

*This opinion is nonprecedential except as provided by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
A20-1591**

State of Minnesota,
Respondent,

vs.

Braxton Monte Anderson,
Appellant.

**Filed November 1, 2021
Affirmed in part, reversed in part, and remanded
Segal, Chief Judge**

Chippewa County District Court
File No. 12-CR-20-8

Keith Ellison, Attorney General, Peter Magnuson, Assistant Attorney General, St. Paul, Minnesota; and

Matthew Haugen, Chippewa County Attorney, Montevideo, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bryan, Presiding Judge; Segal, Chief Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

In this direct appeal from the judgment of conviction for criminal vehicular homicide, appellant argues (1) the district court erred in determining that the state could

impeach him with a prior felony controlled-substance-crime conviction if he were to testify, (2) the district court abused its discretion in denying his motion for a downward durational departure because his crime is less serious than the typical criminal-vehicular-homicide offense, and (3) the district court erred in calculating his criminal-history score. Because we discern no abuse of discretion in the district court's ruling to allow impeachment with a prior felony conviction or in the court's denial of appellant's motion for a downward departure, we affirm those rulings. But we reverse and remand in part to correct appellant's sentence because the district court erred in calculating appellant's criminal-history score.

FACTS

On August 7, 2019, J.K. was driving southbound on Highway 7 near Watson. It was a clear day, there was no construction, and that stretch of the highway was straight. J.K. caught up to the vehicle ahead of him and observed that it was a green two-door car. He also noted a Cadillac Escalade SUV approaching in the northbound lane. As the SUV neared, the driver of the green car made a sudden left turn without signaling or braking. The SUV struck the green car on the passenger side and the car was pushed over to the shoulder. Multiple bystanders called 911 to report the accident, and emergency personnel responded to the scene.

When law enforcement arrived, they discovered two people inside the green car. Appellant Braxton Monte Anderson was the driver and there was a female, later identified as B.S., in the front passenger seat. Anderson could open his eyes but not respond to any questions. B.S. was moaning very loudly and indicating that she could not breathe.

Anderson was removed from the car because he was agitated and thrashing. An emergency medical technician (EMT) could not open the passenger door to free B.S. due to damage caused by the collision. The EMT determined that B.S. was not getting full breaths and appeared to have multiple broken bones. A medic took over administering care to B.S. and the EMT went around to the driver's side to try to reach B.S. When the EMT opened the driver-side door she discovered a glass pipe. The glass pipe had residue that field-tested positive for methamphetamine, and a blood sample taken from Anderson confirmed the presence of methamphetamine and amphetamine in his system.

It took emergency personnel between 45 minutes and an hour to remove B.S. from the car. By that time, a helicopter had arrived to transport her to the hospital for more intensive medical care. As B.S. was being transferred to the helicopter, she stopped breathing. Emergency personnel performed CPR but could not resuscitate B.S. and she died. A forensic pathologist performed a medical examination and determined that the cause of B.S.'s death "was multiple blunt force injuries due to motor vehicle collision." The major cause of the crash was determined to be Anderson's failure to yield to the oncoming SUV.

Respondent State of Minnesota charged Anderson with one count of criminal vehicular homicide and one count of fourth-degree driving while impaired. Before trial, the state filed a notice of its intent to impeach Anderson with evidence of three prior criminal convictions should he choose to testify at trial. Following a pretrial hearing, the district court determined that one of the prior convictions, a gross misdemeanor conviction for providing a false name to a peace officer, could be admitted for impeachment because

it was a crime of dishonesty committed within the last ten years.¹ The court denied the state's request with regard to a second conviction because it was too old, and took under advisement the question of whether the state could use the conviction of fifth-degree controlled-substance crime for impeachment. The district court later issued an order determining that the controlled-substance conviction was admissible, but only as an "unspecified" prior felony conviction, meaning that the state could only refer to the offense as a felony conviction without identifying the type of crime committed.

The district court held a jury trial and the jury found Anderson guilty on both counts. Anderson did not testify. Anderson moved for a downward durational departure in his sentence, arguing that he was less culpable because the driver of the SUV was speeding and thus bore some responsibility for the crash. The district court denied the motion and sentenced Anderson to a presumptive 68-month executed sentence on the criminal-vehicular-homicide conviction. Anderson now appeals.

DECISION

I. The district court did not abuse its discretion in determining that Anderson could be impeached with an unspecified prior felony conviction.

Anderson argues that the district court abused its discretion by determining that he could be impeached with his prior conviction for fifth-degree controlled-substance crime.

¹ Minn. R. Evid. 609(b) "includes a general presumption that '[e]vidence of a conviction . . . is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date.'" *State v. Souder*, 902 N.W.2d 86, 90 (Minn. App. 2017) (alterations in original) (quoting Minn. R. Evid. 609(b)), *rev. denied* (Minn. Dec. 27, 2017).

