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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A17-1790**

State of Minnesota,  
Respondent,

vs.

Lance Martin Odegard,  
Appellant

**Filed September 24, 2018  
Affirmed  
Stauber, Judge\***

Yellow Medicine County District Court  
File No. 87-CR-17-113

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

Keith Helgeson, Yellow Medicine County Attorney, Granite Falls, Minnesota (for  
respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, John Donovan, Assistant Public  
Defender, St. Paul, Minnesota (for appellant)

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

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\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to  
Minn. Const. art. VI, § 10.

## **UNPUBLISHED OPINION**

**STAUBER**, Judge

Appellant challenges the imposition of two concurrent top-of-the-box sentences for felony fifth-degree assault convictions. Because the assaults were committed against two victims, the sentences did not unfairly exaggerate the criminality of his conduct, and the record shows that the district court carefully evaluated the relevant factors, we affirm.

### **FACTS**

While on patrol, Deputy Sheriff Doyle arrested appellant Lance Martin Odegard on an outstanding warrant and brought him to the jail's booking room. At the jail, Doyle asked Odegard, who smelled of alcohol, to submit to a preliminary breath test (PBT), but Odegard refused. Doyle said that he would tell Odegard's probation officer about the refusal, and Odegard swore at Doyle, and his demeanor became aggressive.

Corrections officers Duis and Evenson were also present in the booking room. At Duis's request, Odegard removed his shoes and jacket. But when Duis asked Odegard to remove his cross necklace, he refused, saying that it was religious and citing the Bill of Rights and religious freedom. Odegard removed one of his socks, stood up, and held the sock near Duis's face. Doyle advised Odegard to sit down or he would face more charges, and Odegard flung the sock past Duis's head. Odegard sat down, removed his other sock, stood up again, and asked Duis if she wanted the sock. Doyle put his hand on Odegard's shoulder to get him to sit back down, and, with the sock in his hand, Odegard swung his arm around and hit Doyle on the side of his head.

In an effort to control Odegard, Doyle stepped in front of him, and Evenson grabbed him under his right arm from behind. Odegard pushed Evenson away and began struggling against Doyle and Evenson. Odegard got Doyle into a headlock, and Doyle was unable to get out of it because Odegard was holding his head so tightly. Doyle testified at trial that he was afraid because his breathing was restricted, and he was in a position in which Odegard could have broken his neck. Doyle removed his taser from his belt and tasered Odegard to get Odegard to release him from the headlock. When Doyle got out of the headlock, Odegard came back after him and punched him on the side of the head repeatedly. Doyle got pinned against the wall and hit his head on the doorway. Doyle and Evenson got Odegard to the ground and restrained him. While on the ground, Odegard kicked Doyle.

During the incident, Odegard was swearing at the officers and telling them not to touch him. After being restrained, Odegard threatened to break Doyle's neck and beat him until "he wanted to shoot himself." As a result of the assault, Doyle had swelling on the side of his head from being hit by Odegard, scratches on his forehead from hitting the wall, and marks on his cheek and jawbone from his radio being squeezed into his head while he was in the headlock. Evenson got a bloody nose during the assault.

The jury found Odegard guilty of felony fifth-degree assault-harm against Doyle, felony fifth-degree assault-harm against Evenson, and fourth-degree assault against a peace officer (Doyle). The jury acquitted him of felony fifth-degree assault-fear against Duis and fourth-degree assault against a correctional employee (Evenson). The district court sentenced Odegard for the felony fifth-degree assault convictions against two victims,

Doyle and Evenson. At the sentencing hearing, the district court stated that the assaults were more serious than a typical assault because they occurred in a jail and noted Odegard's criminal history of 63 prior offenses. The district court sentenced Odegard to concurrent, top-of-the-box prison sentences of 36 and 39 months.

## **D E C I S I O N**

This court reviews sentences imposed by the district court for an abuse of discretion. *State v. Delk*, 781 N.W.2d 426, 428 (Minn. App. 2010), *review denied* (Minn. July 20, 2010).

