

*This opinion is nonprecedential except as provided by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
A21-1552**

State of Minnesota,
Respondent,

vs.

Brett Thomas Green,
Appellant.

**Filed January 9, 2023
Affirmed
Wheelock, Judge**

Koochiching County District Court
File No. 36-CR-20-477

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

Jeffrey Naglosky, Koochiching County Attorney, International Falls, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Minnesota; and

Mark D. Nyvold, Special Assistant Public Defender, Fridley, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Smith, Tracy M., Judge; and
Wheelock, Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

Appellant challenges his conviction following a jury trial for one count of first-degree burglary, arguing primarily that the state presented insufficient evidence to

prove beyond a reasonable doubt that he intended to commit a crime while in a dwelling. Appellant raises additional arguments in a pro se supplemental brief, alleging the district court erred by (1) not instructing the jury on a lesser-included offense, (2) not addressing his mental-illness defense, (3) not disqualifying the district court judge for a conflict of interest, (4) declaring a mistrial in the previous proceeding, and (5) imposing an excessive and disproportionate sentence. We affirm.¹

FACTS

In August 2020, police responded to a residence after the homeowner, J.M., reported that someone was inside his home. J.M. told police that he discovered someone inside the house upon arriving home that morning, and police located appellant Brett Thomas Green on the couch in J.M.'s living room. J.M. told police that no one besides himself had a key to his house, and no one had permission to enter, but the spare key was missing from its hiding place in the garage. Police observed that items were strewn throughout the house. J.M. told police that the scattered items were his belongings, and some items appeared to him to be packed up for later removal. J.M. also told police his toothpaste had been used and some of his food had been eaten.

Respondent State of Minnesota charged Green with first-degree burglary. The district court twice granted Green's requests for a mental-competency evaluation pursuant to Minn. R. Crim. P. 20.01 and a mental-illness-defense evaluation pursuant to Minn. R.

¹ Respondent State of Minnesota did not file a brief. Thus, this matter proceeds under Minn. R. Civ. App. P. 142.03 (providing that the case is determined on the merits when respondent does not file a brief).

Crim. P. 20.02. Both evaluation reports indicated that Green was competent to stand trial pursuant to rule 20.01 and that he was not so mentally ill or cognitively impaired as to have a defense to the charge pursuant to rule 20.02. Based on the evaluator's determinations that Green was competent to stand trial, the district court set the matter for trial.

In April 2021, the district court held a two-day jury trial. The jury deliberated but arrived at a deadlock, and the district court declared a mistrial. Green did not object, and the state filed a notice of its intent to retry the case.

The district court held a second jury trial in May 2021. The police officer who responded to the call from J.M. testified on behalf of the state. The officer testified that Green initially told him that Green had permission to be inside the home and had been given a key, but when the officer interviewed J.M., J.M. told him that he did not know Green and that the spare key J.M. kept hidden in the garage was missing. The officer testified that the home appeared to have been "pillaged through" and that J.M. reported the home had not been that way when he left. The state introduced into evidence photographs of the home that the officer had taken that day.

J.M. also testified at trial. He stated that he owned the home, he had lived in the home for 20 years, he lives alone, and he had not given anyone a key or permission to enter the home. He testified that he left home around noon on a Saturday and returned at approximately 7:00 a.m. the following Monday to find the deadbolt to the house—which he did not lock when he left—was locked. He testified that, on entering the house, he saw that various property in his home was rearranged and a "big mess," leaving him "completely perplexed." He further testified that he then saw someone, whom he identified

as Green, sleeping on the couch. J.M. described shouting at Green, who responded that it was okay for him to be there because the house was abandoned.

J.M. identified several items shown in the photographic exhibits that were not where he left them, including drawers that had been emptied and items that had been removed from boxes and shelves and placed on the floor. He testified that a tube of toothpaste that was normally in the bathroom was now in the kitchen, personal-hygiene products appeared to have been used, a box of granola bars had been opened and granola bars removed, pot pies from the freezer were missing, and iced coffee from a carton was gone. J.M. also testified that he found the empty packages from two pot pies that had been in his home, he was certain he had not eaten them, and he found splattered pieces of pot pie in the microwave that were not there before he left his home on Saturday.

