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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1749**

Reinol Godines Vergara, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

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

Carver County District Court
File No. 10-CR-15-427

Charles Clippert, St. Paul, Minnesota (for appellant)

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

Mark Metz, Carver County Attorney, David W. Hunt, First Assistant County Attorney,
Chaska, Minnesota (for respondent)

Considered and decided by Bjorkman, Presiding Judge; Rodenberg, Judge; and
Reyes, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges the denial of his postconviction petition seeking a reduction
of his agreed-to aggravated sentence for aiding and abetting intentional second-degree

murder. He contends his sentence is unreasonable because it is the same sentence his more-culpable accomplice received. We affirm.

FACTS

On April 15, 2015, 90-year-old Earl Olander was found beaten to death in his rural Carver County home. Olander suffered impact injuries to the back of his head, ear, lip, and shoulder. Law enforcement officers discovered him with his hands duct-taped behind his back, and his ankles loosely bound. The condition of the tape and an arc of blood on the floor demonstrated that Olander had struggled to free himself after the assault.

Appellant Reinol Godines Vergara and Edson Celin Benitez Dominguez were later linked to the crime through evidence found in an apartment where Dominguez had lived. They were arrested, and each admitted to being present in Olander's home on the night in question. The state charged both men with aiding and abetting second-degree intentional and unintentional murder. A grand jury subsequently indicted them for aiding and abetting first-degree murder.

Vergara and Dominguez both agreed to plead guilty to one count of aiding and abetting intentional second-degree murder, in exchange for the state's dismissal of the other charges and imposition of a 450-month prison sentence.¹ In his plea petition, Vergara stated that he was making no claim of innocence. And he waived his right to a jury trial as to sentencing, admitting that the following facts support an aggravated sentence: (1) Olander was particularly vulnerable due to his age, and Vergara knew or should have

¹ This is an upward durational departure from the presumptive sentence of 261-367 months. Minn. Sent. Guidelines 4.A (2014).

known of his vulnerability; (2) Olander was treated with particular cruelty because of the injuries inflicted upon him and the fact that he was “duct taped and left in a helpless position on the floor of his living room as his brain swelled and he bled to death” and “may have been alive for up to two days until he died”; (3) Vergara selected Olander because his advanced age made him easier to victimize; and (4) the crime was committed in Olander’s zone of privacy, his home.

At his plea hearing, Vergara acknowledged that Olander hired him to paint his home. Through that contact, Vergara learned the layout of Olander’s home, and became aware of his personal property. But Vergara attempted to minimize his involvement in the burglary and murder. He described Dominguez’s need for money and admitted that he offered Olander as a target because he was old and frail, and lived alone in an isolated area. When they arrived at the home, Vergara noticed that Dominguez had duct tape, a shotgun, and another small gun. Vergara asked why the guns were necessary if the burglary was “going to be a quick in and out.” Dominguez assured him it would be a quick job; Vergara allowed him to enter the home despite knowing that the presence of guns could result in death. After waiting in the car for 20-30 minutes, Vergara became concerned that things were taking too long. So he covered his face with a mask, approached the home, and called out for Olander. He heard nothing and eventually located Dominguez, who told him to search the kitchen. Vergara did so, but did not look for Olander. Vergara returned to the car. Five minutes later, Dominguez entered the car with the two bags, stating that Olander was okay and that he could untie himself. Vergara admitted that Olander was intentionally murdered and that the murder was a foreseeable consequence of the burglary. The district

court accepted Vergara’s plea, noted the aggravating factors, and imposed the agreed-upon aggravated sentence.

Vergara petitioned for postconviction relief, contending that his sentence “is unreasonable and unjustifiably disparate because he is less culpable than [Dominguez].” The district court² denied the petition in a thorough memorandum drawn from the record evidence of Vergara’s involvement in the crime. After noting the evidence provides a basis for finding Vergara guilty of the dismissed first-degree murder charges, the district court determined there was no support for Vergara’s contention that he is less culpable than Dominguez. The court cited this court’s rejection of Dominguez’s parallel argument, quoting our statement that “[b]ecause the case was not tried, we will never know if one man was less culpable than the other.” *Dominguez v. State*, No. A17-1703, 2018 WL 3097708, at *3 (Minn. App. June 25, 2018), *review denied* (Minn. Sept. 18, 2018). And the district court reviewed sentencing guidelines data from 2010-2015, concluding that Vergara’s sentence is “proportional compared to similarly situated defendants.” Vergara appeals.

D E C I S I O N

We review the denial of postconviction relief for abuse of discretion, and reversal is warranted only if “the postconviction court exercised its discretion in an arbitrary or capricious manner, based its ruling on an erroneous view of the law, or made clearly erroneous factual findings.” *Reed v. State*, 793 N.W.2d 725, 729 (Minn. 2010).

² The same district court judge took Vergara’s plea and considered his postconviction petition. We refer to the judge as the district court.

Vergara argues that his sentence is unreasonable because he is less culpable than Dominguez, who received the same sentence. We may review a sentence to determine whether it is “unreasonable” or “unjustifiably disparate.” Minn. Stat. § 244.11, subd. 2(b) (2014). In doing so, we consider the defendant’s sentence in relation to the sentence his accomplice received. *State v. Vazquez*, 330 N.W.2d 110, 111-12 (Minn. 1983). And we compare the sentence to those imposed on other defendants convicted of the same or similar offenses. *Id.* at 112. We are not persuaded that Vergara’s sentence is unreasonable under either measure.

First, the record does not support Vergara’s contention that he is less culpable than Dominguez. Because Vergara and Dominguez both pleaded guilty while insisting that the other person administered the fatal blows, there will never be a finding of fact on this point. But Vergara admitted aiding and abetting the murder in several significant ways. He alone identified Olander as a burglary target. He provided gloves to Dominguez so he would not leave fingerprints behind, wore a mask when he entered the home to avoid detection by Olander, and made no effort to check on Olander despite concern for his welfare. Moreover, the evidence supporting three of the four departure grounds—knowledge of Olander’s particular vulnerability, decision to rob Olander because of his infirmity, and decision to target him in his zone of privacy—are more closely linked to Vergara than to Dominguez. While neither man admitted committing the fatal assaultive acts, they both agreed that they are responsible for these acts and Olander’s resulting death. They received the same agreed-to sentence based on the same criminal-history score. On this record, we are persuaded that Vergara’s sentence is not unreasonable or unjustifiably disparate relative

to Dominguez’s sentence. *See State v. McClay*, 310 N.W.2d 683, 684 (Minn. 1981) (“Where two separately tried codefendants with identical criminal history scores are convicted of the same offense based on the same behavioral incident and the basis for departure in the two cases is identical, the extent of the departure should be identical in both cases.”); Minn. Sent. Guidelines 1.A. (2014) (listing reduction in sentencing disparity as a purpose of the sentencing guidelines); *Dominguez*, 2018 WL 3097708, at *4-5.

Second, Vergara’s sentence is not unfair when compared with sentences imposed on other defendants. The district court compared Vergara’s sentence for second-degree murder with sentencing data collected over a contemporaneous five-year period for defendants convicted of similar offenses. *See Vazquez*, 330 N.W.2d at 112 (stating that “equality and fairness in sentencing . . . involves comparing the sentence of the defendant with those of other offenders”). The district court concluded that Vergara’s sentence was proportionate to the sentences imposed on similar offenders. Vergara does not challenge this determination on appeal, and we see no error.

On this record, we discern no abuse of discretion by the district court in denying Vergara’s postconviction petition seeking sentencing relief.

Affirmed.