

*This opinion is nonprecedential except as provided by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
A20-0870**

State of Minnesota,
Respondent,

vs.

Terrell Elijah Owens,
Appellant.

**Filed May 3, 2021
Affirmed
Hooten, Judge**

Hooten County District Court
File No. 62-CR-19-5480

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

John Choi, Ramsey County Attorney, Jeffrey A. Wald, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Charles F. Clippert, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Slieter, Presiding Judge; Johnson, Judge; and Hooten, Judge.

NONPRECEDENTIAL OPINION

HOOTEN, Judge

In this direct appeal from a judgment of conviction for first-degree aggravated robbery, appellant argues that the district court abused its discretion in denying his motion for a downward durational sentencing departure. We affirm.

FACTS

Respondent State of Minnesota charged appellant Terrell Elijah Owens with first-degree aggravated robbery. This charge was based on allegations that appellant had possessed and discharged a firearm while participating in the forceful taking of the victim's property through use or threats of force. Appellant was 17 years old at the time of the offense, but respondent moved for certification of the matter for adult prosecution, and that motion was granted. Following a bench trial, appellant was found guilty of aiding and abetting aggravated robbery in the first degree. Appellant moved for a downward durational departure from the presumptive sentencing range supplied by the Minnesota Sentencing Guidelines. The district court denied appellant's motion and imposed the minimum sentence still within the guidelines range. This appeal follows.

DECISION

An offender's criminal history score and the severity level of the offense are "the two dimensions most important in sentencing decisions," together supplying a sentencing range under Minnesota's sentencing guidelines. Minn. Sent. Guidelines 2 (2018). The sentences within the range provided by the guidelines "are presumed to be appropriate for the crimes to which they apply." Minn. Sent. Guidelines 2.D.1 (2018). "The court must pronounce a sentence . . . within the applicable prison range unless there exist identifiable, substantial, and compelling circumstances to support a departure." *Id.*

"A 'durational departure' occurs when the court orders a sentence with a duration other than the presumptive fixed duration or range." Minn. Sent. Guidelines 1.B.5.b (2018). "Substantial and compelling circumstances for a durational departure are those

which demonstrate that the defendant's conduct was significantly more or less serious than that typically involved in the commission of the crime in question." *State v. Rund*, 896 N.W.2d 527, 532 (Minn. 2017) (quotations omitted). "Durational departures must be based on the nature of the offense, not the individual characteristics of the offender." *State v. Solberg*, 882 N.W.2d 618, 625 (Minn. 2016) (emphasis omitted). Lack of substantial capacity for judgment and mental impairment are individual characteristics of the offender that are not legally permissible reasons for the sentencing court to make a downward durational departure. *Rund*, 896 N.W.2d at 533, 534 n.11.

In this case, the sentencing guidelines provided a presumptive sentencing range of 58 to 81 months based on appellant's criminal history score of two and a severity level of eight for the offense. Minn. Sent. Guidelines 4.A (2018). At his sentencing, appellant argued for a downward durational departure based on the fact that he was 17 years old at the time of the offense and therefore had a brain that was likely not yet fully developed, causing "poor judgment, lack of impulse control, poor problem solving and increased impulsivity." Appellant, highlighting that he had a criminal history score of two based solely on his juvenile record, argued that 100% of the defendants who had been sentenced for first-degree aggravated robbery between 2014 and 2018 with a criminal history score of two based solely on a juvenile record had received downward durational departures. Appellant also sought a downward durational departure to prevent himself from spending an extended period of time in incarceration and thereby being exposed to "other individuals who are much more embedded in the criminal system than he is."

The district court denied appellant's motion for a downward durational departure and imposed a sentence of 58 months, the minimum sentence still within the range supplied by the guidelines. *See id.* In doing so, the district court "recognize[d] that someone who's 17 doesn't have a fully developed brain." But the district court also highlighted the fact that the crime "involve[d] a shooting of a gun," and stated that "the use of a weapon in that manner is really concerning . . . from a public safety standpoint." The district court stated that the facts of the case "shouldn't be a child's brain in action, and if it is, it's concerning." Finally, the district court found that there were not substantial and compelling reasons to depart from the sentencing guidelines and denied appellant's motion for a downward durational departure.

"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). "A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019) (quotation omitted). Only in a "rare" case will we reverse a district court's refusal to depart from the sentencing guidelines. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

Appellant argues that the district court abused its discretion in denying his motion for a downward durational departure. Specifically, appellant contends that there were "substantial grounds that mitigate[d] [his] actions," and therefore "warranted a durational departure." Appellant asserts, for the first time on appeal, that as a part of the process of certifying the matter for adult prosecution, appellant "was tested and found to be suffering

from depression and anxiety and related physical symptoms,” that his “I.Q. was tested and was found to be in the ‘extremely low range of functioning,’” and that his “I.Q. may have dropped from prior tests because he reported having two concussions since his last test, which can alter executive functioning.” Appellant also claims, again for the first time on appeal, that he “changed when he moved from a middle class neighborhood to a low income neighborhood” and “lost contact with his grandfather, who was a support person in his life,” and that his development was also affected because he “experience[d] homelessness when he grew up.” Appellant argues that, because of his “unique circumstances, the district court should have granted a downward durational departure to 48 months.”

The district court did not abuse its discretion in denying appellant’s motion for a downward durational departure. The factor on which appellant originally based his argument for a downward durational departure—his lack of mental development due to his age—is an individual characteristic of the offender and is thus not a legally permissible basis on which the district court could have made a downward durational departure. *Rund*, 896 N.W.2d at 533. Appellant did not raise arguments related to his depression, anxiety, and related physical symptoms; low I.Q.; concussion; relocation; loss of contact with his grandfather; or experiences with homelessness before the district court. We generally will not consider arguments raised for the first time on appeal. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Even if we were to reach these arguments, they also rest on individual characteristics of the offender and are not legally permissible grounds for a downward durational departure. *See Rund*, 896 N.W.2d at 533. Finally, it is clear from

the district court's order that it carefully considered appellant's motion for a downward durational departure, including his argument that his age and lack of substantial capacity for judgment justified such a departure, before concluding that a downward durational departure was not warranted. In doing so, the district court did not abuse its discretion.

Affirmed.