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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1362**

State of Minnesota,
Respondent,

vs.

Khalil Malik Watson,
Appellant

**Filed June 10, 2019
Affirmed
Reilly, Judge**

Scott County District Court
File No. 70-CR-17-17671

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

Ronald Hocesvar, Scott County Attorney, Todd P. Zettler, Assistant County Attorney,
Shakopee, Minnesota (for respondent)

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

Considered and decided by Hooten, Presiding Judge; Johnson, Judge; and Reilly,
Judge.

UNPUBLISHED OPINION

REILLY, Judge

In this direct appeal from his convictions of criminal vehicular homicide and
criminal vehicular operation, appellant argues that the district court abused its discretion

by imposing permissive consecutive sentences, and by imposing consecutive sentences at the top of the discretionary sentencing range. We affirm.

FACTS

In September 2017, appellant Khalil Malik Watson was driving in a car with his girlfriend, E.H., and three other friends, J.P.M., S.S.J., and H.L.C. Appellant consumed alcohol and took Xanax pills before driving. Appellant was driving at a high rate of speed and lost control of the car, causing it to flip over. S.S.J. and H.L.C. sustained critical injuries in the accident and were transported to the hospital. J.P.M. was pronounced dead at the scene. E.H. initially claimed that she was driving the car, but later admitted that appellant was driving. Following the accident, appellant purchased a one-way ticket to Las Vegas. Appellant sent a number of text messages admitting that he was driving the car and “killed someone on accident.” Appellant was later arrested in Nevada.

In October 2017, the state charged appellant with one count of criminal vehicular homicide under Minn. Stat. § 609.2112, subd. 1(a)(1) (2017), for the death of J.P.M., and two counts of criminal vehicular operation, great bodily harm, under Minn. Stat. § 609.2113, subd. 1(1) (2017), for causing great bodily harm to H.L.C. and S.S.J. Appellant entered a plea of guilty to each of the three counts. The district court accepted appellant’s guilty plea and sentenced him to 69 months in prison for criminal vehicular homicide and 21 months for each of the two criminal vehicular operation charges. The district court ordered all three sentences to run consecutively, for a total sentence of 111 months. This appeal follows.

DECISION

I. The district court did not abuse its discretion by imposing permissive consecutive sentences.

Appellant challenges the district court's decision to impose consecutive sentences for his criminal-vehicular-homicide and criminal-vehicular-operation convictions. District courts are afforded broad discretion to impose consecutive sentences when permitted under the sentencing guidelines. *See State v. Vang*, 847 N.W.2d 248, 264 (Minn. 2014) (“Consecutive sentencing of multiple felonies with multiple victims is permissive and within the broad discretion of the district court.” (quotation omitted)). But the “threshold issue” of whether the consecutive sentences imposed were permissive under the sentencing guidelines “requires interpretation of the sentencing guidelines, which is a question of law subject to de novo review.” *State v. Rannow*, 703 N.W.2d 575, 577 (Minn. App. 2005) (citing *State v. Watkins*, 650 N.W.2d 738, 741 (Minn. App. 2002)).

The Minnesota Sentencing Guidelines were created to ensure “uniformity, proportionality, rationality, and predictability in sentencing.” *State v. Misquadace*, 644 N.W.2d 65, 68 (Minn. 2002); *see also* Minn. Sent. Guidelines 1.A (2018). To effectuate this policy, “sentences must be based on correct criminal-history scores, as these scores are the mechanism district courts use to ensure that defendants with similar criminal histories receive approximately equal sanctions for the same offense.” *State v. Maurstad*, 733 N.W.2d 141, 147 (Minn. 2007). A sentence based on an incorrect criminal-history score is an illegal sentence and may be corrected at any time. *Id.*

Where, as here, an offender is convicted of multiple current offenses, concurrent sentencing is presumptive. *Rannow*, 703 N.W.2d at 577; *see also* Minn. Sent. Guidelines 2.F (2018) (“Generally, when an offender is convicted of multiple current offenses . . . concurrent sentencing is presumptive.”). But the sentencing guidelines allow for permissive consecutive sentencing when the disposition for the current offense is commitment and one of following three conditions applies: (1) the prior felony sentence is for a crime listed among the offenses eligible for permissive consecutive sentencing in section 6; (2) “the offender is being sentenced for multiple current felony convictions for crimes on the list of offenses eligible for permissive consecutive sentences” in section 6; or (3) the offender is convicted of a new felony crime while on felony escape from lawful custody. Minn. Sent. Guidelines 2.F.2.a.1 (2018). For each felony offense sentenced consecutively to another felony offense, the court must use a criminal-history score of zero or the mandatory minimum for the offense, whichever is longer, to determine the presumptive duration. *Id.* at 2.F.2.b (2018).

These requirements are satisfied here. The Minnesota Sentencing Guidelines call for presumptive commitment on all three felony counts. Section 6 of the sentencing guidelines includes both criminal vehicular homicide (death) under Minnesota Statutes section 609.2112, subdivision 1, and criminal vehicular operation (great bodily harm) under Minnesota Statutes section 609.2113, subdivision 1, on the list of offenses eligible for permissive consecutive sentences. Minn. Sent. Guidelines 6 (2018). The presentence investigation report calculated appellant’s offenses under the sentencing guidelines as follows:

Count 1, Felony Criminal Vehicular Homicide is a Severity Level 8 offense. Combined with the Defendant's Criminal History score of 1 point results in a presumptive commit to the Commissioner of Corrections for a period of 58 months. The discretionary range is 50 months (low) and 69 months (high).

Count 2, Felony Criminal Vehicular Operation is a Severity Level 5 offense. Permissive consecutive offenses are calculated with a Criminal History score of 0. This results in a presumptive commit to the Commissioner of Corrections for a period of 18 months. The discretionary range is 15 months (low) and 21 months (high).

