

*This opinion is nonprecedential except as provided by  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  
A22-0011**

State of Minnesota,  
Respondent,

vs.

Felix Hieu Imhoff,  
Appellant.

**Filed November 21, 2022  
Affirmed  
Smith, Tracy M., Judge**

Washington County District Court  
File No. 82-CR-20-1958

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

Kevin Magnuson, Washington County Attorney, Nicholas A. Hydukovich, Assistant  
County Attorney, Stillwater, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Abigail H. Rankin, Assistant  
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larson, Presiding Judge; Johnson, Judge; and Smith,  
Tracy M., Judge.

**NONPRECEDENTIAL OPINION**

**SMITH, TRACY M., Judge**

In this appeal from the final judgment of conviction for second-degree assault, appellant Felix Imhoff challenges his sentence, arguing that the district court abused its discretion by denying his motion for a downward durational departure. Because the district

court did not abuse its discretion in finding that Imhoff's conduct was not significantly less severe than a typical second-degree assault, we affirm.

## **FACTS**

Respondent State of Minnesota charged Imhoff with second-degree assault—dangerous weapon, in violation of Minnesota Statutes section 609.222, subdivision 1 (2018). Imhoff entered a straight plea to the charge. At his plea hearing, Imhoff acknowledged getting into a verbal altercation with an acquaintance, T.B., taking a box cutter that T.B. was holding, and hitting T.B. in the head with the box cutter.

Imhoff moved for a downward dispositional and/or durational departure in sentencing. In arguing for a durational departure, Imhoff contended that his conduct was significantly less serious than the typical second-degree assault offense in part because the weapon was only a box cutter, not a more dangerous weapon, and T.B., not Imhoff, introduced the box cutter into the altercation. Imhoff also asserted that he drank and used cocaine the night before the incident and had missed a weekly therapeutic treatment, which affected his mood stability.

At the first sentencing hearing, the district court considered these motions but denied them and sentenced Imhoff to an executed sentence of 18 months' imprisonment, the bottom of the presumptive range of 18 to 25 months. The district court later vacated that sentence and set another hearing, explaining that it did so because it wanted more time to review the matter "in a little more depth." At the second sentencing hearing, the district court reconsidered the motions for durational and/or dispositional departures and again

declined to depart either in duration or in disposition. In explaining from the bench its decision not to grant a durational departure, the district court stated:

The first is a claim that the assault in this case was significantly less serious. Based on my experience, it appears to me this is relatively typical or fairly typical. We have got angry people, drugs and/or alcohol involved. A fight occurs, a weapon is present and someone ends up being seriously injured. So to me that does not persuade me that this is somehow significantly less serious. There were some serious injuries here.

Imhoff appeals, challenging only the denial of a downward durational departure.

### **DECISION**

The Minnesota Sentencing Guidelines establish presumptive sentences for felony offenses. Minn. Stat. § 244.09, subd. 5 (2018). The sentencing guidelines seek to “maintain uniformity, proportionality, rationality, and predictability in sentencing” of felony crimes. *Id.* “Consequently, departures from the guidelines are discouraged and are intended to apply to a small number of cases.” *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016).

A district court may depart from the sentencing guidelines only “if aggravating or mitigating circumstances are present, and those circumstances provide a substantial and compelling reason not to impose a guidelines sentence.” *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014) (emphasis omitted) (quotations and citations omitted); *see also* Minn. Sent’g Guidelines 2.D.1 (2018) (stating that a district court “must” sentence within the guidelines range “unless there exist identifiable, substantial, and compelling circumstances to support a departure”). But even if substantial and compelling circumstances exist, a district court is not required to depart from the guidelines. *State v. Walker*, 913 N.W.2d 463, 468 (Minn. App. 2018); Minn. Sent’g Guidelines 2.D.1.

District courts are afforded “great discretion in the imposition of sentences,” and appellate courts will reverse a sentencing decision “only for an abuse of that discretion.” *Soto*, 855 N.W.2d at 307-08 (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).

