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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1109**

State of Minnesota,
Respondent,

vs.

Karl Edward Henze,
Appellant.

**Filed May 13, 2019
Affirmed
Cochran, Judge**

Lake County District Court
File No. 38-CR-17-428

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

Russell H. Conrow, Lake County Attorney, Two Harbors, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Steven P. Russett, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Hooten, Judge; and Cochran,
Judge.

U N P U B L I S H E D O P I N I O N

COCHRAN, Judge

Appellant Karl Edward Henze challenges his conviction of unlawful possession of
a firearm, arguing that the evidence introduced at trial was not sufficient to support the
conviction. He also challenges the district court's denial of his motion for a downward

dispositional departure based primarily on his significant medical problems. Because the evidence was sufficient to support the conviction and the district court did not abuse its discretion in imposing the presumptive sentence, we affirm.

FACTS

In September 2017, Henze, who was on probation for third-degree assault, met with his probation officer, Jeffrey Adams. Henze told Adams that he would test positive for hydrocodone. Based on Henze's admission, Adams believed that there might be hydrocodone in Henze's apartment. Henze consented to Adams searching his apartment for contraband, including firearms. Henze denied that there would be firearms or any other contraband in the apartment.

Adams, Officer Nathan Gens, and another probation officer searched the apartment. During the search, Gens found multiple boxes of different kinds of ammunition in a dresser drawer in Henze's bedroom. After locating the ammunition, Gens obtained a search warrant to search the rest of Henze's apartment.

During the subsequent search of the apartment, Gens located a gun cabinet in Henze's bedroom closet. The gun cabinet was immediately visible when the closet was opened. The gun cabinet was locked but the key was in the keyhole. The cabinet contained two rifles, three handguns, and many boxes of ammunition. Officers also found ammunition elsewhere in the bedroom. Inside a dresser drawer that contained Henze's socks, at the foot of Henze's bed, an officer found a blue case containing ammunition. Officers also found a handgun magazine in the bottom of another dresser drawer. Altogether, there was a significant amount of ammunition in the bedroom. Much of the

ammunition did not match the firearms that police found. Henze told Gens that he did not know that the firearms and ammunition were in the apartment.

The state charged Henze with six counts of possession of a firearm or ammunition by an ineligible person under Minn. Stat. § 624.713, subd. 1(2) (2016). The case proceeded to a jury trial. At trial, Henze testified that he knew, because he was on probation, that a probation officer could search his home at any time. He also acknowledged that he consented to the search. And he agreed that the guns and ammunition were found in his bedroom.

According to Henze, another family member who once lived in his apartment likely left the guns and ammunition in the bedroom, unbeknownst to him. The apartment building where he lived has been owned by his family since 1908. Several members of his family have occupied the building. Henze moved into the apartment in 2001.¹ At that time, his sister also lived there intermittently. They split time in the apartment—when he stayed in the apartment, she stayed at another home. They both used the bedroom where the guns were found. His sister passed away in 2007. Henze had lived in the apartment alone since 2007.

Henze testified that he did not own the guns and did not know that the gun cabinet was in the closet. He believed that his sister placed the guns and ammunition in the apartment. His sister owned guns, but she did not hunt. Henze speculated that the guns

¹ He had also lived there in the 1970s.

may have been passed down through his family, possibly from his father. He testified that he recognized one of the guns from when he was a child.

Henze testified that he accessed the sock drawer often but did not know that the blue case containing ammunition was there. He testified that he had not used or paid attention to the other dresser in his bedroom where ammunition was found because it was “off limits” and that the dresser had been there when he moved in. He testified that he used the bedroom closet—it was the only closet in the room—but he “never really went in” the side of the closet where the gun cabinet was found. He admitted that the gun cabinet was not old.

The jury found Henze guilty of all six counts of possession of a firearm or ammunition by an ineligible person under Minn. Stat. § 624.713, subd. 1(2). The district court entered a judgment of conviction on one of the firearm counts.

Adams completed a presentence investigation (PSI) before sentencing. Adams indicated in the PSI that the state had charged Henze with threats of violence and fifth-degree assault for an incident that occurred in January 2018, while Henze was on pretrial release for the current offense. The PSI also noted that Henze had been placed in custody five times in connection with alleged probation violations since April 2017. Adams opined that Henze “has little regard for orders of the [c]ourt, as evidenced by his lack of success on supervised probation and pre-trial release conditions.” Adams recommended that the district court impose the presumptive sentence under the Minnesota Sentencing Guidelines, 60 months in prison.

