

*This opinion is nonprecedential except as provided by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
A21-1077**

State of Minnesota,
Appellant,

vs.

Isaac Alonzo Cryer,
Respondent.

**Filed December 20, 2021
Affirmed
Larkin, Judge**

Ramsey County District Court
File No. 62-CR-19-6820

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

John Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney, St. Paul, Minnesota (for appellant)

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

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

NONPRECEDENTIAL OPINION

LARKIN, Judge

A jury found appellant guilty of two counts of second-degree attempted murder committed against two different victims and three counts of second-degree assault committed against three additional victims. The district court ordered appellant to serve

five concurrent terms of incarceration for the offenses, resulting in a total term of incarceration of 156 months. The state appeals the district court's sentences, arguing that the 156-month term of incarceration is disproportionately lenient given the severity of the underlying crimes. Because the state has not established that the district court abused its discretion by imposing concurrent terms of incarceration, we affirm.

FACTS

Appellant State of Minnesota charged respondent Isaac Alonzo Cryer with two counts of second-degree attempted murder, two counts of drive-by shooting, and five counts of second-degree assault. The charging document indicates that in September 2019, Cryer shot at a vehicle that was occupied by TJR and his four-year-old daughter, TR. A bullet or fragment struck TR in the head, causing a traumatic brain injury. The complaint indicates that after Cryer shot at TJR's vehicle, he shot at three other individuals, VLC, NDL, and CML. A bullet struck VLC in the forearm.

In March 2021, a jury found Cryer guilty as charged. The jury also found an aggravating sentencing factor for some of the offenses: a child was present.

Cryer moved for a dispositional or durational downward sentencing departure. He asserted that he acted "to protect his mother and other family members who were being threatened." And he argued that an aggravated sentence was improper because the scene was chaotic and he was unaware of the presence of a child. At sentencing, Cryer's attorney noted that Cryer had "no prior felony convictions" and argued for a 48-month sentence.

The state noted that Cryer assaulted five separate victims during the underlying offenses, and it argued that Cryer should be sentenced consecutively. The state asked the district court to impose, at minimum, a 318-month term of incarceration.

The district court concluded that the aggravating factor did not support an upward departure. The district court found that the assaults of TR and TJR, and the two drive-by shooting offenses, were lesser-included offenses, and it did not impose sentences on those four offenses.¹ The court sentenced Cryer to serve 156 months in prison for one of the attempted-murder offenses, 156 months for the other attempted-murder offense, and 57 months for each of the three remaining second-degree assault offenses. The court noted that each sentence was within the applicable presumptive sentencing range under the Minnesota Sentencing Guidelines and ordered that the sentences run concurrently. The state appeals.

DECISION

The state challenges Cryer's 156-month sentence, contending that it is disproportionate to the severity of the crimes and "wholly ignores four victims." Specifically, the state argues that the district court abused its discretion by ordering that Cryer's sentences be served concurrently instead of consecutively, resulting in an "extraordinarily lenient sentence."

¹ Although the state asserts, in a footnote, that the district court was "wrong" when it concluded that the drive-by shooting offenses were lesser included offenses and that the aggravating factor did not support an upward departure, the state provides no meaningful analysis. We therefore do not address those arguments. *See In re Application of Olson for Payment of Servs.*, 648 N.W.2d 226, 228 (Minn. 2002) (holding that party waived issue mentioned "tangentially in one argument heading and in one footnote").

District courts have great discretion when imposing sentences because “[a] trial judge sits with a unique perspective on all stages of a case, including sentencing, and . . . is in the best position to evaluate the offender’s conduct and weigh sentencing options.” *State v. Hough*, 585 N.W.2d 393, 397 (Minn. 1998). An appellate court reverses a sentencing decision only if the district court abused its discretion. *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014). 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.” *Riley v. State*, 792 N.W.2d 831, 833 (Minn. 2011).

“The sentences provided in the [Minnesota Sentencing Guidelines] Grids are presumed to be appropriate for the crimes to which they apply.” Minn. Sent. Guidelines 2.D.1 (2019). The state does not dispute that the district court’s sentences are within the applicable presumptive sentencing ranges under the sentencing guidelines. But the state notes that consecutive sentences are permissible when a crime involves multiple victims and argues that concurrent sentencing is “an understatement of [Cryer’s] criminality.”

