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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1791**

State of Minnesota,
Respondent,

vs.

Terrell Reese Schaeffer,
Appellant.

**Filed August 17, 2020
Affirmed
Reyes, Judge**

Goodhue County District Court
File No. 25-CR-18-2299

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

Stephen F. O’Keefe, Goodhue County Attorney, Christopher J. Schrader, Assistant County Attorney, Red Wing, Minnesota (for respondent)

Melissa Sheridan, Eagan, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Johnson, Judge; and Larkin, Judge.

UNPUBLISHED OPINION

REYES, Judge

Appellant challenges his sentence following his guilty plea to two counts of aggravated first-degree robbery and one count of first-degree burglary while in possession of a dangerous weapon. Appellant argues on appeal that the district court abused its

discretion by not sentencing him to probation and by not making the sentences of his two robbery convictions concurrent. We affirm.

FACTS

Appellant Terrell Reese Schaeffer pleaded guilty to two counts of aggravated first-degree robbery, in violation of Minn. Stat. § 609.245, subd. 1 (2016), and one count of first-degree burglary, in violation of Minn. Stat. § 609.582, subd. 1(b) (2016), after robbing two Cannon Falls homeowners at gunpoint. On May 21, 2018, appellant and an accomplice “forced their way into the residence, pointed a gun at [the residents], took guns, phones, keys and money, tied them up and then fled.” The victims stated that the men took them downstairs and tied their hands with rope and a cellphone charger cord, but that the knots were loose enough for them to slip out and call 911 when the men left. Law enforcement arrested appellant, and respondent State of Minnesota charged appellant with eight counts.

As part of the plea agreement, in exchange for appellant’s guilty plea to three counts, the state dismissed the other five counts and recommended that appellant receive the same 108-month sentence as his accomplice. The presentence investigation report (PSI) outlined appellant’s criminal history and struggles with chemical dependency. Appellant explained that he committed the crime because of a drug debt due that day. He said, “I am in no rush to return to the community. I can do my treatment while I’m incarcerated. I would ask the Court for a departure to 36 months commit because of the firearm.” The PSI recommended that “the Court follow the MN Sentencing Guidelines recommendations” and commit appellant to three consecutive sentences of 58 months, one for each count.

At the sentencing hearing, both victims gave impact statements emphasizing that they lost their feeling of safety and trust in their home and community. The victims stated that they were not happy with the plea agreement, felt let down by the justice system, and wanted appellant “prosecute[d] to the fullest extent of the law.”

The district court accepted the state’s 108-month sentence recommendation, stating its displeasure with the state’s decision to treat the two defendants equally because appellant’s sentence could be longer due to his criminal-history score of one. The district court considered appellant’s remorse and letters by his family members but determined that “outweighing that is this incident itself and how it shocked and scared the community requiring extraordinary and significant law-enforcement work.” The district court then denied appellant’s motion for a downward dispositional departure, stating, “The severity of the case far outweighs any amenability to probation of [appellant].” The district court also denied appellant’s motion for a downward durational departure, stating, “It is in my discretion and the Court’s discretion to sentence consecutively, and I am going to do so with respect to the armed robberies, and not do so with respect to the burglary.” The district court noted that it moved up in the sentencing range for the robbery offenses because the convictions “don’t take into account all that happened including the fact that it was in their home, that is not where a typical aggravated robbery occurs.” The district court sentenced appellant to consecutive prison terms of 54 months for each aggravated robbery conviction and to a concurrent term of 54 months for the burglary conviction. This appeal follows.

DECISION

I. The district court appropriately exercised its discretion by imposing the presumptive guidelines sentence because it considered the required factors.

Appellant argues that the district court abused its discretion because it (1) relied on the seriousness of the offense to justify executing the sentence; (2) improperly concluded that the facts supporting his eligibility for probation did not justify a downward dispositional departure; and (3) did not impose the consecutive robbery sentences in the order in which the criminal acts occurred. We disagree.