Henze requested a downward dispositional departure, arguing that his significant health problems warranted the departure and that a condition that Henze remain on an alcohol monitor would be effective in keeping Henze compliant with probation conditions. Henze asserted that his doctors told him that he had two to three years to live.² The district court denied Henze's request for a departure. It expressed concern over Henze's inability to comply with probation conditions and concern that Henze posed a threat to public safety. The district court imposed the presumptive sentence.

This appeal follows.

DECISION

Henze challenges his conviction, arguing that the circumstantial evidence presented at trial was insufficient to prove beyond a reasonable doubt that he knowingly possessed the firearms and ammunition found in his bedroom. Henze also argues that the district court abused its discretion in sentencing him to the presumptive sentence despite evidence that he suffered from a serious health condition. We address each issue in turn.

I. The evidence produced at trial was sufficient to support Henze's conviction.

Henze argues that the evidence was not sufficient to establish that he *knowingly* possessed firearms or ammunition. Specifically, Henze argues that the evidence does not preclude the reasonable inferences that (1) another family member left the firearms and ammunition in the apartment before Henze took possession of it and (2) Henze did not

² Henze did not provide documentation of his prognosis despite a continuance of sentencing to obtain such records. It was not disputed, however, that Henze had significant medical issues.

know that the firearms and ammunition were in the apartment until they were found during the search.

In reviewing whether a conviction was supported by sufficient evidence, this court conducts “a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, was sufficient” to support the conviction. *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012) (quotation omitted). We assume that “the jury believed the state’s witnesses and disbelieved any evidence to the contrary.” *State v. Caldwell*, 803 N.W.2d 373, 384 (Minn. 2011) (quotation omitted). “[W]e will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense.” *Ortega*, 813 N.W.2d at 100.

When the conviction is based on circumstantial evidence, this court applies a two-step analysis. *State v. Harris*, 895 N.W.2d 592, 601 (Minn. 2017). First, the court identifies the circumstances proved at trial, disregarding evidence that is not consistent with the jury’s verdict. *Id.* Second, the court considers the inferences that can be drawn from the circumstances proved. *Id.* The court gives no deference to the jury’s inferences at this second step. *Id.* The evidence is sufficient if the circumstances proved, viewed as a whole, are “consistent with a reasonable inference that the accused is guilty and inconsistent with any rational hypothesis except that of guilt.” *Id.*

Knowledge is usually proved by circumstantial evidence. *State v. Ali*, 775 N.W.2d 914, 919 (Minn. App. 2009), *review denied* (Minn. Feb. 16, 2010). Henze denied

knowledge of the firearms and ammunition found in his bedroom. Thus, the only evidence of Henze's knowledge is circumstantial evidence of how and where police found the firearms. The circumstantial evidence test applies.

The circumstances proved at trial relevant to Henze's knowledge were: Henze lived alone at the apartment for about ten years; Henze consented to a search of his apartment, but he knew that his probation officer could search the apartment even without his consent; while searching Henze's bedroom, police found ammunition in a blue case in Henze's sock drawer; Henze used the sock drawer "quite often"; police found a gun safe in Henze's bedroom closet, and it was immediately visible when the closet was opened; the gun safe was locked, but the key was in the keyhole; there were five firearms in the gun safe; Henze admitted that he used the closet; police found a significant amount of ammunition, including a magazine, in dresser drawers in Henze's bedroom; and much of the ammunition did not match the firearms found in the safe. Henze's testimony that he did not know about the guns and ammunition is inconsistent with the jury's verdict and must therefore be disregarded. *See Harris*, 895 N.W.2d at 601 (indicating that evidence inconsistent with the jury's verdict must be disregarded when applying the circumstantial evidence test).

We conclude that the circumstances proved are consistent with a finding that Henze knew about the guns and ammunition in his bedroom and do not support any rational hypothesis in which Henze did not know that the firearms and ammunition were in his bedroom. It is not rational to believe that Henze did not examine one entire side of his bedroom closet, multiple bedroom dresser drawers, and the contents of a case in his sock drawer for the ten years that he had lived alone in the apartment.

