

*This opinion is nonprecedential except as provided by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
A20-0753**

State of Minnesota,
Respondent,

vs.

Shane Kirby Williams,
Appellant.

**Filed April 26, 2021
Affirmed in part, reversed in part, and remanded
Kalitowski, Judge***

Pennington County District Court
File No. 57-CR-18-552

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

Seamus Duffy, Pennington County Attorney, Kristin J. Hanson, Assistant County Attorney, Thief River Falls, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Leah C. Graf, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Worke, Judge; and Kalitowski, Judge.

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

NONPRECEDENTIAL OPINION

KALITOWSKI, Judge

Appellant Shane Williams challenges his sentence, arguing the district court (1) abused its discretion by relying on improper factors in imposing an upward departure; (2) erred by misapplying the sentencing guidelines; and (3) erred in ordering a domestic abuse no-contact order. We affirm in part, reverse in part, and remand.

FACTS

In July 2018, the state charged Williams with attempted second-degree murder, second-degree assault, domestic assault by strangulation, and endangerment of a child. Minn. Stat. §§ 609.19, subd. 1(1); .222, subd. 2; .2247, subd. 2; .378, subd. 1(b)(1) (2016). Williams had assaulted his roommate by choking her and stabbing her three times while her minor niece and nephew were present. The record indicates that the nephew physically tried to stop the assault.

Williams negotiated a plea agreement with the state that stipulated that he would enter a *Norgaard* plea to the second-degree assault charge in exchange for the state dropping his remaining charges. The parties also agreed that the children's presence was an aggravating factor for which the state could seek an aggravated sentence of between 36 and 84 months. With Williams's criminal-history score, the presumptive sentence for the second-degree assault charge was 33 months. Minn. Sent. Guidelines 4.A (2016).

The district court sentenced Williams to 78 months' imprisonment. In reaching its decision, the district court stated that the children's presence was "an identifiable and compelling circumstance" supporting an aggravated durational departure. The district

court also determined that the departure was appropriate because the roommate “suffered terribly” and “had a long rehab to go,” and because “the children also suffered to the same extent.” In addition, the district court imposed a domestic abuse no-contact order (DANCO) for the roommate and the children against Williams as a condition of his sentence.

DECISION

I. The district court did not abuse its discretion by sentencing Williams to 78 months’ imprisonment.

Williams challenges his 78-month sentence arguing that the district court abused its discretion by (1) relying on improper factors to support an upward departure; and (2) erring in applying the Minnesota Sentencing Guidelines. We review a district court’s imposition of a sentence for an abuse of discretion. *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014). An abuse of discretion occurs when a district court bases its decision on an erroneous view of the law or facts unsupported by the record. *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019). Because the district court has “great discretion” to impose sentences, we will not reverse absent a clear abuse of that discretion. *Soto*, 855 N.W.2d at 307-08.

A. The district court may consider factors inherent in the crime when sentencing defendants.

Williams argues that the district court erroneously based its decision on the suffering endured by the roommate and the children when the district court stated: “[O]ur victim suffered terribly. As she indicated, she had a long rehab to go, but I believe just as important, the children also suffered to the same extent, and so in my mind that justifies

doubling the amount.” Williams claims that because he did not admit to the roommate’s suffering and need for rehabilitation or to the children’s suffering as aggravating factors, it was improper for the court to consider these factors in sentencing Williams. We disagree.

When a district court seeks to depart from a presumptive sentence established by the sentencing guidelines, it must identify “a substantial and compelling justification” for that departure. *State v. Misquadace*, 644 N.W.2d 65, 69 (Minn. 2002). When the defendant accepts a plea deal and waives his right to a jury trial, he must admit the substantial and compelling fact supporting an upward departure, and his admission must “be accompanied by a knowing waiver of his right to a jury finding on that fact before the admission may be used to enhance his sentence.” *State v. Dettman*, 719 N.W.2d 644, 652 (Minn. 2006).

Williams waived his right to a jury determination on the aggravating factor of the presence of the children during the assault. And at sentencing, the district court relied on that admission in determining that the children’s presence supported an upward durational departure. Only after the district court had already acknowledged the basis for its departure—the children’s presence—did it refer to the children’s and roommate’s suffering and the roommate’s need for rehabilitation.

