

*This opinion is nonprecedential except as provided by  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  
A20-0214**

State of Minnesota,  
Respondent,

vs.

Damien Damonte Carey,  
Appellant.

**Filed January 19, 2021  
Affirmed  
Bryan, Judge**

Hennepin County District Court  
File No. 27-CR-18-22958

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

Michael O. Freeman, Hennepin County Attorney, Jonathan P. Schmidt, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Steven P. Russett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Segal, Chief Judge; Ross, Judge; and Bryan, Judge.

**NONPRECEDENTIAL OPINION**

**BRYAN, Judge**

In this direct appeal from the judgments of conviction and sentences for two counts of aggravated robbery, appellant challenges the district court's decision to deny his motion for a downward dispositional departure. Specifically, appellant argues that the district court failed to consider the reasons supporting his departure motion. Because the district

court adequately considered the reasons for and against the downward departure motion, we conclude that the district court's decision to sentence appellant to the presumptive sentences was within the district court's discretion, and we affirm the sentences imposed.

## **FACTS**

Respondent State of Minnesota charged appellant Damien Damonte Carey with two counts of first-degree aggravated robbery in violation of Minnesota Statutes section 609.245, subdivision 1 (2018). Carey pleaded guilty to both counts. At the plea hearing, Carey admitted that he, along with two codefendants, went to an apartment where the two victims were present. Once inside the apartment, Carey brandished an air-powered BB gun. Then he and the two codefendants demanded that the two victims give them "property."<sup>1</sup> Carey also admitted that the two codefendants took property from the victims. At the end of the plea hearing, the district court ordered a Rule 25 evaluation and a PSI. Carey requested a psychological evaluation, but the district court denied this request.

In the PSI, the probation officer stated that Carey "minimized the level of fear" he imposed on the victims. Although Carey pointed the BB gun at them, he told the probation officer his actions did not threaten the victims because he had a BB gun as opposed to a firearm. The probation officer also noted that Carey scolded himself for his choices and exhibited remorse for the victims. The probation officer opined that although Carey indicated a "desire to start anew," his "willingness to procure money in various manners, including violence, is alarming, and he continues to be a marked risk to reoffend." The

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<sup>1</sup> The parties used the term "property" at the plea hearing and did not refer to any of the specific items listed in the complaint and in the presentence investigation report (PSI).

probation officer did not identify any substantial or compelling mitigating factors to justify departure from the presumptive sentences. Instead, the probation officer identified multiple aggravating factors that were present. Despite these aggravating factors, however, the probation officer ultimately recommended that the district court sentence Carey to the presumptive 78-month term of commitment for count one and 98-month term for count two.

Carey moved for a downward dispositional departure, requesting probationary sentences. Carey argued that he had a troubled upbringing and that he needs “long term care and treatment.” He explained that he is amenable to treatment and probation given his “young age” and desire to “change his direction.” He further argued that it was in the best interests of society to rehabilitate him on probation rather than “institutionalize” him.

The state opposed the departure motion and sought aggravated sentences. The state argued that there were not substantial or compelling reasons to depart downward and that Carey was not amenable to probation. The state noted that Carey committed the offenses while on “intensive supervised release” and that, per the PSI report, Carey had many rule violations in the past. The state also argued that the offenses were more serious than typical offenses because Carey and the two codefendants planned ahead of time to rob the victims at gunpoint. In addition, the state emphasized that Carey was “instrumental” in the crime because he drove the car to the apartment, brought the BB gun to the apartment, displayed the BB gun to the victims, and ordered the victims to relinquish their property.

After hearing from the state, Carey’s counsel, and Carey himself, the district court concluded that the facts did not support departing from the presumptive guidelines range:

I do not find any substantial and compelling reasons to depart from the presumptive sentence. In fact, this case would qualify for permissive consecutive sentencing and *Blakely*, an upward departure based upon the fact that there were more than three people involved in the case, there's an expectation of privacy where the victims were robbed.

