

*This opinion is nonprecedential except as provided by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
A20-0398**

State of Minnesota,
Respondent,

vs.

Ismail Adam Abdo,
Appellant.

**Filed March 15, 2021
Affirmed
Connolly, Judge**

Hennepin County District Court
File No. 27-CR-15-29636

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

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

Stephen V. Grigsby, Minneapolis, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Ross, Judge; and Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Appellant challenges his sentence for first-degree criminal sexual conduct, arguing that the district court abused its discretion when it failed to consider appellant's return to

the state to face prosecution after fleeing to another country as a mitigating factor and imposed the maximum sentence in the range to which appellant agreed in his plea bargain. Because we see no abuse of discretion in appellant's sentence, we affirm.

FACTS

On August 4, 2015, shortly after midnight, appellant Ismail Abdo and Mohamed Elmi, armed with guns, saw two people, A. (male) and B. (female), whom they decided to rob. Appellant waited in the car while Elmi robbed them. Elmi then told B. to get in the car so they could take her to an ATM to get more cash. When B. could not withdraw as much cash as appellant and Elmi wanted, they told her they were going to “have a little fun” with her and drove to a park with which B. was not familiar. In the park, the two men sexually assaulted B., including forced vaginal penetration and forced oral sex. They left B. in the park. Following this incident, appellant fled to Somalia, where he remained for the next three years.¹

Elmi was arrested and charged. A jury convicted him of two counts of first-degree criminal sexual conduct, one count of second-degree criminal conduct, one count of aiding and abetting kidnapping, and two counts of first-degree aggravated robbery. The jury also found three of the “heinous elements” set out in Minn. Stat. § 609.3455, subd. 1(d) (2014) as the possible basis for a sentence of life in prison without possibility of release under Minn. Stat. § 609.3455, subd. 2(1) (2014). Elmi was sentenced to life in prison without

¹ A more detailed account of the incident can be found in *State v. Elmi*, No. A16-1692, 2017 WL 5663491, at *1-2, (Minn. App. Nov. 27, 2017), *review denied* (Minn. Jan. 24, 2018).

possibility of release. *See State v. Elmi*, No. A16-1692, 2017 WL 5663491, at *2, (Minn. App. Nov. 27, 2017), *review denied* (Minn. Jan. 24, 2018).

In November 2018, appellant cooperated with extradition by going to Kenya, turning himself in to U.S. authorities, and returning to Minnesota. He was charged with four counts of first-degree criminal sexual conduct, two counts of first-degree aggravated robbery, and one count of kidnapping. He pleaded guilty to one count of first-degree criminal sexual conduct in exchange for a sentence of between 280 to 360 months and dropping the other charges. Appellant was not incarcerated pending sentencing.

The presentence investigation (PSI) reported that there were three heinous elements to appellant's crime: he was armed with a dangerous weapon; the victim was assaulted by more than one perpetrator; and the victim was removed without consent and not left in a safe place. *See* Minn. Stat. § 609.3455, subd. 1(d)(5), (7), (8). Two additional factors were that the offense had a significant psychological impact on the victim and that appellant fled the country to avoid persecution. The PSI recommended a sentence of 360 months in prison.

At the end of the sentencing hearing in January 2020, the prosecution agreed with the PSI that 360 months in prison was the appropriate sentence, while the defense argued for the minimum plea-bargain sentence, 280 months in prison. The district court's remarks showed that it had considered both arguments.

I have to consider [appellant's] act itself. I have to consider what [he has] done since that time and, also, what happened to his . . . [co-defendant].

. . . [Appellant], you didn't have to be here. . . . [Y]ou were willing to face up to [the consequences of your act.] . . .

[Y]ou were walking into a situation where you were going to spend most of the rest of your life in prison. If I had to sentence you for who you are [today], . . . it would certainly be different than what you did back then.

But I can't ignore what you did back then and [I must] consider what the punishment should be for that. And it's not just whether or not [you] may be a danger to someone else. There's a reason to punish somebody simply for what they did, even if I would conclude that there is no longer any risk. . . .

. . . [T]he years that you had between the time the incident took place and the time you turned yourself in—that was a freedom that . . . you probably didn't deserve but you've been able to enjoy. . . . [Y]ou've had roughly four years of your life that you enjoyed, to a degree, far beyond what you otherwise would have done.

. . . I come back to the nature of the offense. . . . [T]hat deserves, if not the life imprisonment that [Elmi] had, at least the 360 that is at the top of the range.

Appellant was sentenced to 360 months in prison. He challenges his sentence, arguing that the district court abused its discretion by imposing the maximum plea-bargain sentence and not considering appellant's voluntarily turning himself in to U.S. authorities, returning to Minnesota, and cooperating with prosecution as mitigating factors.

DECISION

“We afford the [district] court great discretion in the imposition of sentences and reverse sentencing decisions only for an abuse of that discretion.” *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014) (quotation omitted). We see no abuse of discretion here.

Appellant agrees that the sentence imposed was within the range he agreed to when he pleaded guilty and that his crime was “especially bad.” He does not challenge the PSI finding of three statutory “heinous elements” that would justify a sentence of life imprisonment without possibility of release for the count of first-degree criminal sexual

conduct to which he pleaded guilty. See Minn. Stat. § 609.3455, subd. 1(d)(5), (7), (8).

Appellant argues that the district court abused its discretion because, by imposing the maximum plea-bargain sentence, it failed to reward appellant's decisions to turn himself in to U.S. authorities, return to Minnesota, and face the consequences of his crime, three circumstances he regards as "mitigating factors." But even if those circumstances were mitigating factors, the district court was not compelled to consider them. See *Soto*, 855 N.W.2d at 307-08. Moreover, as the victim's impact statement at the sentencing hearing showed, appellant's decision to flee impeded her efforts to feel safe and put the past behind her. She said that, when she learned appellant had been found and was being extradited, she "felt all sense of safety gone," and she was pulled back into the events of August 4, 2015, after more than four years.

Finally, appellant argues that the law should be changed to make it compulsory for judges to reduce a sentence when a defendant who fled the country voluntarily returns to face prosecution because "[t]o fail to compel a court under these circumstances to reduce a sentence is to enshrine with the force of binding precedent a disincentive to cooperate with extradition." But appellant cites no legal support or precedent for this view, and it is at least arguable that compelling judges to reduce the sentences of those who flee and then return would be a disincentive to remain and face charges. In any event, changing the law so that judges are compelled to reduce sentences when a defendant who successfully fled to escape prosecution and then returns to face prosecution is beyond the scope of this court's authority. "[T]he task of extending existing law falls to the supreme court or the

legislature, but it does not fall to this court.” *Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987), *review denied* (Minn. Dec. 18, 1987).

We see no abuse of discretion in the district court’s decision.

Affirmed.