court erred by concluding that the crime was committed in a location where the victim had an expectation of privacy. Specifically, he asserts that a “victim [who] was murdered in his home cannot be considered atypical or particularly egregious.” Caselaw establishes that a violation of the zone of privacy in one’s home is a basis for an upward departure in a murder case. *See State v. Parker*, 901 N.W.2d 917, 929 (Minn. 2017) (affirming a district court’s upward departure based on zone of privacy where the defendant shot the victim in the victim’s home).

Dominguez last argues that “the court failed to take into account the mitigating factors.” The postconviction court rejected Dominguez’s argument regarding mitigating factors, noting that Dominguez specifically agreed that he would “receive an aggravated sentence of 450 months in prison” and that he never asked the district court to consider mitigating factors. The postconviction court also noted that there are no mitigating factors in this case.

Dominguez asserts that “it is clear that [his] participation in the burglary was minimal” and that his “brave action even influenced Vergara to not go through with his threat [to kill Olander].” We disagree. The record establishes that Dominguez drove Vergara and the shotgun used to assault Olander to the crime scene, intending to commit a crime, and that he helped Vergara restrain Olander with duct tape. As to Dominguez’s purported “brave action,” he argues that “the moment Vergara mentioned killing [Olander] . . . [Dominguez] said he was not going to be part of killing anyone and left the house at risk to his own life.” No reasonable person would equate leaving an elderly, helpless man alone to defend against a threat of imminent death with a “brave action.” Like the postconviction court, we do not discern any mitigating circumstances.

Evidence of Intent to Kill

Dominguez next argues that “[a] court is not permitted to accept a plea Agreement with convictions for which insufficient evidence exists.”

A valid guilty plea must be “accurate, voluntary and intelligent.” *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). “[T]he main purpose of the accuracy requirement is to protect a defendant from pleading guilty to a more serious offense than he could be

convicted of were he to insist on his right to trial.” *State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983). “A proper factual basis must be established for a guilty plea to be accurate.” *Ecker*, 524 N.W.2d at 716. A criminal defendant bears the burden of establishing that his plea was invalid. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). The validity of a guilty plea is a question of law that we review de novo. *Id.*

Dominguez argues that the record does not sufficiently establish his intent to kill. Dominguez relies on the standard that is used to review a conviction obtained at trial based on circumstantial evidence. When reviewing such a conviction, we use a two-step analysis. See *State v. Al-Naseer*, 788 N.W.2d 469, 473-75 (Minn. 2010). First, we determine the circumstances proved. *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017). Second, we determine if the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis other than guilt. *Id.*

Because Dominguez’s conviction stems from a guilty plea, and not a trial, the proper analytical framework is the one used to assess the accuracy of a guilty plea. We therefore do not apply the two-step circumstantial-evidence standard. Instead, we consider whether the factual basis for Dominguez’s guilty plea was adequate to establish his guilt, focusing on the intent element.

“A person 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 (2014). Such a person “is also liable for any other crime committed in pursuance of the intended crime if reasonably

foreseeable by the person as a probable consequence of committing or attempting to commit the crime intended.” *Id.*, subd. 2 (2014).

Dominguez’s admissions in support of his guilty plea adequately establish his intent to kill. Dominguez admitted that he believed that Vergara’s “intention [was] to kill Mr. Olander that night.” Dominguez also admitted that his conduct that night was “intentional,” that he actively participated in the crime, and that he transported the shotgun that was used to assault Olander. Lastly, Dominguez admitted that the murder was reasonably foreseeable as a probable consequence of trying to commit the burglary. Based on these admissions, we conclude that the factual basis for Dominguez’s guilty plea was adequate and that he did not plead guilty to a more serious offense than he could be convicted of had he insisted on his right to trial.

Coercion

Dominguez argues that he was coerced into pleading guilty and that his plea was therefore involuntary. Specifically, he asserts that he received ineffective assistance of counsel because his attorney coerced him into accepting the plea. To prevail on a claim of ineffective assistance of counsel, a claimant must show that his counsel’s representation fell below an objective standard of reasonableness and that there is a reasonable probability that but for the deficient performance, the outcome would have been different. *Ecker*, 524 N.W.2d 712, 718 (citing *Strickland v. Washington*, 466 U.S. 668, 687-88, 694, 104 S. Ct. 2052, 2064, 2068 (1984)). We “need not address both the performance and prejudice prongs if one is determinative.” *State v. Nissalke*, 801 N.W.2d 82, 111 (Minn. 2011) (quotation omitted). When we review a postconviction court’s denial of relief on a claim

of ineffective assistance of counsel, we “consider the court’s factual findings that are supported in the record, conduct a de novo review of the legal implication of those facts on the ineffective assistance claim, and either affirm the court’s decision or conclude that the court abused its discretion because postconviction relief is warranted.” *State v. Nicks*, 831 N.W.2d 493, 503-04 (Minn. 2013).

Dominguez asserts that “[his] Public Defender scared him with 1st Degree Murder, making him believe he would certainly lose at trial and spend the rest of his life in prison.” Improper coercion generally requires a threat or promise made to induce a defendant to plead guilty. *See, e.g., Nelson v. State*, 880 N.W.2d 852, 861 (Minn. 2016). Although “confronting a defendant with the risk of more severe punishment clearly may have a discouraging effect on the defendant’s assertion of his trial rights, the imposition of these difficult choices is an inevitable—and permissible—attribute of any legitimate system which tolerates and encourages the negotiation of pleas.” *Bordenkircher v. Hayes*, 434 U.S. 357, 364, 98 S. Ct. 663, 668 (1978) (quotation omitted). Dominguez’s attorney’s advice regarding the benefits of a plea offer and the risk of loss at trial was not improper coercion.

Moreover, the plea hearing record refutes Dominguez’s assertion that he was coerced into pleading guilty. Dominguez repeatedly indicated that he had not been coerced into pleading guilty. Dominguez stated, under oath, that no one had “made any threats to [him]” or “promises . . . besides [the] plea agreement” in exchange for his guilty plea. Dominguez also stated that he was “satisfied with [his] attorneys’ representation” and was pleading guilty because he was “guilty of [the] offense.”

In conclusion, we have fully considered all of the arguments in Dominguez's pro se brief, including those not specifically addressed in this opinion. None of his pro se arguments provides a basis for relief. See *Ture v. State*, 681 N.W.2d 9, 20 (Minn. 2004) (rejecting remaining pro se arguments without discussing each argument). Because Dominguez has not established a basis for relief from his conviction or sentence, we affirm.

Affirmed.