Green testified on his own behalf. He stated that late on Sunday evening prior to the day J.M. came home, he was stranded in J.M.'s neighborhood because his ride fell through, and he had a broken foot in a cast. He testified to using a spare key from the garage to enter J.M.'s home. He stated that he knew of the home and the presence of the spare key because either his dad or a friend was acquainted with J.M. and suggested to Green that he ask to rent a room there. He later testified that he thought the home might be abandoned.

Green testified that he planned to await J.M.'s return to ask about renting a room from him, and while he was waiting, he began cleaning and organizing the house; he claimed that the state's photographic exhibits reflected his efforts. Green denied eating any of J.M.'s food or using his personal-hygiene products, claiming that he brought his

own food and toiletries to the house. Green stated that he would have called for a ride, but his phone did not have service, and eventually he fell asleep, waking when J.M. arrived home the following morning.

The jury found Green guilty of first-degree burglary. The district court ordered a presentence investigation, and Green moved for a downward dispositional sentencing departure. The district court denied the departure motion and sentenced Green to the guidelines sentence of 45 months in prison. Green appeals.

DECISION

I. There is sufficient evidence in the record to prove that Green committed theft while in the dwelling—satisfying an element of first-degree burglary.

Green argues that the state presented insufficient circumstantial evidence to prove an element of the crime of first-degree burglary because a reasonable alternative hypothesis exists for why J.M.’s food and products were used or consumed other than Green having consumed them. We disagree.

In contrast with direct evidence, which is “based on personal knowledge or observation and . . . if true, proves a fact without inference or presumption,” the supreme court has defined circumstantial evidence as evidence from which the jury “can infer whether the facts in dispute existed or did not exist.” *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotations omitted). “Thus, circumstantial evidence always requires an inferential step to prove a fact that is not required with direct evidence.” *Id.* (citing *State v. Silvernail*, 831 N.W.2d 594, 604 (Minn. 2013)).

“When the direct evidence of guilt on a particular element is not alone sufficient to sustain the verdict,” appellate courts apply the circumstantial-evidence standard of review. *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017). Under the heightened circumstantial-evidence standard, appellate courts conduct a two-step analysis. *Silvernail*, 831 N.W.2d at 598. The first step is to identify the circumstances proved by the state. *Id.* In identifying the circumstances proved, we defer to the jury’s acceptance of the state’s evidence and “construe conflicting evidence in the light most favorable to the verdict and assume that the jury believed the [s]tate’s witnesses and disbelieved the defense witnesses.” *Id.* at 598-99 (quotation omitted). Thus, in determining the circumstances proved, “we consider only those circumstances that are consistent with the verdict . . . because the jury is in the best position to evaluate the credibility of the evidence even in cases based on circumstantial evidence.” *Id.* at 599 (citation omitted).

“The second step is to determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt.” *Id.* (quotations omitted). In making this determination, appellate courts review the circumstances proved “not as isolated facts, but as a whole,” and independently examine the reasonableness of all inferences rather than deferring to the jury’s choice between reasonable inferences. *Id.* Even so, “inconsistencies in the state’s case or possibilities of innocence” do not require reversal so long as the evidence as a whole “makes such theories seem unreasonable.” *State v. Tschew*, 758 N.W.2d 849, 858 (Minn. 2008). Therefore, rather than relying on “mere conjecture,” a defendant challenging the sufficiency of

circumstantial evidence must point to evidence in the record “consistent with a rational theory other than guilt.” *Id.*

Here, the jury found Green guilty of first-degree burglary under Minn. Stat. § 609.582, subd. 1(a) (2020), which provides that a person commits first-degree burglary when they (1) enter a dwelling, (2) without consent, (3) while another person who is not an accomplice is present at any time when the actor is in the dwelling, and (4) either commit a crime while in the dwelling or enter the dwelling with intent to commit a crime. Green argues that the state failed to prove the fourth element beyond a reasonable doubt because the state did not prove his intent to commit a crime while in J.M.’s dwelling. But the state can prove the fourth element of first-degree burglary by proving *either* Green’s intent to commit a crime *or* that Green actually committed a crime while in J.M.’s dwelling.

