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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1659**

State of Minnesota,
Respondent,

vs.

Anike Tatiaramika Jiles,
Appellant.

**Filed July 27, 2020
Affirmed
Johnson, Judge**

Dakota County District Court
File No. 19HA-CR-18-2488

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

James C. Backstrom, Dakota County Attorney, Heather Pipenhagen, Assistant County Attorney, Hastings, Minnesota (for respondent)

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

Considered and decided by Johnson, Presiding Judge; Cochran, Judge; and John P. Smith, Judge.*

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

UNPUBLISHED OPINION

JOHNSON, Judge

Anike Tatiaramika Jiles intentionally injured a 22-month-old child whom she was babysitting by forcing the child's hands into extremely hot water and holding them there until the child suffered severe burns. Jiles pleaded guilty to first-degree assault and admitted to the existence of three aggravating factors. The district court imposed a sentence of 206 months of imprisonment, which is twice as long as the maximum presumptive sentence. We conclude that the district court did not abuse its discretion in sentencing Jiles and, therefore, affirm.

FACTS

On September 23, 2018, Jiles was babysitting L.G., the 22-month-old daughter of a woman with whom Jiles was romantically involved. At some point in the evening, Jiles placed L.G.'s hands in hot water, causing severe burns. After law-enforcement officers arrived, Jiles told a medic that the girl had sustained the injuries while washing her hands. But after L.G. was taken to a hospital, the treating physician told law enforcement that he believed that the child's injuries were consistent with a "dipping" type of injury, whereby the child's hands were submerged into hot liquid. Jiles later changed her story and told a police officer that she was washing a personal item in the bathroom sink and forgot that the sink was still full of hot water and bleach when she sent the child to go wash her hands. After being questioned further, Jiles again changed her story and said that she was helping the child wash her hands by standing behind her when the child exclaimed that the water was "hot, hot," and Jiles realized that the child's hands were badly burned. As a result of

the burns, L.G. underwent multiple skin-graft surgeries and will require additional treatment, including additional surgeries, in the future.

The state initially charged Jiles with third-degree assault, in violation of Minn. Stat. § 609.223, subd. 1 (2018), and child endangerment, in violation of Minn. Stat. § 609.378, subd. 1(b)(1) (2018). Later, after the severity of L.G.'s injuries became more apparent, the state amended the complaint to add a charge of first-degree assault, in violation of Minn. Stat. § 609.221, subd. 1 (2018). The state also gave notice of its intent to seek an upward departure based on three aggravating factors: the particular vulnerability of the victim, the particular cruelty of the offense, and the fact that Jiles was in a position of trust or authority.

Jiles pleaded guilty to first-degree assault and admitted to the three aggravating factors asserted by the state. The district court ordered a pre-sentence investigation (PSI). The PSI report stated that there were no identifiable mitigating factors but “substantial and/or compelling aggravating factors.” The probation officer noted that the presumptive sentencing range was 74 to 103 months and recommended that the district court impose a prison sentence of 206 months.

Before sentencing, Jiles moved for a downward dispositional or durational departure. She argued that she was amenable to probation, has a strong support system, was remorseful, had taken positive steps since committing the crime, and lacked a criminal history. The district court denied Jiles's motion and imposed a sentence 206 months of imprisonment. The district court noted that it had made an upward durational departure based on the child's particular vulnerability, the particular cruelty of the crime, and Jiles's position of authority. Jiles appeals.

DECISION

I. Motion for Downward Departure

We begin by addressing an argument in Jiles’s *pro se* supplemental brief, which logically precedes the other arguments made by her and on her behalf. She argues that the district court erred by denying her motion for a downward dispositional departure on the ground that she is particularly amenable to probation. *See* Minn. Sent. Guidelines 2.D.3.a.7 (2018).

The requirement that a defendant be “particularly” amenable to probation “ensure[s] that the defendant’s amenability to probation distinguishes the defendant from most others and truly presents the ‘substantial[] and compelling circumstances’ that are necessary to justify a departure.” *State v. Soto*, 855 N.W.2d 303, 309 (Minn. 2014) (quoting Minn. Sent. Guidelines 2.D.1). In determining whether a defendant is particularly amenable to probation, a district court may consider, among other things, “the defendant’s age, [her] prior record, [her] remorse, [her] cooperation, [her] attitude while in court, and the support of friends and/or family.” *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). A district court need not discuss all of the *Trog* factors if the district court denies a motion for a downward dispositional departure. *State v. Pegel*, 795 N.W.2d 251, 254 (Minn. App. 2011).

In this case, the district court considered Jiles’s argument and found that she is not particularly amenable to probation. The district court referred specifically to Jiles’s failure to timely submit to psychological evaluations and her failure to follow through with treatment despite evidence that she needed it. The district court said to Jiles, “what that tells me is that at every turn, you are going to question probation.” This statement indicates

that the district court considered Jiles to be not amenable to probation. Jiles contends that she previously successfully completed a term of probation, engaged in anger-management counseling, and received mental-health and chemical-dependency treatment. But other evidence in the record, particularly Jiles's psychological evaluation, indicates that she is not amenable to probation. The district court was well within its discretion when it considered but rejected Jiles's argument that she is particularly amenable to probation

Thus, the district court did not err by denying Jiles's motion for a downward dispositional departure.

