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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1338**

State of Minnesota,
Respondent,

vs.

Rashad Ramon Ivy,
Appellant.

**Filed May 20, 2019
Reversed and remanded
Slieter, Judge**

Ramsey County District Court
File No. 62-CR-15-4420

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

John Choi, Ramsey County Attorney, Adam E. Petras, Assistant County Attorney, St. Paul,
Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Slieter, Judge; and Klaphake,
Judge.*

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

UNPUBLISHED OPINION

SLIETER, Judge

Appellant challenges his resentencing on remand from this court, arguing that the district court impermissibly imposed two upward durational departures. We reverse and remand for resentencing.

FACTS

In February 2016, a jury found appellant Rashad Ramon Ivy guilty on a total of ten counts: three counts of aiding and abetting second-degree solicitation to practice prostitution (counts 3, 4, and 5), four counts of aiding and abetting second-degree engaging in sex trafficking (counts 1, 8, 9, and 10), one count of third-degree criminal sexual conduct (count 6), one count of conspiracy to engage in second-degree sex trafficking (count 7), and one count of domestic assault by strangulation (count 2). In a separate *Blakely* phase of the trial, the jury found 15 aggravating factors. *See State v. Shattuck*, 704 N.W.2d 131, 141 (Minn. 2005) (holding imposition of presumptive sentence mandatory absent additional findings).

On March 20, 2016, the district court sentenced appellant to 700 months. In determining appellant's sentence, the district court applied a statutory aggravating factor that resulted in 48 additional months being added to each of appellant's prostitution and sex-trafficking counts.¹

¹ See Minn. Stat. § 609.322, subd. 1(b) (2014); *see also* Minn. Sent. Guidelines 2.G.9 (2014) (stating that the “presumptive sentence is determined by locating the duration in the appropriate cell on the applicable Grid” and adding “48 months, if the underlying crime was completed”).

In the direct appeal, this court held that, because the state charged appellant with multiple counts—each with a single victim—for soliciting prostitution and sex trafficking, “appellant’s sentence is inconsistent with Minn. Stat. § 609.322 and the sentencing guidelines because the multiple-victims aggravating factor set forth in section 609.322, subdivision 1(b)(4), was not applicable to any of appellant’s convictions.” *State v. Ivy*, 902 N.W.2d 652, 666 (Minn. App. 2017). This court also determined that the sentence imposed by the district court was not a departure. *Id.* at 665. Ultimately, this court concluded that “because the district court declined to depart from the sentencing guidelines, and the sentence imposed is inconsistent with section 609.322, we reverse appellant’s sentence and remand for resentencing.” *Id.* at 667.

On remand, the district court sentenced appellant to a total of 581 months, as follows, in the following order:

Count 8 (sex trafficking): 182 months, representing a double-upward durational departure. The district court based this departure on the aggravating factors found by the jury.

Count 9 (sex trafficking): 57 months, representing a top-of-the-box term to run consecutively to Count 8.

Count 10 (sex trafficking): 57 months, representing a top-of-the-box term to run consecutively to Counts 8 and 9.

Count 5 (solicitation of prostitution): 57 months, representing a top-of-the-box term to run consecutively to Counts 8, 9, and 10.

Count 3 (solicitation of prostitution): 57 months, representing a top-of-the-box term to run consecutively to Counts 8, 9, 10, and 5.

Count 6 (criminal sexual conduct): 57 months, representing a top-of-the-box term to run consecutively to Counts 8, 9, 10, 5, and 3.

Count 1 (sex trafficking): 114 months, representing a double upward durational departure from the top-of-the-box presumptive term of 57 months to run consecutively to Counts 8, 9, 10, 3, 5, and 6. The district court based this departure on the “incredibly egregious conduct” that appellant engaged in with one of the victims.

The district court did not impose sentences on counts 2, 4, and 7 because they were based upon the same behavioral incidents as other counts.

This appeal follows.

D E C I S I O N

Appellant contends that *Williams v. State* and its progeny preclude imposition of an upward departure on resentencing. 361 N.W.2d 840 (Minn. 1985). We agree.

District courts have broad discretion in imposing sentences. *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014). We review a district court’s decision to depart for an abuse of discretion. *Dillon v. State*, 781 N.W.2d 588, 595 (Minn. App. 2010).

In *Williams*, the supreme court stated:

In order to ensure future compliance . . . with the sentencing guidelines requirements, we prospectively adopt, effective the date this opinion is filed, the following general rules:

1. If no reasons for departure are stated on the record at the time of sentencing, no departure will be allowed.
2. If reasons supporting the departure are stated, this court will examine the record to determine if the reasons given justify the departure.