To establish the fourth element of burglary, the state argues that Green actually committed the crime of theft while in J.M.’s dwelling, because he intentionally and without claim of right took or used J.M.’s moveable property without consent and with intent to permanently deprive J.M. of possession of the property. *See* Minn. Stat. § 609.52, subd. 2(a)(1) (2020) (defining theft). The state relied on circumstantial evidence to prove that Green intentionally took or used J.M.’s property. *See State v. Irby*, 967 N.W.2d 389, 396 (Minn. 2021) (“Intent is a state of mind To prove intent, it is permissible for the jury to infer that a person intends the natural and probable consequences of his actions.” (quotation omitted)). Intent to commit a crime at the time an individual enters a dwelling is distinct from intent to use another person’s property and permanently deprive the owner of the property, the latter of which is required to establish the crime of theft. In his brief,

Green mistakenly conflates the “intent” required for the two alternate means of establishing the fourth element of first-degree burglary. If the state proved that Green committed the crime of theft while in J.M.’s dwelling by establishing that he intentionally took or used J.M.’s property with intent to permanently deprive J.M. of the property, the state established the final element of first-degree burglary set forth in the statute, and it does not matter whether it proved that Green had intent to commit a crime when he entered J.M.’s dwelling.

Turning back to the circumstantial-evidence analysis, we first identify the circumstances proved by the state. *See Silvernail*, 831 N.W.2d at 598. Here, construing the evidence in the light most favorable to the conviction, the state proved the following circumstances at trial. J.M. left his house on a Saturday and returned early in the morning on the following Monday. While J.M. was away, Green used a hidden spare key to gain entry to J.M.’s house, which he knew belonged to someone else. J.M. did not give Green permission to enter his home. Green was alone in the house for several hours, and during that time, many of J.M.’s possessions were moved throughout the house. On finding Green in the house, J.M. and police observed an open box of granola bars sitting out on a desk with granola bars missing. Before J.M. left the house, the box had been unopened inside a kitchen cabinet. J.M. also found empty packages from two pot pies—which he was certain he had not eaten—and observed splattered pieces of pot pie in the microwave. A carton of iced coffee appeared to J.M. to have less beverage in it than before. A tube of toothpaste

was in the kitchen that was not there before J.M. left the house, and some of J.M.'s personal-hygiene items appeared to have been used while he was away from the house.²

We turn next to the second step of the circumstantial-evidence analysis: determining whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis other than guilt. *See id.* at 599. Viewing the evidence as a whole, we conclude the aforementioned circumstances are all consistent with the inference that Green intentionally took or used some of the food and hygiene products in question without J.M.'s consent and with the intent to permanently deprive J.M. of the items, meeting the required elements of theft. We further conclude that the only reasonable inference to be drawn from the circumstances proved is that Green took the granola bars and pot pies with the intent to permanently deprive J.M. of possession of these items.

Green, however, argues that these circumstances are also consistent with a rational hypothesis that the items were used or consumed prior to Green's entry into the house. Green argues that it was "entirely speculative" to infer that he used the hygiene products because there was no evidence that the products were in containers that made it possible for the content levels to be evaluated as the product was used. Green further argues that despite J.M.'s testimony regarding the food items, it could "reasonably be inferred that this food had been left as the police found it, and J.M. just forgot about leaving it that way." This inference is unreasonable given a review of the evidence as a whole, however, because

² On appeal, Green does not dispute that these circumstances were proved, referring to the food and items having been used as a "proven fact."

J.M.'s testimony, which the jury credited, reflected J.M.'s overall awareness of the state of his home prior to leaving and his identification of what was different on his return.

Neither inconsistencies in the state's case, nor possibilities of innocence, require reversal "so long as the evidence taken as a whole makes such [alternative] theories seem unreasonable." *Tscheu*, 758 N.W.2d at 858. The theory that J.M. forgot opening and consuming the granola bars and exploding the pot pies in his microwave over the less-than-48 hours of his time away from home is unreasonable when the evidence is taken as a whole. And, as the state argued at trial, "theft of something that belonged to [J.M.]" is all that the state needed to prove to establish that Green committed or intended to commit theft while inside an occupied dwelling without consent, and thus to meet the required elements of his conviction for first-degree burglary.

Because the circumstances proved by the state are consistent with the inference that Green committed theft of the granola bars and pot pies, and the proven circumstances are inconsistent with any rational hypothesis other than guilt, we conclude that the state presented sufficient evidence to support Green's conviction for first-degree burglary.