Appellate courts “afford the trial court great discretion in the imposition of sentences and reverse sentencing decisions only for an abuse of that discretion.” *See State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014) (quotation omitted). We generally do not review a district court’s decision to sentence a defendant “within the presumptive guidelines range.” *State v. Delk*, 781 N.W.2d 426, 428 (Minn. App. 2010), *review denied* (Minn. July 20, 2010). Although we may modify a presumptive sentence, we will not do so “absent compelling circumstances.” *See State v. Freyer*, 328 N.W.2d 140, 142 (Minn. 1982). Appellant bears the burden on appeal to show that the district court abused its discretion. *See Waters v. Fiebelkorn*, 13 N.W.2d 461, 464-65 (Minn. 1944).

Appellant first argues that the district court abused its discretion by relying on the offense to justify executing the recommended sentence. A district court must focus on the defendant in considering a dispositional departure by analyzing factors such as “defendant’s age, his prior record, his remorse, his cooperation, his attitude while in court, and the support of friends and/or family.” *State v. Solberg*, 882 N.W.2d 618, 623 (Minn.

2006) (quoting *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982)). For a durational departure, the district court must focus on the seriousness of the offense. *Id.* But a district court is not required to state reasons for imposing a presumptive sentence, so long as it “carefully evaluated” the testimony and information before it. *State v. Johnson*, 831 N.W.2d 917, 925 (Minn. App. 2013), *review denied* (Minn. Sept. 17, 2013); *State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985).

Based on the record and sentencing transcript, we are satisfied that the district court still considered these downward-dispositional factors. For example, the district court specifically considered appellant’s remorse and letters from family members. But even if factors favoring a departure are present, the district court is not required to depart. See *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981) (recognizing that sentencing guidelines state that district court *may* depart when substantial and compelling reasons are present). Appellant has not shown how the district court abused its discretion by imposing the presumptive sentence.

Appellant next argues that the district court abused its discretion “in concluding that the many circumstances demonstrating [appellant] was a good candidate for probation did not justify a dispositional departure.” Appellant cites to *State v. Heenum*, 441 N.W.2d 793 (Minn. 1989), in which an appellate court reversed a district court’s application of a presumptive sentence. In *Heenum*, the supreme court emphasized how rare it is to reverse a district court’s discretionary refusal to depart, stating that it has only happened once before that case. *Id.* at 801. Despite its rarity, the supreme court held that the mitigating factors present when a woman killed her husband after being abused by him and after being

subjected to “severe physical and mental abuse throughout their relationship” mandated a downward disposition. *Id.* *Hennum* is clearly distinguishable in the facts and mitigating factors. Further, there, the PSI recommended a downward departure for half the sentence, which is what the supreme court instructed the district court to impose. *Id.* Here, the PSI recommended that “the Court follow the MN Sentencing Guidelines recommendations” and commit appellant to three consecutive sentences of 58 months, one for each count. Appellant fails to meet his burden of showing how the district court abused its discretion by sentencing him to the presumptive sentence even if there were factors present that could have supported a downward dispositional departure.

II. Appellant’s pro se arguments lack merit.

Appellant argues in his pro se brief that the district court erred by sentencing his two robbery convictions consecutively rather than in the order in which the offenses occurred. *See* Minn. Sent. Guidelines 2.F (Supp. 2017). Appellant’s two consecutive sentences are for aggravated first-degree robbery, crimes that appellant committed simultaneously against the two victims.

Appellant also argues that the district court erred in imposing an upward durational departure. But, as the state correctly points out, the district court did not impose an upward departure. Appellant is referencing the original PSI that the Minnesota Department of Corrections later amended with the correct sentencing range for his first-degree burglary conviction. Because appellant’s sentence falls within the correct guidelines range, it did not constitute an upward departure. Appellant’s argument fails.

Affirmed.