He acknowledges that the district court determined that the conviction could only come in as an unspecified prior felony, but he argues that the sanitized conviction would still be unduly prejudicial because “it takes no great stretch of the imagination to see that a jury would be tempted to consider a defendant’s prior conviction as evidence of careless or reckless behavior, or to see him as deserving punishment, rather than for assessing credibility.” He also argues that the district court performed an “incomplete analysis” when determining whether the prior conviction was admissible for impeachment purposes.

A district court may admit evidence of a defendant’s prior felony conviction for impeachment if “the probative value of admitting this evidence outweighs its prejudicial effect.” Minn. R. Evid. 609(a)(1). We review the district court’s ruling on the admissibility of prior convictions for impeachment under a clear abuse-of-discretion standard. *State v. Swanson*, 707 N.W.2d 645, 654 (Minn. 2006).

In determining whether the probative value of a conviction outweighs its prejudicial effect, the district court must consider five factors, referred to as the “*Jones* factors”:

- (1) the impeachment value of the prior crime, (2) the date of the conviction and the defendant’s subsequent history, (3) the similarity of the past crime with the charged crime (the greater the similarity, the greater the reason for not permitting use of the prior crime to impeach), (4) the importance of defendant’s testimony, and (5) the centrality of the credibility issue.

State v. Jones, 271 N.W.2d 534, 538 (Minn. 1978). To reduce the risk of prejudice to the defendant from allowing evidence of a prior crime, a district court may sanitize a conviction by barring the prosecution from disclosing the nature of the prior conviction

and allowing the state to refer to the conviction only as an unspecified felony conviction. *State v. Hill*, 801 N.W.2d 646, 652-53 (Minn. 2011).

Here, the district court addressed each of the *Jones* factors and determined that the prior conviction could be admitted, for impeachment purposes, as an unspecified prior felony. The district court explained that the conviction was for a felony and was thus probative of Anderson's "general lack of respect for the law." The court noted that the offense was also "highly probative" of Anderson's credibility, having occurred less than two years before the current offense. The court commented that the importance of Anderson's testimony weighed against admissibility; but the court noted that credibility would be a central issue if Anderson were to testify and that this weighed in favor of allowing the prior conviction to be used as impeachment evidence. The district court, however, determined that disclosing the nature of the prior offense would be too prejudicial because of the similarities between them—the past conviction was for drug possession and the current offense involved the allegation that Anderson had controlled substances in his system at the time of the fatal collision. The court therefore ruled that the prior conviction could only be admitted as an unspecified felony. We discern no abuse of discretion in the district court's ruling.

In *Swanson*, the Minnesota Supreme Court adopted the rule that "a district court should demonstrate on the record that it has considered and weighed the *Jones* factors." 707 N.W.2d at 655. The supreme court explained that "absent an analysis on the record of the *Jones* factors, an appellate court does not know the reasons for the district court's decision." *Id.*

Here, the district court offered a clear and concise analysis of each of the *Jones* factors that is supported by the record. The analysis provides a reasoned basis for the district court's decision, and expressly notes that if Anderson were to testify then credibility would be a central issue. *See State v. Ihnot*, 575 N.W.2d 581, 587 (Minn. 1998) (stating that when a defendant's credibility is a central issue of the case, "a greater case can be made for admitting the impeachment evidence, because the need for the evidence is greater." (quotation omitted)). We therefore reject Anderson's argument that the district court conducted an "incomplete analysis" in determining the conviction was admissible. We therefore discern no abuse of discretion in the district court's determination that Anderson could be impeached with evidence of an unspecified prior felony conviction.²

II. The district court did not abuse its discretion in denying Anderson's motion for a downward durational departure.

Anderson next argues that the district court abused its discretion by denying his motion for a downward durational departure and imposing a presumptive sentence under the sentencing guidelines. A guidelines sentence is presumed to be appropriate and the district court must impose it unless "identifiable, substantial, and compelling circumstances" justify a downward departure. *State v. Johnson*, 831 N.W.2d 917, 925 (Minn. App. 2013) (quotation omitted), *rev. denied* (Minn. Sept. 17, 2013); *see also* Minn.

² We also note that Anderson does not challenge the district court's determination that he could be impeached with his prior conviction of providing false information to a peace officer. That conviction was for a crime involving "dishonesty or false statement," which is explicitly admissible for impeachment purposes under Minn. R. Evid. 609(a). Thus, Anderson would have been impeached with evidence of a prior conviction even if the district court had determined that evidence of the controlled-substance conviction was inadmissible.

Sent. Guidelines 2.D.1 (Supp. 2019). The sentencing court has “broad discretion” and an appellate court will only reverse a sentencing court’s refusal to depart in a “rare case.” *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). We generally will not disturb the imposition of a presumptive sentence when “the record shows that the sentencing court carefully evaluated all the testimony and information presented” before imposing a sentence. *Johnson*, 831 N.W.2d at 925 (quotation omitted).