But the harms considered by the district court are inherent in the offense and the fact that the children were present. The roommate suffered “substantial bodily harm” as a result of the second-degree assault. Minn. Stat. § 609.222, subd. 2. Likewise, the children’s presence is an aggravating factor because it was harmful to the children to be present during the assault. Because the harm to the roommate and the children are inseparable elements of the offense and the admitted aggravating factor, the district court

did not err in referencing those factors in sentencing Williams. Furthermore, even if the district court improperly referenced the roommate's suffering when discussing the departure, we conclude that absent that comment, the district court would have imposed the same sentence. The facts involving the presence of the children here provided a substantial and compelling basis for the district court's imposition of a double upward durational departure.

B. The district court's double upward durational departure was consistent with the Minnesota Sentencing Guidelines.

The Minnesota Sentencing Guidelines grid provides presumptive sentence lengths for criminal offenses. Minn. Sent. Guidelines 4.A. The presumptive sentence is found in the cell where the convicted offense and the criminal-history score intersect. Minn. Sent. Guidelines 2.C.1 (2016). Some cells include only one fixed presumptive sentence length, while others include a fixed presumptive sentence and a sentence range in italics. *Id.*

The presumptive sentence for second-degree assault with a criminal-history score of two is 33 months. Minn. Sent. Guidelines 4.A. The sentencing grid does not provide a presumptive sentence range for this offense and criminal-history score. *Id.* But, the district court determined that the presumptive sentencing range in this case was 29 to 39 months. The district court then concluded that a double upward durational departure—generally the maximum upward durational departure that aggravating factors can justify—was appropriate and sentenced Williams to 78 months. *State v. Shattuck*, 704 N.W.2d 131, 140 (Minn. 2005).

Williams challenges the district court's calculation, arguing that because the grid only includes a fixed presumptive sentence—not a sentencing range—for his offense and criminal-history score, the district court erred in sentencing him to 78 months. We disagree.

When the grid provides only a single, presumptive, fixed sentence, “the standard range—15 percent lower and 20 percent higher than the fixed duration displayed—is permissible without departure, provided that the minimum sentence is not less than one year and one day, and the maximum sentence is not more than the statutory maximum.” Minn. Sent. Guidelines 2.C.1. The absence of a presumptive sentencing range in italics does not mean, as Williams argues, that there is no permissible sentencing range.

Here, the district court properly concluded that the presumptive range is 29 months to 39 months. Thus, the district court correctly applied the Minnesota Sentencing Guidelines and did not abuse its discretion by sentencing Williams using 39 months as the top of the range.

II. The district court did not have the authority to issue a DANCO as a condition of Williams's sentence.

Williams also argues that the district court erred in issuing a DANCO in addition to the 78-month sentence because it lacked the authority to do so. We review a challenge to the district court's application of the law de novo. *State v. Anderson*, 941 N.W.2d 724, 727 (Minn. 2020).

The district court's authority to impose the terms or conditions of a sentence is not inherent and must be established by statute. *State v. Pugh*, 753 N.W.2d 308, 311 (Minn.

App. 2008), *review denied* (Minn. Sept. 23, 2008). Thus, district courts may not impose a DANCO unless explicitly authorized by statute to do so. *Id.*

Second-degree assault may be punished by either imprisonment for not more than ten years, payment of not more than \$20,000, or both. Minn. Stat. § 609.222, subd. 2. A DANCO is not a punishment authorized by the statute. Nor is a DANCO recognized as an available punishment for a felony. Minn. Stat. § 609.10 (2016). Rather, a court may only impose a DANCO against a defendant in a criminal proceeding as part of a pretrial order or postconviction probationary order—neither of which apply here. Minn. Stat. § 629.75, subd. 1(b) (2016); *State v. Ness*, 834 N.W.2d 177, 182 (Minn. 2013).

We conclude that the district court lacked the authority to impose a DANCO against Williams as part of his sentence. Because the district court erroneously imposed the DANCO against Williams, we reverse and remand to the district court for resentencing consistent with this decision.

Affirmed in part, reversed in part, and remanded.