II. The district court did not err when it did not instruct the jury on a lesser-included offense or by failing to address Green’s mental-illness defense, and it did not abuse its discretion by declaring a mistrial in the previous proceeding, failing to disqualify the district court judge for a conflict of interest, or imposing a sentence consistent with the guidelines.

We discern five additional arguments Green makes in his pro se supplemental brief³ and conclude that none of these arguments are supported by the record.

First, Green argues that the district court erred by failing to provide a lesser-included-offense instruction to the jury sua sponte. Green asserts that the facts of the case support a charge of trespass pursuant to Minn. Stat. § 609.605, subd. 1(b)(4) (2020), and therefore, the district court should have instructed the jury on the lesser-included offense of trespass. The record shows that Green did not request a lesser-included-offense instruction.

“[W]hen a defendant fails to request a lesser-included offense instruction warranted by the evidence, the defendant impliedly waives his or her right to receive the instruction.” *State v. Dahlin*, 695 N.W.2d 588, 597-98 (Minn. 2005). But even when a defendant has expressly or impliedly waived the instruction, “a trial court may, in its discretion, ignore the waiver and give any instructions warranted by the evidence.” *Id.* at 598. “Thus, absent plain error affecting a defendant’s substantial rights, a trial court does not err when it does

³ Green also argues in his pro se brief that the state’s evidence was insufficient, seeming to claim that the evidence supported a theory that he entered J.M.’s home with intent other than to commit theft. As we have already discussed, the jury credited J.M.’s testimony that food items were missing or consumed and did not credit Green’s testimony as to his actions that night. Our analysis and conclusion that the state’s evidence is sufficient to support Green’s conviction applies in equal measure to Green’s pro se argument as it does to the argument briefed by the appellate public defender.

not give a warranted lesser-included offense instruction if the defendant has . . . waived that instruction.” *Id.*

We recognize that appellate courts may consider a district court’s failure to give a jury instruction if it is plain error affecting substantial rights. Minn. R. Crim. P. 31.02; *State v. Montermini*, 819 N.W.2d 447, 459 (Minn. App. 2012), *rev. denied* (Minn. Nov. 20, 2012). “In order to meet the plain error standard, a criminal defendant must show that (1) there was an error, (2) the error was plain, and (3) the error affected the defendant’s substantial rights.” *State v. Myhre*, 875 N.W.2d 799, 804 (Minn. 2016). Generally, an error is plain if it “contravenes case law, a rule, or a standard of conduct.” *State v. Hersi*, 763 N.W.2d 339, 344 (Minn. App. 2009) (quotation omitted). Error affects a defendant’s substantial rights when it deprives the defendant of a fair trial. *Tscheu*, 758 N.W.2d at 863. If all three prongs of the plain-error test are met, we then decide whether to “address the error to ensure fairness and the integrity of the judicial proceedings.” *Id.* (quotation omitted).

Courts must give a lesser-included-offense instruction when “1) the lesser offense is included in the charged offense; 2) the evidence provides a rational basis for acquitting the defendant of the offense charged; and 3) the evidence provides a rational basis for convicting the defendant of the lesser-included offense.” *Dahlin*, 695 N.W.2d at 598.

We note that Green has not cited any authority requiring a district court to instruct a jury on lesser-included offenses if the defendant does not request it. *See Montermini*, 819 N.W.2d at 460 (rejecting a claim of plain error where appellant failed to cite any authority holding that a district court’s failure to give an unrequested

lesser-included-offense instruction is plain error). Further, it is not clear that the evidence provided a rational basis for acquitting Green of first-degree burglary and convicting him of trespass as a lesser-included offense, given J.M.'s testimony that food and hygiene items were missing or appeared to have been consumed. A person is guilty of misdemeanor trespass when they enter the dwelling of another without claim of right or consent of the owner or one who has the right to give consent, except in an emergency situation. Minn. Stat. § 609.605, subd. 1(b)(4). Because the district court did not act in contravention of case law, a rule, or a standard of conduct or otherwise err by failing to instruct the jury sua sponte regarding lesser-included offenses, the district court did not commit plain error, and Green is not entitled to relief under the plain-error standard.

Second, Green argues that the district court failed to consider his defense of mental illness or cognitive impairment under Minn. R. Crim. P. 20.02 and failed to follow the procedure laid out in rule 20.02 for the mental-illness defense. A review of the record shows that this is not the case.