When a district court imposes a presumptive sentence, an appellate court “may not interfere with the [district] court’s exercise of discretion, as long as the record shows the [district] court carefully evaluated all the testimony and information presented before making a determination.” *State v. Van Ruler*, 378 N.W.2d 77, 80-81 (Minn. App. 1985). An explanation is not required when a district court denies a departure and imposes a presumptive sentence so long as the district court considered the reasons for a departure. *Id.* at 80. Only in a “rare case” will an appellate court reverse the district court’s refusal to depart from the presumptive sentence. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

Imhoff contends that the district court abused its discretion by denying his motion for a downward durational departure. A durational departure is a sentence that is shorter or longer than the presumptive range prescribed by the sentencing guidelines. Minn. Sent’g Guidelines 1.B.5.b (2018). “A durational departure must be based on factors that reflect the seriousness of the offense, not the characteristics of the offender.” *Solberg*, 882 N.W.2d at 623 (emphasis omitted). In determining whether to grant a downward durational departure, a district court must consider whether the defendant’s conduct was “significantly less serious than that typically involved in the commission of the offense.” *State v. Mattson*, 376 N.W.2d 413, 415 (Minn. 1985).

Imhoff argues that his offense was significantly less serious than the typical second-degree assault. *See Mattson*, 376 N.W.2d at 415. He asserts that a survey of appellate decisions shows that second-degree assault cases generally either involve a “traditional” dangerous weapon like a firearm or knife or, when there is no “traditional” dangerous weapon, involve prolonged assaults, threats of substantial harm, or other aggravating factors. Imhoff emphasizes that this case, in contrast, involves a box cutter—“a relatively small article”—and asserts that he did not bring the box cutter to the altercation, did not own it, did not brandish the weapon while threatening harm, and did not intentionally wield it to cause harm.

Even recognizing that a box cutter might be less dangerous than a gun or knife, it does not follow that the district court abused its discretion by finding that the offense was not significantly less serious than the typical second-degree assault with a dangerous weapon. *See id.*; *Van Ruler*, 378 N.W.2d at 80-81. The district court observed that the offense involved “drugs and/or alcohol” and “angry people” who got into a fight where a weapon was used and “someone end[ed] up being seriously injured.” While some other second-degree-assault cases might have involved more dangerous weapons or other types of harmful conduct, those cases do not compel the conclusion that the facts here establish a significantly less serious offense than the typical second-degree assault. On these facts, we discern no abuse of discretion in the district court’s determination that Imhoff’s second-degree assault was not significantly less serious than the typical offense.

Moreover, even if the district court had found this offense to be significantly less serious than the typical offense, it was not required to depart. *See Walker*, 913 N.W.2d at

468; Minn. Sent’g Guidelines 2.D.1. And, as noted above, this court will not disrupt an appellant’s sentence that is within the presumptive range so long as the record shows that the district court carefully evaluated all the relevant information before making a decision. *Van Ruler*, 378 N.W.2d at 80-81. Here, the record shows that the district court did just that. The district court considered Imhoff’s departure motion at not one, but two hearings. After the first hearing, it decided to revisit sentencing and to devote more time to considering arguments, reviewing the record, and hearing from both T.B. and Imhoff. It is true, as Imhoff observes, that the district court and both parties focused mainly on the dispositional-departure factors during the sentencing hearings. But the record also shows that the district court considered the severity of the offense as compared to a typical second-degree assault and explicitly outlined its reasoning for denying a durational departure at the end of the second sentencing hearing. Its evaluation was careful.

Imhoff relies on the broad range of second-degree-assault cases and the frequency of departures to argue that departure is required here. He asserts that “[t]he district court apparently failed to recognize that the charged subdivision can encompass a tremendous range of behavior, therefore requiring closer attention to ensure the satisfaction of the purpose of the sentencing guidelines—to reduce inconsistency while ensuring the punishment reflects the crime.” In support of his argument, Imhoff cites discussion from the Minnesota Sentencing Guidelines Commission about second-degree assaults: “Circumstances surrounding the offense can also vary significantly, from barroom brawls to unprovoked confrontations. . . . It is perhaps unsurprising to find many departures in the sentencing of a crime that can be committed in so many different ways.” Minn. Sent’g

Guidelines Comm’n, *2019 Sentencing Practices: Annual Summary Statistics for Felony Cases Sentenced in 2019*, 31 (2020), [https://mn.gov/sentencing-guidelines/assets/2019MSGCAnnualSummaryStatistics\\_tcm30-457007.pdf](https://mn.gov/sentencing-guidelines/assets/2019MSGCAnnualSummaryStatistics_tcm30-457007.pdf) [<https://perma.cc/UVH5-N8K5>].

But the district court here accounted for the fact that second-degree assault encompasses a broad range of behavior when it imposed a sentence at the bottom of the presumptive range.

In sum, this is not the “rare case” in which this court should reverse the imposition of a presumptive sentence. *See Kindem*, 313 N.W.2d at 7.

**Affirmed.**