This case is distinguishable from the codefendant, the defendant Mr. Carey. You were the one with the gun, or the BB gun.

The district court imposed the presumptive prison sentences of 78 months for count one and 98 months for count two, to be served concurrently. Carey appeals.

### **DECISION**

Carey argues that the district court erred when it failed to consider his argument for a downward sentencing departure. We disagree and conclude that the district court acted within its discretion when it sentenced Carey to the presumptive sentences.

The Minnesota Sentencing Guidelines establish presumptive sentences for felony offenses. Minn. Stat. § 244.09, subd. 5 (2018). A sentence prescribed under the Minnesota Sentencing Guidelines is presumed to be appropriate. *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014). A district court “may” depart from the presumptively appropriate guidelines sentence only if “identifiable, substantial, and compelling circumstances” warrant doing so. *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016) (quotation omitted). “Substantial and compelling circumstances are those circumstances that make the facts of a particular case different from a typical case.” *State v. Peake*, 366 N.W.2d 299, 301 (Minn. 1985). To maintain uniformity and proportionality in sentencing, departures from the guidelines sentence are discouraged. *State v. Rund*, 896 N.W.2d 527, 532 (Minn. 2017).

If the defendant requests a departure, the district court must “exercise [its] discretion by deliberately considering circumstances for and against departure.” *State v. Pegel*, 795 N.W.2d 251, 253 (Minn. App. 2011) (quotation omitted). To exercise sentencing discretion, the district court must consider circumstances supporting a downward departure from the presumptive sentence, and the district court errs when it fails to consider “[l]egitimate” and “significant” reasons for a departure. *See State v. Curtiss*, 353 N.W.2d 262, 263-64 (Minn. App. 1984) (discussing a downward durational departure); *see also State v. Mendoza*, 638 N.W.2d 480, 483 (Minn. App. 2002), *review denied* (Minn. Apr. 16, 2002). But the district court is not required to depart even if there are grounds to do so. *State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006). This court will affirm a district court’s refusal to depart as long as there are valid reasons for doing so. *State v. Kindem*, 313 N.W.2d 6, 7-8 (Minn. 1981). Only in a “rare” case will we reverse the district court’s refusal to depart from the presumptive sentence. *Id.* at 7. When the record demonstrates that an exercise of discretion has not occurred, the case must be remanded for consideration of the departure issue. *Curtiss*, 353 N.W.2d at 264.

Carey argues that because the district court did not explicitly address the grounds for his requested departure (that he is particularly amenable to probation and that a probationary sentence would benefit society), the district court failed to consider his request. We are not persuaded for two reasons. First, although the district court did not specifically analyze Carey’s arguments, district courts are not required to do so. *See Pegel*, 795 N.W.2d at 254 (holding that the district court is not required to discuss every sentencing factor when declining to depart); *State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn.

App. 1985) (stating that the district court need not provide an explanation when it considers reasons for departure but imposes a presumptive sentence). Because the district court imposed the presumptive sentences, it was not required to explain its decision.

Second, the district court did consider the circumstances for and against the departure. The district court stated: “I do not find any substantial and compelling reasons to depart from the presumptive sentence.” We do not assume, as Carey’s argument does, that this statement shows that the district court ignored Carey’s arguments or was unable to identify Carey’s arguments. Instead, we consider the context of this statement by the district court. Immediately after making this statement, the district court acknowledged the presence of the following circumstances: (1) more than three people were involved in the offenses; (2) the offenses occurred in a location where the victims had an expectation of privacy; and (3) Carey brought a BB gun with him to commit the planned robbery. The reasoning reflects that when balanced against the state’s arguments, the grounds identified by Carey were not sufficiently substantial and compelling to the district court to justify a departure. The district court, therefore, balanced the circumstances weighing for and against Carey’s requested departure and explained the valid reasons for its decision. We conclude that the district court acted within its discretion.

**Affirmed.**