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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0910**

State of Minnesota,
Respondent,

vs.

William Issac Jones,
Appellant.

**Filed March 18, 2019
Affirmed
Rodenberg, Judge**

Hennepin County District Court
File No. 27-CR-17-28217

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

Michael O. Freeman, Hennepin County Attorney, Linda K. Jenny, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Reilly, Presiding Judge; Rodenberg, Judge; and Bratvold, Judge.

UNPUBLISHED OPINION

RODENBERG, Judge

Appellant William Issac Jones appeals from his conviction and sentence for aiding and abetting simple robbery. Appellant argued for either a dispositional or a durational

departure at the district court; the state recommended a durational departure. The district court imposed a guidelines sentence at the “bottom of the box.” On appeal, appellant argues that the district court abused its sentencing discretion by relying on offender-based factors when it declined to impose a downward durational departure. We affirm.

FACTS

The state charged appellant with aiding and abetting simple robbery after appellant robbed P.K. of his wallet and ATM card. Appellant was homeless at the time and had been sleeping at the Chicago Lake Transit Station. P.K. had come into the station to sleep, and a small group of people including appellant, P.K., and C.M., began drinking alcohol together. Appellant became upset when P.K. said that he would not “buy another drink” from appellant. P.K. told officers that he fell asleep and later woke up because C.M. was “going through his pockets trying to steal his belongings.” Appellant assisted C.M. in holding P.K. down and was the person who took his wallet.

Police arrested appellant, and the state charged him with aiding and abetting simple robbery under Minn. Stat. § 609.24 (2016). Appellant admitted that he took P.K.’s wallet and ATM card and used the card to purchase cigarettes that he could sell for money to buy alcohol. In exchange for appellant’s plea of guilty, the state offered to recommend a 29-month sentence, a downward durational departure from the sentencing guidelines. Appellant rejected the offer and entered a straight guilty plea, with no sentencing agreement. Appellant’s trial counsel explained to the district court that appellant planned to argue for a downward dispositional departure at sentencing.

At sentencing, the state argued against appellant's request for a dispositional departure. The state expressed that, given appellant's past, it "would be hard for the court to find that he's particularly amenable to probation or treatment." The state did support a downward durational sentencing departure, reasoning that appellant "played a somewhat less active role" and "wasn't the initiator of the robbery." The state based its position on "how [appellant] conducted himself and the offense-related factors" and asked the district court to impose and execute a 29-month sentence.

The probation officer present at sentencing explained that "[p]robation has been extended to [appellant] numerous times, and he has had probation violations each time which have resulted in prison." The probation officer explained that appellant "is not amenable to probation" because probation has exhausted everything that it has to offer to appellant. The probation officer therefore recommended that the court impose and execute the presumptive 38-month middle-of-the-box prison sentence.

Appellant's attorney argued for a dispositional departure to probation so that appellant could complete treatment. Appellant's attorney argued that appellant "has been dealing with three co-occurring significant issues[:] traumatic brain injury, mental-health issues, and chemical dependency." In the alternative, appellant moved for a downward durational departure.

The district court, after hearing these arguments and reviewing the presentence investigation (PSI), declined to depart from the guidelines. The district court explained that it was denying the departure requests because appellant was not particularly amenable to probation. The district court expressed appreciation of the state's argument that

appellant's conduct was "less serious" than is typical, but executed a bottom-of-the-box guidelines sentence of 33 months.

This appeal followed.

DECISION

On appeal, appellant argues that the district court abused its sentencing discretion because it denied both a dispositional and a durational departure based solely on offender-related factors.

A district court must impose the presumptive guidelines sentence absent identifiable, substantial, and compelling circumstances justifying the departure. *State v. Johnson*, 831 N.W.2d 917, 925 (Minn. App. 2013), *review denied* (Minn. Sept. 17, 2013). The decision to depart lies within the district court's discretion, and appellate courts will not reverse a presumptive sentence absent an abuse of that discretion. *State v. Kindem*, 313 N.W.2d 6, 7-8 (Minn. 1981). A district court's discretion is broad, and only a rare case warrants reversal of a guidelines sentence. *Id.* at 7. Even when grounds exist that may justify a departure, appellate courts generally will not interfere with a district court's imposition of a presumptive guidelines sentence. *State v. Back*, 341 N.W.2d 273, 275 (Minn. 1983); *State v. Evenson*, 554 N.W.2d 409, 412 (Minn. App. 1996), *review denied* (Minn. Oct. 29, 1996).

When considering whether to depart durationally, a sentencing court must compare the act with other acts constituting the same offense. *State v. Behl*, 573 N.W.2d 711, 713 (Minn. App. 1998), *review denied* (Minn. Mar. 19, 1998). We will affirm a presumptive sentence when the record shows that the sentencing court carefully evaluated all the

testimony and information presented before making a determination. *Johnson*, 831 N.W.2d at 925. “However, the district court is not required to explain its reasons for imposing a presumptive sentence.” *Id.*

Appellant argues that we must reverse his guidelines sentence because the district court abused its discretion by denying both a dispositional and a durational departure based solely on offender-related factors.

The record does not support appellant’s argument. Most of the discussion at the sentencing hearing focused on appellant’s dispositional-departure argument. The district court first addressed that argument, and its discussion of appellant’s criminal history and alcohol abuse was in response to appellant’s argument for a dispositional departure.

After denying appellant’s request for a dispositional departure, the district court turned to the state’s durational-departure argument. The district court noted that it could “appreciate what the state said about this case in particular” but that it would “go to the bottom of the box as recognition of [appellant’s] acceptance of responsibility and [appellant’s] less-active role, rather than actually departing, just given the other information in the PSI.” After acknowledging that appellant’s less-serious conduct might warrant a departure, the district court decided that the 33-month presumptive guidelines sentence at the “bottom of the box” was an appropriate sentence.

The district court had no further obligation to specify its reason for imposing a presumptive guidelines sentence. *See State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985) (stating that no explanation is required when the district court considers reasons for departure but elects to impose a presumptive sentence). A district court need not depart in

every case where a mitigating factor is present. *State v. Pegel*, 795 N.W.2d 251, 253-54 (Minn. App. 2011). In order to depart, a district court must not only identify a factor supporting departure; it must determine the circumstances supporting departure to be substantial and compelling. Minn. Sent. Guidelines 2.D.1 (2016). The district court implicitly found, after it considered all of the arguments, that the identified circumstances to support a departure were not substantial and compelling. The district court's decision to impose a bottom-of-the-box guidelines sentence is within its discretion.

Affirmed.