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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0866**

State of Minnesota,
Respondent,

vs.

Arcelus Antonio Williams,
Appellant.

**Filed April 1, 2019
Affirmed
Slieter, Judge**

Hennepin County District Court
File No. 27-CR-17-23641

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Jean Burdorf, Assistant County Attorney, Minneapolis, 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 Slieter, Judge.

UNPUBLISHED OPINION

SLIETER, Judge

Appellant Arcelus Antonio Williams appeals from his 60-month sentence for ineligible person in possession of ammunition. Appellant argues that the district court

abused its discretion at sentencing by either (1) basing its decision on an erroneous view of the law, or (2) failing to exercise its discretion properly. We affirm.

FACTS

After a September 17, 2017 incident, appellant was arrested on a felony warrant. During a search of appellant's person, officers found a magazine with ten live rounds of nine-millimeter ammunition in appellant's pocket. Because of prior convictions, appellant was prohibited from possessing ammunition.

Appellant was charged with one count of ineligible person in possession of ammunition, in violation of Minn. Stat. § 624.713, subd. 1(2) (2016). In a stipulated facts trial, the district court found appellant guilty.

At sentencing, appellant requested a downward durational or dispositional departure,¹ arguing several mitigating factors were present, including that appellant possessed only ammunition and was not committing a more serious offense at the time. The state requested the presumptive 60-month sentence. After reviewing the record and hearing arguments from counsel, the district court found no substantial and compelling circumstances to warrant a departure and sentenced appellant to 60 months.

This appeal follows.

¹ Although appellant requested both a durational and a dispositional departure at sentencing, appellant only challenges the district court's denial of a durational departure.

DECISION

I. The district court's decision is not based on an erroneous view of the law.

Appellant first contends that the district court erroneously interpreted Minn. Stat. § 624.713 (2016) as prohibiting sentencing departures for ammunition-only offenses. “A court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record.” *Riley v. State*, 792 N.W.2d 831, 833 (Minn. 2011).

Appellant focuses on this statement from the district court during the sentencing hearing:

[t]he statute does not differentiate between ammunition and firearms. Maybe they should. It would seem to make some sense to me that they do, but they don't. So the legislature has decided it's just as serious to have ammunition as it is to have a firearm. So that's not, that doesn't make this crime less serious because you were [in] possession of an ammunition clip, a magazine, and not a firearm.

Appellant argues that this statement shows that the district court interpreted the statute as prohibiting departures for ammunition offenses entirely. Appellant misconstrues the district court's words.

Viewed in light of the entire sentencing hearing, it is clear that the district court is responding to appellant's argument that “possession of a couple of bullets without a firearm . . . is a reasonable basis for a durational departure.” The district court is not interpreting the statute as prohibiting departures entirely; rather, the district court is noting that the statute treats ammunition and firearms the same. Minn. Stat. § 624.713, subd. 1 (“The following persons shall not be entitled to possess ammunition or a pistol . . .”). The

district court's statement of the law is correct: appellant's offense is not less serious and thus a factor for a durational departure simply because he possessed only ammunition. See *State v. Rund*, 896 N.W.2d 527, 534 (Minn. 2017) (holding that defendant's threats to kill police officers were not less serious because they were made with a reckless disregard of the risk of terrorizing, as opposed to a purposeful intent to cause terror; the terroristic-threats statute prohibited both purposeful and reckless conduct); *State v. Solberg*, 882 N.W.2d 618, 627 (Minn. 2016) (holding that defendant's sexual assault was not less serious than typical because it was accomplished using coercion and not violence—defendant's use of coercion “fits squarely within the statute's prohibition of sexual assault by coercion”).

The district court accurately stated the law and did not misinterpret the statute as prohibiting departures entirely. There was no abuse of discretion.

II. The district court properly exercised its discretion.

In the alternative, appellant argues that the district court abused its discretion because it failed to consider the mitigating factors.² The record does not support this assertion.

“We afford the trial court great discretion in the imposition of sentences and reverse sentencing decisions only for an abuse of that discretion.” *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014) (quotation omitted). “When factors that may justify departing from

² Because we conclude that the district court properly exercised its discretion and considered factors for and against departure, we do not address appellant's arguments regarding departure factors.

the presumptive sentence are present, a court must exercise its discretion and consider the factors.” *State v. Kier*, 678 N.W.2d 672, 677 (Minn. App. 2004). “But the mere fact that a mitigating factor is present in a particular case does not obligate the court to place defendant on probation or impose a shorter term than the presumptive term.” *State v. Pegel*, 795 N.W.2d 251, 253–54 (Minn. App. 2011) (quotation omitted). This court affirms a presumptive sentence “when ‘the record shows [that] 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) (alteration in original) (quoting *State v. Van Ruler*, 378 N.W.2d 77, 81 (Minn. App. 1985)). “[A] district court is not required to explain its reasons for imposing a presumptive sentence.” *Id.*

The record demonstrates that the district court properly considered the mitigating factors. The district court heard arguments from the state, appellant’s attorney, and appellant. The district court also reviewed the presentence investigation report, a letter from a social worker with the public defender’s office, and a letter from appellant. Before sentencing, the district court remarked: “Well, obviously I’ve reviewed your record quite thoroughly by reading the presentence and the information that [the public defender] presented.”

After considering the above, the district court found that there were no substantial and compelling circumstances warranting a departure, stating, “[s]o, I can’t find good grounds to depart durationally.” The district court did, in fact, exercise its discretion and

ultimately imposed the presumptive sentence. There is no requirement that it explain its decision. *Van Ruler*, 378 N.W.2d at 80.

Affirmed.