A district court may grant a downward durational departure “if the defendant’s conduct is significantly less serious than that typically involved in the commission of the offense.” *State v. Mattson*, 376 N.W.2d 413, 415 (Minn. 1985). When determining whether an offense was less serious than a typical offense, the district court “must analyze the act as compared with other acts constituting the same offense.” *State v. Behl*, 573 N.W.2d 711, 713 (Minn. App. 1998) (quotation omitted), *rev. denied* (Minn. Mar. 19, 1998). We review the district court’s refusal to depart from the presumptive sentence for an abuse of discretion. *Id.* at 714.

The district court explained its reasons for denying Anderson’s motion for a downward departure as follows:

Well the statute in issue here that was violated only requires that the death of a person results when a person operates a motor vehicle in a negligent manner while having an amount of controlled substance in their system and that was well proven. I don’t find any facts here that make this less serious than any other similar offense and my recollection of the testimony is that Mr. Anderson’s car turned directly in front of an oncoming vehicle and that caused the unfortunate death in this case so I’m denying the motion for a departure.

Anderson argues that he should have received a downward departure because the offense for which he was convicted (subdivision 1(a)(6) of the criminal-vehicular-homicide statute) is less serious than the other offenses in the criminal-vehicular-homicide statute.³ See Minn. Stat. § 609.2112, subd. 1(a)(1)-(8) (2018). Anderson points to the fact that “[u]nlike other forms of this offense-type, the State did not have to prove [he] was [actually] under the influence of drugs or alcohol or gross negligence.” We are not persuaded.

As the state notes, the supreme court rejected an analogous argument in *State v. Solberg*. 882 N.W.2d 618, 626-27 (Minn. 2017). In that case, the appellant argued that “his offense [was] less serious than the typical crime of third-degree criminal sexual conduct because he used coercion, not violence, to accomplish sexual penetration.” *Id.* at 626. The supreme court held that appellant’s use of coercion “to cause the victim to submit to penetration against her will fits squarely within the statute’s prohibition of sexual assault by coercion,” and dismissed appellant’s argument as “incorrect.” *Id.* at 626-27.

Here, the criminal-vehicular-homicide statute similarly covers a range of wrongful acts. And as the district court observed, Anderson’s conduct falls within the statutory provision under which he was convicted. Anderson’s assertion that other provisions of the criminal-vehicular-homicide statute encompass “more egregious” conduct erroneously

³ Anderson was convicted under Minn. Stat. § 609.2112, subd. 1(a)(6) (2018), which provides that an individual commits the offense of criminal vehicular homicide “if the person causes the death of a human being . . . as a result of operating a motor vehicle . . . in a negligent manner while any amount of a controlled substance listed in Schedule I or II . . . is present in the person’s body.”

compares his conviction to convictions that require proof of different elements, rather than the offenses of others convicted under the same provision. In addition, the sentencing guidelines explicitly provide that any conviction under Minn. Stat. § 609.2112, subd. 1(a) (2018), is a severity level 8 offense. See Minn. Sent. Guidelines 5.A (Supp. 2019) (assigning severity levels to offenses). Anderson’s assertion that Minn. Stat. § 609.2112, subd. 1(a)(6), encompasses less “egregious” conduct than other provisions therefore goes against the sentencing guidelines’ assignment of severity levels. On this record, the district court did not abuse its discretion in denying Anderson’s motion for a downward durational departure.

III. Anderson has a right to be resentenced with a corrected criminal-history score.

Finally, Anderson argues that he has a right to be resentenced because the district court improperly calculated his criminal-history score. The proper calculation of a defendant’s criminal-history score is a question of law that this court reviews de novo. See *State v. Scovel*, 916 N.W.2d 550, 554 (Minn. 2018). A defendant cannot waive appellate review of his criminal-history score, which may be corrected at any time. *State v. Maurstad*, 733 N.W.2d 141, 147 (Minn. 2007).

Anderson was sentenced based on a criminal-history score of two. He was assigned one and one-half felony points and one-half of a custody-status point, which were combined for a total of two criminal-history points. He argues, and the state agrees, that the district court improperly calculated his criminal-history score.

The sentencing guidelines provide that in calculating the criminal-history points to be assigned for prior felony convictions, “[t]he felony point total is the sum of the felony

weights. If the sum of the weights results in a partial point, the point value must be rounded down to the nearest whole number.” Minn. Sent. Guidelines 2.B.1.i (Supp. 2019). Here, Anderson was assigned one and one-half felony points. Because this involves a partial point, his felony-point total should have been rounded down to one before being added to the one-half custody-status point, for a criminal-history score of 1.5, not 2. The district court therefore erred in sentencing Anderson based on a criminal-history score of two, and Anderson is entitled to be resentenced.

Affirmed in part, reversed in part, and remanded.