

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-2091**

State of Minnesota,
Respondent,

vs.

Quyla Chaquita Dennise Fisher,
Appellant.

**Filed January 11, 2021
Affirmed in part, reversed in part, and remanded
Ross, Judge**

Hennepin County District Court
File No. 27-CR-19-7171

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

Michael O. Freeman, Hennepin County Attorney, Nicole Cornale, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Ross, Presiding Judge; Florey, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

Quyla Fisher toppled a disabled man from his wheelchair and stabbed him after he refused her demand for the personal identification number to his credit card. Fisher pleaded guilty to first-degree assault and robbery and moved the district court unsuccessfully for a downward dispositional or durational sentencing departure. We affirm the district court's

refusal to grant Fisher's departure motion because the court properly exercised its discretion in weighing the relevant factors. But we reverse in part because our recent holding entitles Fisher to benefit from an amendment to the sentencing guidelines, and we therefore remand for resentencing.

FACTS

Minneapolis police officers responded to a report of a man yelling for help from an apartment in February 2019. Officers found the apartment unlocked with the front door partially blocked by a reclining chair and wheelchair. They heard a man calling out from inside, and they entered. The apartment was filled with smoke, and they saw a man, prone on the floor, covered in blood and bleeding from his face, mouth, and neck. A bloody tooth and a kitchen knife lay on the floor beside him. He told officers that Quyla Fisher had thrown him from his wheelchair and stabbed him repeatedly because he refused her demand to disclose the personal identification number to his credit card. He told them that Fisher also put a bag over his head and tried to suffocate him.

Officers arrested Fisher, and the state charged her with first-degree assault and first-degree robbery under Minnesota Statutes sections 609.221, subdivision 1 and 609.245, subdivision 1 (2018). Fisher pleaded guilty to first-degree assault and first-degree robbery. She moved for a downward dispositional or durational departure, and the district court denied the motion and sentenced her to serve 122 months in prison. Fisher appeals.

DECISION

Fisher challenges the district court's order denying her motion for a downward dispositional departure. The district court has broad sentencing discretion, *State v. Kindem*,

313 N.W.2d 6, 7 (Minn. 1981), but may not depart downward from the presumptive sentence designated by the sentencing guidelines absent substantial and compelling mitigating circumstances, Minn. Sent. Guidelines 2.D.1 (2018).

Fisher argues that the substantial and compelling circumstance supporting departure here is her particular amenability to probation. It is true that particular amenability to probation may be a mitigating factor that warrants a downward dispositional sentencing departure. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). But the presence of mitigating factors does not require the district court to depart. *State v. Wall*, 343 N.W.2d 22, 25 (Minn. 1984). And although dispositional departures generally rest on offender-related factors, “offense-related aggravating factors may” also “be used to support . . . a dispositional departure.” *State v. Chaklos*, 528 N.W.2d 225, 228 (Minn. 1995). The district court expressly considered the nature of Fisher’s offense and, after considering the reasons for and against a dispositional departure and recognizing several mitigating factors, it determined that the atrocious manner of Fisher’s crime counterbalanced her reasons for a departure. The district court’s careful weighing of the circumstances demonstrates that it appropriately exercised its sentencing discretion.

Fisher does rightly question whether the district court assigned her the correct criminal-history score when it calculated her sentence. The proper calculation of a criminal-history score is a question of law we review de novo. *See State v. Scovel*, 916 N.W.2d 550, 554 (Minn. 2018). Fisher argues specifically that she is entitled to benefit from an amendment to the sentencing guidelines that became effective August 1, 2019, after she committed her offense but before her conviction became final. The amendment

allows for a custody-status point to be assigned only if the offender was on probation for a different offense when she committed her current offense. *See* Minn. Sent. Guidelines 2.B.2.a (Supp. 2019). Because Fisher was not on probation when she committed the robbery, she argues that she should be resentenced under the amendment. We recently applied the amendment and ordered an appellant to be resentenced in the same circumstance. *See State v. Robinette*, 944 N.W.2d 242, 249 (Minn. App. 2020), *review granted in part* (Minn. June 30, 2020). Bound by *Robinette*, we reverse and remand for the district court to resentence Fisher under the amended guidelines.

Affirmed in part, reversed in part, and remanded.