3. If the reasons given justify the departure, the departure will be allowed.

4. If the reasons given are improper or inadequate, but there is sufficient evidence in the record to justify departure, the departure will be affirmed.

5. If the reasons given are improper or inadequate and there is insufficient evidence of record to justify the departure, the departure will be reversed.

361 N.W.2d at 844.

In *State v. Thieman*, the supreme court determined the appropriate remedy when a district court imposes what it mistakenly believes is a guidelines sentence, but which is in fact a sentencing guidelines departure. 439 N.W.2d 1, 7 (Minn. 1989); *see also State v. Foreman*, 680 N.W.2d 536, 540-41 (Minn. 2004). It is *Thieman* which best informs our decision.

Thieman involved an erroneous application of the sentencing guidelines that resulted in a 108-month executed prison sentence when the actual presumptive executed prison sentence was 60 months. *Thieman*, 439 N.W.2d at 6. The defendant discovered the sentencing error and requested resentencing. The district court, upon resentencing, articulated departure reasons and re-imposed the 108-month sentence as an upward durational departure. The supreme court reduced the sentence to the correct presumptive 60-month sentence, concluding:

At the time of sentencing, both attorneys and the trial judge assumed that the presumptive sentence for attempted second-

degree murder would be given. All three were under the impression that the presumptive sentence was 108 months when, in fact, it was 60 months. It is impossible to predict what the court would have done had it known then that the presumptive guideline sentence was 60 months. We do know that the court intended to issue the presumptive sentence, and to allow it now to amend retroactively its reasons and depart from the guidelines is contrary to *Williams*.

Id. at 7 (citing *Williams*, 361 N.W.2d at 844).

In *State v. Geller*, the supreme court reaffirmed the *Williams* rule. 665 N.W.2d 514, 517 (Minn. 2003). There, “the state ask[ed] that [the supreme court] warn district courts that failure to comply [with *Williams*] in the future will result in imposition of a guideline sentence.” *Id.* The supreme court noted that “the first rule we set out in *Williams* is clear: absent a statement of the reasons for the sentencing departure placed on the record at the time of sentencing, no departure will be allowed.” *Id.* Because the district court “did not state the reasons for departure on the record at the time of sentencing,” the supreme court remanded for imposition of the presumptive guidelines sentence. *Id.*

Here, as this court noted in appellant’s first appeal, the district court did not knowingly impose a sentencing guidelines durational departure. *Ivy*, 902 N.W.2d. at 667. Instead, the district court attempted to impose a sentence pursuant to a statutory aggravating factor which, if applicable, would have increased appellant’s *presumptive* sentence. See Minn. Sent. Guidelines 2.G.9 (stating that the “*presumptive sentence* is determined by locating the duration in the appropriate cell on the applicable Grid” and adding “48 months, if the underlying crime was completed” (emphasis added)). This court ruled that application improper. *Ivy*, 902 N.W.2d. at 666-67.

Pursuant to the sentencing guidelines, “[a] pronounced sentence for a felony conviction that is outside the appropriate range on the applicable Grid, including a stayed or imposed gross misdemeanor or misdemeanor sentence, is a departure from the Guidelines.” Minn. Sent. Guidelines 2.D.1 (2014). Thus, appellant’s initial sentence became a sentencing departure due to the incorrect application of the statutory aggravating factor. However, because the district court did not knowingly depart, it did not articulate reasons supporting a departure. *Williams*, therefore, precludes imposition of a departure on resentencing.

We recognize that the record supports the jury’s findings regarding the 15 aggravated factors and the judge’s use of those findings to impose an upward durational departure on remand. Supreme court precedent, however, is clear that the remedy for an incorrect presumptive sentence resulting in an unsupported departure is remand for resentencing within the presumptive range. *Foreman*, 680 N.W.2d at 540; *Thieman*, 439 N.W.2d at 7. We are bound by supreme court precedent. *State v. Curtis*, 921 N.W.2d 342, 346 (Minn. 2018).

Because we conclude that the district court’s upward departures must be reversed, it is unnecessary to address appellant’s argument regarding the district court’s altering of unchallenged sentences on remand. However, we discern no error in resentencing all counts upon remand. Sentencing is a “package,” and when “a defendant attacks a portion of a judgment, he is reopening the entire judgment and cannot selectively craft the manner in which the court corrects that judgment.” *State v. Hutchins*, 856 N.W.2d 281, 285 (Minn. App. 2014) (quotation omitted), *review granted* (Minn. Dec. 30, 2014) *and order granting*

review vacated (Minn. July 20, 2015). We reverse and remand for resentencing within the presumptive guidelines.

Reversed and remanded.