Minn. R. Crim. P. 20.02, subd. 7(a), states that if a defendant notifies the prosecutor of their intent to rely on the defense of mental illness together with a defense of not guilty, the court must separate the two defenses, hearing and determining the defense of not guilty first, and hearing and determining the defense of mental illness second. The defendant must notify the prosecutor in writing of a mental-illness defense. Minn. R. Crim. P. 9.02, subd. 1(5)(c); *see also State v. Lee*, 491 N.W.2d 895, 899 (Minn. 1992) (“[I]f an accused intends to raise any defense besides not guilty, s/he must notify the prosecution.”).

Here, the district court granted Green's two requests for competency evaluations pursuant to Minn. R. Crim. P. 20.01 and mental-illness-defense evaluations pursuant to Minn. R. Crim. P. 20.02. Both evaluators determined that Green was competent to stand trial at the time of the evaluations and that he knew the nature of his actions at the time of the alleged burglary. The evaluators further determined that he was not suffering from a significant mental illness or impairment at the time of the alleged burglary that would constitute a defense to the charge. Green contested the second evaluator's report and informed the court that he would seek an independent rule 20.02 evaluation. The district court then entered pleas of not guilty and not guilty by reason of mental illness and granted Green leave to seek his own rule 20.02 evaluation.

The record reflects that Green did not submit an independent rule 20.02 evaluation after the court granted his request to do so. Green did not provide the prosecution with written notice of his mental-illness defense as required by Minn. R. Crim. P. 9.02, subd. 1(5). The district court need separate the defenses and instruct the jury accordingly only if the defendant notifies the prosecutor under rule 9.02, subdivision 1(5), of their intent to rely on both defenses. Minn. R. Crim. P. 20.02, subd. 7(a), (b). Further, "the defendant bears the burden of proving mental illness or cognitive impairment by a preponderance of the evidence." *Id.*, subd. 7(c). Although Green contested the results of the second rule 20.02 evaluation, the record shows that he did not present any evidence to raise mental illness as an affirmative defense at trial. On appeal, "error is never presumed," and the burden of showing error rests on the one who relies on it. *Loth v. Loth*, 35 N.W.2d 542, 546 (Minn. 1949) (quotation omitted); see *State v. Fleming*, 869 N.W.2d 319, 329 (Minn.

App. 2015) (applying this principle from *Loth* in a criminal case), *aff'd on other grounds*, 883 N.W.2d 790 (Minn. 2016). Green has not shown that the district court erred by not proceeding according to Minn. R. Crim. P. 20.02, subd. 7(a).

Third, Green argues that the district court abused its discretion by declaring a mistrial in the initial April 2021 trial, impermissibly subjecting him to double jeopardy.

The Double Jeopardy Clause of the U.S. Constitution protects a defendant against repeated prosecutions for the same offense. *Oregon v. Kennedy*, 456 U.S. 667, 671 (1982). Our appellate courts apply the “manifest necessity” standard when the district court declares a mistrial due to a hung jury. *State v. Soyke*, 585 N.W.2d 418, 420 (Minn. App. 1998). Because the declaration of a mistrial due to a hung jury is the manifest-necessity finding accorded the most deference on appeal, our review is “very limited.” *Id.* (citing *Arizona v. Washington*, 434 U.S. 497, 509-10 (1978)). “But if a defendant consents to the district court’s declaring a mistrial, he waives any claim that retrial is barred under the double jeopardy doctrine.” *State v. Hunter*, 815 N.W.2d 518, 521 (Minn. App. 2012).

Here, Green consented to the district court’s mistrial declaration. When the district court learned that the jury was deadlocked in the first trial, it informed the parties that it was considering a mistrial declaration and solicited argument on the record. Green’s counsel supported declaration of a mistrial, saying, “I guess I would ask for a hung jury.” The state filed notice of intent to retry the case, and Green did not move the district court to dismiss. Thus, Green waived his claim that the second trial subjected him to double jeopardy in violation of his constitutional rights. *See id.* Moreover, because this issue was not raised to the district court, it is not properly before this court on appeal. *See Roby v.*

State, 547 N.W.2d 354, 357 (Minn. 1996) (holding that issues, even constitutional issues, are waived on appeal if not raised to the district court).