### ***Imposition of two sentences***

“[C]ourts are not prevented from giving a defendant multiple sentences for multiple crimes arising out of a single behavioral incident if: (1) the crimes affect multiple victims; and (2) multiple sentences do not unfairly exaggerate the criminality of the defendant's conduct.” *State v. Skipintheway*, 717 N.W.2d 423, 426 (Minn. 2006). A defendant “may be sentenced separately for multiple convictions arising from the same behavioral incident if those convictions relate to multiple victims . . . because where multiple victims are involved, a defendant is equally culpable to each victim.” *State v. Edwards*, 774 N.W.2d 596, 605 (Minn. 2009).

Odegard argues that the multiple sentences unfairly exaggerated the criminality of his conduct because the only target of his anger was Doyle and he unintentionally hit Evenson when Evenson attempted to help Doyle. This argument is contrary to the jury's finding that Odegard assaulted Evenson because an element of fifth-degree assault is the intentional infliction or attempted infliction of bodily harm. Minn. Stat. § 609.224, subd.

1(2) (2016). Also, the way in which Odegard committed the assaults, resisting the booking process in the presence of multiple officers, made it more likely that multiple persons would be injured. *See Edwards*, 774 N.W.2d at 605 (stating that a “defendant who commits an act of violence with the intent to harm more than one person or by means likely to cause harm to several persons is more culpable than a defendant who harms only one person”) (quotation omitted).

The cases relied on by Odegard involved the affirmance of consecutive sentences for crimes against multiple victims. *State v. Montalvo*, 324 N.W.2d 650, 652 (Minn. 1992); *State v. Hazley*, 428 N.W.2d 406, 411 (Minn. App. 1988), *review denied* (Minn. Sept. 28, 1988). The fact that those cases involved more egregious conduct than this case does not support Odegard’s argument that the district court abused its discretion by imposing multiple concurrent sentences in this case. *See State v. Ali*, 855 N.W.2d 235, 259 (Minn. 2014) (“In cases with multiple victims, consecutive sentences are rarely, if ever, disproportionate to the offense.”).

### ***Top-of-the-box sentences***

Sentence ranges in the sentencing guidelines are presumed appropriate for the crimes to which they apply. Minn. Sent. Guidelines 2.D.1 (2016). “This court will generally not exercise its authority to modify a sentence within the presumptive range absent compelling circumstances.” *Delk*, 781 N.W.2d at 428 (quotation omitted). “The district court is not required to explain its reasons for imposing a presumptive sentence,” and we will affirm a presumptive “sentence when the record shows the sentencing court carefully evaluated all the testimony and information presented before making a

determination.” *State v. Johnson*, 831 N.W.2d 917, 925 (Minn. App. 2013) (quotation omitted), *review denied* (Minn. Sept. 17, 2013). “[A]ny sentence within the presumptive range for the convicted offense constitutes a presumptive sentence.” *Delk*, 781 N.W.2d at 428.

“[A] district court sits with a unique perspective on all stages of a case, including sentencing, and is in the best position to evaluate the offender’s conduct.” *State v. Solberg*, 882 N.W.2d 618, 626 (Minn. 2016) (quotation omitted). Odegard cites his chemical dependency and mental-health issues as mitigating factors. Although the district court noted these factors and stated that Odegard’s acts were not rational, the court stated reasons for imposing top-of-the-box sentences, including Odegard’s extensive criminal history, the fact that the offenses took place in jail, and Odegard’s threatening taunts to Doyle after being restrained. On Odegard’s argument that he had religious reasons for refusing to take off the necklace, the district court stated that jail procedures prohibit wearing jewelry and noted Odegard’s familiarity with the criminal-justice system. Notably, Odegard swore at Doyle and his demeanor became aggressive when Doyle said he would tell Odegard’s probation officer about the PBT refusal, which occurred before Odegard was instructed to remove the necklace, and Odegard continued to swear at the officers during the assaults.

The district court did not abuse its discretion in sentencing Odegard.

**Affirmed.**