Henze argues that his consent to the search is evidence that he did not know about the firearms and ammunition in his apartment. We are not persuaded. Henze admitted at trial that he knew his probation officer could search his apartment at any time. Thus, his consent to a search carries little weight in determining whether Henze knowingly possessed the firearms and ammunition contained therein. We affirm the conviction because the circumstantial evidence of knowing possession is sufficient to support the jury's verdict.

II. The district court acted within its discretion when it sentenced Henze to the presumptive guidelines sentence.

Henze next argues that the district court abused its discretion in denying his motion for a downward dispositional departure based on his significant health problems and amenability to probation.

We review the district court's sentencing decision for an abuse of discretion. *State v. Law*, 620 N.W.2d 562, 564-65 (Minn. App. 2000), *review denied* (Minn. Dec. 20, 2000). The district court has "great discretion" in sentencing and "we cannot simply substitute our judgment for that of the [district] court." *State v. Spain*, 590 N.W.2d 85, 88 (Minn. 1999). But "[a]ppellate courts may vacate or modify a sentence on many grounds, including that the sentence is unreasonable or inappropriate, or that such a result is in the interest of fairness and uniformity." *State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006) (quotation and citation omitted).

The sentences provided by the Minnesota Sentencing Guidelines are presumed to be appropriate. *State v. Reece*, 625 N.W.2d 822, 824 (Minn. 2001). It is only in "rare" cases that an appellate court will reverse the district court's refusal to depart because, even

when substantial and compelling circumstances are present, the Minnesota Sentencing Guidelines provide only that the district court *may* depart. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). If a defendant requests a downward dispositional departure, the district court must consider the circumstances for and against departing. *State v. Mendoza*, 638 N.W.2d 480, 483 (Minn. App. 2002), *review denied* (Minn. Jan. 31, 2002).

A downward dispositional departure from a prison sentence to probation may be justified if the defendant is particularly amenable to probation or if probation would be best for the defendant and for society. *State v. Heywood*, 338 N.W.2d 243, 244 (Minn. 1983); *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982); *State v. Wright*, 310 N.W.2d 461, 463 (Minn. 1981). Factors that courts may consider in determining whether a defendant is particularly amenable to probation include his “age, his prior record, his remorse, his cooperation, his attitude while in court, and the support of friends and/or family.” *Trog*, 323 N.W.2d at 31.

Henze argued to the district court that his significant health concerns and his amenability to probation supported a departure. On appeal, Henze argues that the presumptive sentence that the court imposed was contrary to society’s interest because it was not compassionate and because the state will be required to pay for his healthcare. He argues that the sentence was also contrary to his interest in being with his family in his final days.

We conclude that the district court acted well within its discretion in imposing the presumptive sentence. The district court considered Henze’s sentencing arguments and expressed appropriate concern for Henze’s health. The court also expressed legitimate

concern over Henze’s inability to comply with probation and pretrial release conditions, and concern about the threat that Henze poses to public safety. As noted in the PSI, Henze was on probation for third-degree assault when police found multiple firearms and ammunition in his bedroom. In addition, while on pretrial conditional release for the current offense, Henze was charged with threats of violence and fifth-degree assault. And, since April 2017, Henze had been placed in custody five times in connection with alleged probation violations. The district court’s concern regarding Henze’s inability to comply with probation conditions and concern regarding public safety are well supported by the record.

Henze argues that the district court’s concern for public safety was overstated because Henze’s behavior could be curbed by the use of an alcohol monitor while on probation. He argued to the district court and argues on appeal that his alcohol use caused him to violate his probation conditions. There was some evidence that Henze was more compliant with probation when he was subjected to an alcohol monitor.³ But, in recommending that the court impose the presumptive sentence, Adams opined that Henze “has little regard for the orders of the [c]ourt, as evidenced by his lack of success on supervised probation and pre-trial release conditions.” Given Henze’s poor performance on probation and pretrial conditional release, we conclude that the district court’s concerns

³ At an omnibus hearing, Adams indicated that the use of an alcohol monitor seemed to be effective in keeping Henze from drinking alcohol.

were supported by the evidence in the record and that the district court acted within its discretion in sentencing Henze to the presumptive guidelines sentence.

Affirmed.