Fourth, Green argues that the district court abused its discretion because the judge failed to disqualify himself under Minn. Code Jud. Conduct Rule 2.11(A).

Minn. R. Crim. P. 26.03, subd. 14(3), requires that “[a] judge must not preside at a trial or other proceeding if disqualified under the Code of Judicial Conduct.” Under the Minnesota Code of Judicial Conduct, “[a] judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned.” Minn. Code Jud. Conduct Rule 2.11(A). Circumstances under which a judge’s impartiality might reasonably be questioned include when a judge has a personal bias concerning a party’s lawyer or when a person with a third-degree of relationship to the judge is a party to the proceeding or is acting as a lawyer in the proceeding. *Id.* (A)(1), (2).

Green states that he had other cases in the district court that were proceeding at the same time as this case and that the city attorney was also the prosecuting attorney in those cases. He then alleges that the city attorney is the judge’s half-brother. A review of the record shows that the city attorney Green alleges is related to the judge was not a party to this case, was not acting as a lawyer in the proceeding, and was not present for Green’s trial in this matter.⁴

⁴ Our review of the record reveals that the city does not appear as a party on any of the pleadings in this matter, and, although they share a last name, there is no information indicating that the city attorney is related to the district court judge.

At trial, Green did not seek to disqualify the judge or otherwise request the judge's removal. Again, because the issue was not raised to the district court, we do not consider it on appeal. *Roby*, 547 N.W.2d at 357. Even if we were to review this argument, Green does not point to anything in the record implicating the judge's impartiality in this case based on the city attorney's appearance on other, unrelated cases. He also does not provide any evidence of a relationship between the judge and the city attorney beyond a bare allegation that the two are related. On appeal, "error is never presumed," and "the burden of showing error rests upon the one who relies upon it." *Loth*, 35 N.W.2d at 546 (quotation omitted); *Fleming*, 869 N.W.2d at 329 (applying this principle from *Loth*). Thus, Green's argument that the district court abused its discretion by permitting the judge to preside over his case fails.

Finally, Green argues that his 45-month sentence was "excessive and disproportionate" and that a bottom-of-the-box 39-month sentence was appropriate under the circumstances.

The Minnesota Sentencing Guidelines assign a presumptive range of 39 to 54 months for first-degree burglary of an occupied dwelling by an offender with a criminal-history score of 4.⁵ Minn. Sent'g Guidelines 4.A (2020). We review the sentence imposed by a district court for an abuse of discretion. *State v. Delk*, 781 N.W.2d 426, 428

⁵ Green suggests that the district court abused its discretion in sentencing him because his criminal-history score was incorrectly calculated. Because Green does not point to anything in the record to support this alleged error, Green's argument here fails. On appeal, we do not presume the district court erred in making a sentencing determination. *Fleming*, 869 N.W.2d at 329 (citing *Loth*, 35 N.W.2d at 546).

(Minn. App. 2010), *rev. denied* (Minn. July 20, 2010). “This court will not generally review a district court’s exercise of its discretion to sentence a defendant when the sentence imposed is within the presumptive guidelines range.” *Id.* Nor will this court generally modify a sentence within the presumptive range “absent compelling circumstances.” *Id.* (quotation omitted).

Here, Green moved the district court for a downward dispositional departure prior to sentencing but did not argue for a durational departure. At the sentencing hearing, the district court heard from both parties. In imposing a sentence of 45 months, the district court followed the presentence-investigation-report recommendation and the sentencing guidelines.

Green makes many of the same arguments raised elsewhere in his pro se supplemental brief to demonstrate “mitigating factors” that he believes support his position that the sentence the district court imposed is excessive. However, Green’s claims are not supported by the record and do not rise to the level of the “compelling circumstances” required for this court to consider modifying a presumptive sentence. *Id.* (quotation omitted); *see also State v. Epps*, 949 N.W.2d 474, 488 (Minn. App. 2020) (stating no abuse of discretion occurred where guidelines sentence was imposed despite defendant’s request for the statutory minimum sentence based on claimed amenability to treatment), *aff’d on other grounds*, 964 N.W.2d 419 (Minn. 2021). Thus, the district court did not abuse its discretion by imposing a sentence within the guidelines range.

In sum, we conclude that the district court neither erred nor abused its discretion in this case.

Affirmed.