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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1442**

State of Minnesota,
Respondent,

vs.

John Henry Cone-Wade,
Appellant.

**Filed July 15, 2019
Affirmed
Klaphake, Judge***

Dakota County District Court
File Nos. 19HA-CR-16-2946; 19HA-CR-15-727; 19HA-CR-17-686

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

James C. Backstrom, Dakota County Attorney, Anna Light, Assistant County Attorney,
Hastings, Minnesota (for respondent)

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

Considered and decided by Halbrooks, 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UNPUBLISHED OPINION

KLAPHAKE, Judge

Appellant John Henry Cone-Wade challenges the district court's sentencing order, arguing that a dispositional or downward durational departure was warranted because his offenses were less serious than typical and he is particularly amenable to probation. Appellant argues in the alternative that he is entitled to resentencing. Because the district court did not abuse its discretion when it failed to find substantial and compelling reasons to depart from the sentencing guidelines and because there is no error that warrants resentencing, we affirm.

DECISION

In this direct appeal from convictions of third-degree drug sale, driving while impaired or intoxicated (DWI)-test refusal, and unlawful possession of a firearm, appellant argues that the district court erred in denying his motions for a dispositional or durational downward sentencing departure for his DWI and firearms convictions.

This court “afford[s] the [district] court great discretion in the imposition of sentences and reverse[s] sentencing decisions only for an abuse of that discretion.” *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014) (quotation omitted). The district court may depart from the Minnesota Sentencing Guidelines only when “substantial and compelling circumstances are present.” *Id.* at 308. It is only in rare cases where an appellate court will reverse the imposition of a presumptive sentence. *State v. Pegel*, 795 N.W.2d 251, 253 (Minn. App. 2011). Thus, this court “will not ordinarily interfere with a sentence falling within the presumptive sentence range, either dispositionally or durationally, even if there

are grounds that would justify departure.” *State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006) (quotation omitted).

The district court sentenced appellant to a 62-month bottom-of-the-box guidelines sentence, followed by five years of conditional release on the DWI case, and a 60-month sentence on the firearm case. In denying appellant’s departure motions, the district court stated that it “[had] to balance what the law compels [it] to consider, which is the crimes that [appellant] committed . . . and [t]o recognize the work that [appellant has] done and to recognize the community’s need for accountability and safety. And the crimes that [appellant] committed are serious . . . [d]rugs, alcohol, guns.” The district court further indicated that appellant needs more time to address the significant issues in his life, and that after those issues are addressed, “then community safety gets addressed because the violence goes down and the anger goes down.”

The record indicates that the district court considered appellant’s arguments that favored a departure, but concluded that there were not substantial and compelling reasons to depart and that public safety would best be served by sentencing appellant in accordance with the sentencing guidelines. Consequently, this is not one of those rare cases where an appellate court will reverse the imposition of a presumptive sentence. *See Pegel*, 795 N.W.2d at 253.

Appellant argues, in the alternative, that he is still entitled to resentencing because the district court erroneously believed that he had a prior felony possession of a firearm offense, which would have subjected him to a nondiscretionary 60-month prison term. *See* Minn. Stat. § 609.11, subd. 8(b) (2016) (stating that the court must sentence a defendant to

the mandatory minimum sentence established in section 609.11 [of 60-months] if the defendant was previously convicted of an offense listed in subdivision 9 in which the defendant possessed a firearm); Minn. Stat. § 260B.245, subd.1(a) (2016) (An “[extended jurisdiction juvenile (EJJ)] conviction shall be treated in the same manner as an adult felony criminal conviction for purposes of the Sentencing Guidelines.”). But appellant was still subject to a mandatory 60-month prison sentence, regardless of whether he had a prior qualifying offense, because he was convicted under Minn. Stat. 624.713, subd. 1(2) (2016). See Minn. Stat. 609.11, subd. 5(b) (2016) (“Any defendant convicted of violating section[] 624.713 subd. 1(2), shall be committed to the commissioner of corrections for not less than five years [60 months], nor more than the maximum sentence provided by law.”).

Moreover, section 609.11, subd. 8(a), provides that only the prosecutor or the district court may move to depart from the mandatory minimum sentences established by section 609.11, subd. 5(b). Because there is no evidence in the record suggesting that the prosecutor moved to depart on appellant’s firearm offense, and because the district court specifically failed to find substantial and compelling circumstances warranting a departure, it cannot be said that the district court erred, even if it believed that appellant had a prior felony possession of a firearm offense EJJ conviction.¹

Affirmed.

¹ We have reviewed the record and cannot find evidence tending to prove one way or the other that the district court believed appellant was designated EJJ on the prior felony possession of a firearm offense.