“Generally, when an offender is convicted of multiple current offenses . . . concurrent sentencing is presumptive.” Minn. Sent. Guidelines 2.F (2019). But a district court may order “multiple sentences for multiple crimes arising out of a single behavioral incident if: (1) the crimes affect multiple victims; and (2) multiple sentences do not unfairly exaggerate the criminality of the defendant’s conduct.” *State v. Alger*, 941 N.W.2d 396, 400 (Minn. 2020) (explaining the “multiple-victim rule”). “Consecutive sentences are a more severe sanction because the intent is to confine the offender for a longer period than under concurrent sentences. If the severity of the sanction is to be proportional to the

severity of the offense, consecutive sentences should be limited to more severe offenses.”
Minn. Sent. Guidelines cmt. 2.F.01 (2019).

In *State v. Warren*, the supreme court considered the state’s appeal of concurrent sentencing for three first-degree murder offenses. 592 N.W.2d 440, 451 (Minn. 1999). In reviewing the sentences in that case, the supreme court set forth the following standard:

In cases where the state challenges the [district] court’s imposition of concurrent sentences for multiple convictions of first degree murder involving more than one victim, we will consider whether the sentences are *commensurate with the defendant’s culpability and not an understatement of the defendant’s criminality* and we will continue to be guided by the sentences imposed on other offenders.

Id. at 451-52 (emphasis added).

We are not aware of any case applying that standard in a context other than sentencing for first-degree murder. Moreover, the district court’s statements at sentencing indicate that its decision was based on the evidence presented at trial. The district court explained:

As I reflected on the trial, I kept coming back to the same thing, that this is all just – it’s just tragic because your family is suffering, [TJR], [TR], that family is suffering. And it’s a no-win in terms of what this Court can do because *something happened that day, and unfortunately, the folks who all know about it are the folks who testified. And the jury made the best decision they can make.*

(Emphasis added.)

Even though the record indicates that the district court’s sentencing decision was influenced by the evidence presented at trial, the state did not provide this court a transcript of the trial. Without a trial transcript, we are unable to review the evidence on which the

district court relied and assess whether that evidence supports concurrent sentencing. *See Hough*, 585 N.W.2d at 397 (stating that the district court is in “the best position to evaluate the offender’s conduct and weigh sentencing options”); *see also State v. Axford*, 417 N.W.2d 88, 93-94 (Minn. 1987) (requiring a sufficient trial record before a reviewing court can properly address issues on appeal); *State v. Heithecker*, 395 N.W.2d 382, 383 (Minn. App. 1986) (affirming the district court because the appellant failed to provide a trial transcript on appeal, and without a trial transcript it was impossible to judge the merits of the appeal). Thus, even if the *Warren* standard were applicable here, we would not be able to apply it because we cannot evaluate Cryer’s culpability and criminality.

The state reasonably suggests that the district court’s concurrent sentences are disproportionately lenient when compared to the underlying criminal conduct. But as an appellate court applying a deferential standard of review, “we cannot simply substitute our judgment for that of the trial court.” *See State v. Spain*, 590 N.W.2d 85, 88 (Minn. 1999) (emphasizing that “[w]e afford the trial court great discretion in the imposition of sentences”).

In sum, “[w]e will affirm the imposition of a presumptive guidelines sentence when the record shows that the sentencing court carefully evaluated all the testimony and information presented before making a determination.” *State v. Johnson*, 831 N.W.2d 917, 925 (Minn. App. 2013) (quotation omitted), *rev. denied* (Minn. Sept. 17, 2013). The district court noted that it had “thought about this quite a bit as to what . . . the right sentence [is] in this case” and had “reflected on the trial” before determining the sentence. Because the state did not provide a transcript of the trial, we cannot review the evidence that

influenced the district court's sentencing decision. Nor can we conclude that the district court's decision was against logic and the facts in the record. And, we are not aware of any precedent indicating that the district court abused its discretion as a matter of law. Thus, we discern no basis to conclude that concurrent sentencing was an abuse of discretion in this case.

Affirmed.