Count 3, Felony Criminal Vehicular Operation is a Severity Level 5 offense. Permissive consecutive offenses are calculated with a Criminal History score of 0. This results in a presumptive commit to the Commissioner of Corrections for a period of 18 months. The discretionary range is 15 months (low) and 21 months (high).

See id. at 5 (2018) (Offense Severity Reference Table). Probation noted that imposition of consecutive sentences at the top of the discretionary range “does not depart from Minnesota Sentencing Guidelines.” Because appellant’s offenses meet the criteria for permissive consecutive sentencing, the district court did not abuse its discretion by imposing consecutive sentences.¹ *See* Minn. Sent. Guidelines 2.F.2.a (2018) (explicitly allowing permissive consecutive sentences to be “given without departure”).

¹ Appellant argues that the court erred by imposing consecutive sentences because his criminal-history score is wrong. Specifically, appellant argues that his juvenile adjudication in 2014 for fifth-degree drug procession did not qualify as a prior controlled substance violation. While appellant did not raise this argument to the district court, he may nevertheless challenge his score on appeal because a defendant cannot waive or forfeit appellate review of his criminal history score. *See Maurstad*, 733 N.W.2d at 147. Here, unlike *Maurstad*, appellant did not petition for postconviction relief, and he relies on evidence not filed with the court. *See* Minn. R. Crim. P. 28.02, subd. 8 (“The record on appeal consists of the documents filed in the district court, the offered exhibits, and the transcripts of the proceeding, if any.”). We are not a fact-finding court. *See State v.*

Appellant also argues that the consecutive criminal-vehicular-operation sentences were unlawful because the recommended guidelines sentence is 18 months, not 21 months. Given a criminal-history score of zero, the discretionary sentencing range for criminal vehicular operation is 15 to 21 months. Minn. Sent. Guidelines 4.A n.2 (2017). Appellant argues that “[a]llowing a consecutive sentence length anywhere within the presumptive range would frustrate the purpose of the Guidelines.” Appellant is incorrect. The sentencing guidelines “provide both a fixed presumptive duration and a range of time for that sentence,” although the grids themselves “do not display ranges.” Minn. Sent. Guidelines 2.C.1 (2018). “If the duration for a sentence that is a presumptive commitment is found in a shaded area, the standard range . . . is permissible without departure.” *Id.* Minnesota law is clear that “any sentence within the presumptive range for the convicted offense constitutes a presumptive sentence.” *State v. Delk*, 781 N.W.2d 426, 428 (Minn. App. 2010), *review denied* (Minn. July 20, 2010); *see also State v. Jackson*, 749 N.W.2d 353, 359 n.2 (Minn. 2008) (noting that each cell in the sentencing grid contains three numbers and “[a]ll three numbers in any given cell constitute an acceptable sentence”). Here, the district court sentenced appellant to 21 months for each of the two criminal-vehicular-operation crimes. This sentence is within the presumptive sentencing range and

Breaux, 620 N.W.2d 326, 334 (Minn. App. 2001) (“A reviewing court cannot base its decision on matters outside the record on appeal and any matters not part of the record must be stricken.” (quotation omitted)). Moreover, probation used a criminal-history score of zero to determine the presumptive duration of appellant’s offenses. *See* Minn. Sent. Guidelines 2.F.2.b (2018). On the record before us, we cannot conclude that the district court abused its discretion in sentencing appellant based on the criminal-history score of zero provided in the sentencing worksheet.

does not constitute an abuse of discretion. We therefore affirm the district court's sentencing decision.

II. The district court did not abuse its discretion by imposing consecutive sentences at the top of the discretionary range.

Appellant argues that the district court abused its discretion by imposing top-of-the-box consecutive sentences. “A district court’s decision to impose consecutive sentences is reviewed for an abuse of discretion.” *State v. Ali*, 855 N.W.2d 235, 259 (Minn. 2014). “The district court abuses its discretion in imposing consecutive sentences when the resulting sentence unfairly exaggerates the criminality of the defendant’s conduct.” *State v. Vang*, 774 N.W.2d 566, 584 (Minn. 2009). “In cases with multiple victims, consecutive sentences are rarely, if ever, disproportionate to the offense.” *Ali*, 855 N.W.2d at 259.

Appellant argues that his crimes were mitigated by his youth, “psychosocial immaturity,” and lack of an “independent adult identity.” Minnesota recognizes that less-severe sentences may be appropriate when based on a defendant’s extreme cognitive impairment. *See, e.g., State v. McLaughlin*, 725 N.W.2d 703, 716 (Minn. 2007) (“[T]o constitute a mitigating factor in sentencing, a defendant’s impairment must be ‘extreme’ to the point that it deprives the defendant of control over his actions.”). Here, the record contains no evidence that appellant’s youth or immaturity was severe enough to deprive him of control over his actions. Instead, the record reveals that appellant consumed alcohol and took Xanax pills, drove at a high rate of speed, and lost control of the car. Appellant then fled to Las Vegas in an effort to avoid prosecution. Appellant’s immaturity does not appear to be sufficiently extreme so as to constitute a mitigating factor.

Moreover, even if a mitigating factor was present, the district court was not obligated to impose a shorter sentence than the presumptive sentence. *State v. Wall*, 343 N.W.2d 22, 25 (Minn. 1984). Appellant received a presumptive sentence, and even if he had established that he was too immature to understand the consequences of his actions, the district court would not have been obligated to depart from the guidelines. Given the evidentiary record, we determine that the consecutive sentences are not disproportionate to appellant's offenses and do not unfairly exaggerate the criminality of his conduct. The district court did not abuse its discretion by imposing top-of-the-box consecutive sentences.

Affirmed.