II. Duration of Sentence

With the assistance of appellate counsel, Jiles argues that the district court erred by imposing a sentence of 206 months of imprisonment. She does not argue that the district court erred by departing upward from the presumptive sentence range. She acknowledges that the district court's selection of a sentence was a matter of discretion and that this court applies an abuse-of-discretion standard of review. She contends that the sentence is excessive in light of mitigating factors. She requests that this court "reduce the excessive sentence to a term that is commensurate to [her] level of culpability."

In general, "the extent of [an upward sentencing] departure should be limited to that justified by the reason for departure." *State v. Schantzen*, 308 N.W.2d 484, 487 (Minn. 1981). "We will interfere with the district court's sentencing discretion only when the sentence is disproportionate to the offense or unfairly exaggerates the criminality of the defendant's conduct." *State v. Ali*, 895 N.W.2d 237, 247 (Minn. 2017) (quotation omitted). The supreme court has stated that, as a general rule, an upward durational departure that is

otherwise proper will not be reversed so long as it is no more than “double the presumptive sentence length.” *State v. Evans*, 311 N.W.2d 481, 483 (Minn. 1981). To be more specific, “the *Evans* rule . . . authorize[s] a sentence that is twice the upper end of the presumptive sentencing range.” *State v. Barthman*, 938 N.W.2d 257, 269 (Minn. 2020). In this case, the 206-month sentence imposed on Jiles is exactly twice the upper end of the presumptive sentencing range, 103 months. *See* Minn. Sent. Guidelines 4.A (2018).

Jiles contends that the 206-month sentence is an abuse of discretion in light of multiple mitigating factors. She asserts that she has certain cognitive and psychological limitations that impair her executive functioning and rational decision-making, such as obsessive-compulsive tendencies and her own experience of being abused as a child. A district court should consider a defendant’s diminished capacity as a mitigating factor when imposing a sentence. *State v. Wall*, 343 N.W.2d 22, 25 (Minn. 1984). Nonetheless, “[t]he degree to which [a defendant] lacked substantial capacity for judgment is the type of factual issue best decided by the trial court” and may be offset by the vulnerability of the victim. *State v. Barsness*, 473 N.W.2d 325, 329 (Minn. App. 1991). The record does not reflect that Jiles has cognitive or behavioral deficits that significantly impair her capacity for judgment. We have reviewed Jiles’s confidential psychological evaluation, and we conclude, for reasons that we refrain from disclosing in this opinion, that it supports the district court’s sentence. *See* Minn. R. Pub. Access to Recs. of Jud. Branch 4, subd. 1(b), (f).

Jiles also asserts that she expressed remorse after the incident by comforting L.G. after burning her, accompanying L.G. to the hospital, keeping her mother informed about

her treatment, and continuing to express regret at sentencing. At the sentencing hearing, Jiles expressed remorse during her opportunity for allocution. In response, the district court stated to Jiles that her claims of remorse are undercut by her failure to follow through on chemical-dependency treatment and mental-health treatment. This statement indicates that the district court did not believe that Jiles was remorseful.

The state contends that this court should compare Jiles's sentence to sentences imposed on other defendants in similar cases. *See State v. McLaughlin*, 725 N.W.2d 703, 715 (Minn. 2007). The state has cited one precedential opinion and several non-precedential opinions in which similarly long sentences were imposed for first-degree assaults against young children. *See State v. Petschl*, 692 N.W.2d 463, 472-73 (Minn. App. 2004) (affirming 196-month sentence where defendant fractured skull of three-week-old infant), *review denied* (Minn. Jan. 20, 2005); *see also State v. Ahmed*, No. A18-0977, 2019 WL 1430689, at *5 (Minn. App. Apr. 1, 2019) (affirming 201-month sentence where defendant abused two-month-old infant, causing severe and permanent injuries), *review denied* (Minn. May 28, 2019); *State v. Crump*, No. A15-1690, 2016 WL 6826235, at *1 (Minn. App. Nov. 21, 2016) (reviewing conviction of defendant sentenced to 206 months for assaulting 15-month-old infant, causing brain damage), *review denied* (Minn. Feb. 14, 2017); *State v. Tate*, No. A14-1339, 2016 WL 952444, at *7-8 (Minn. App. Mar. 14, 2016) (affirming 206-month sentence where defendant shot four-year-old child in leg), *review denied* (Minn. May 31, 2016). Jiles cites opinions in which defendants were convicted of and sentenced for the crime of malicious punishment of a child causing great bodily harm, a crime she says the state could have charged in this case. But that is not the crime to which

Jiles pleaded guilty, so the sentences imposed in those cases do not provide a proper comparison.

In sum, the mitigating factors on which Jiles relies do not demonstrate that the district court abused its discretion by imposing a sentence of 206 months of imprisonment. The evidence of Jiles's cognitive and psychological limitations was not especially convincing. The district court expressly rejected Jiles's personal statements that she was remorseful. And the sentence that was imposed is not disproportionate in light of sentences imposed in other cases of first-degree assaults against small children.

Thus, we conclude that the district court did not err by imposing a sentence of 206 months of imprisonment.

Affirmed.