

*This opinion is nonprecedential except as provided by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
A22-0110**

State of Minnesota,
Appellant,

vs.

Matthew Warren Luepke,
Respondent.

**Filed June 27, 2022
Reversed and remanded
Frisch, Judge**

Nicollet County District Court
File No. 52-CR-18-545

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Considered and decided by Reilly, Presiding Judge; Slieter, Judge; and Frisch,
Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

The state appeals the district court's sentence imposing a downward durational
departure from the mandatory-minimum sentence following respondent's conviction of

possession of a firearm by an ineligible person. We reverse and remand for imposition of a guidelines sentence.

FACTS

In December 2018, appellant State of Minnesota charged respondent Matthew Warren Luepke with illegal possession of a firearm and ammunition, in violation of Minn. Stat. § 624.713, subd. 1(2) (2018). The complaint contained allegations that law-enforcement officers found Luepke barricaded in his grandmother's basement and that a rifle and ammunition were on the ground near where it appeared Luepke had been sleeping. A review of Luepke's criminal record revealed that he had been previously convicted of at least one crime of violence and that he was ineligible to possess a firearm.

Luepke was released from custody pending trial. After his release and while the charges were pending, Luepke had multiple interactions with law enforcement after allegedly abusing his Adderall prescription. Luepke's counsel requested a competency evaluation, alleging that Luepke could not assist counsel with his defense. The district court ordered a competency evaluation pursuant to Minn. R. Crim. P. 20.01.

Luepke refused to participate in the Rule 20 evaluation. The district court thereafter ordered the examiner to prepare a report with available information, including Luepke's medical and corrections records. The examiner prepared a report based on the records and her brief interaction with Luepke, and the district court summarized those findings. The district court specifically noted that Luepke did not present with symptoms consistent with an affective or psychotic disorder, his most recent presentation and behaviors align with

substance-induced behavior, and the examiner did not believe Luepke suffered from a cognitive disorder.

In July 2019, the district court found Luepke not competent to proceed because Luepke could not consult with counsel due to a “mental illness [or] disorder [Luepke] [was] *currently* experiencing.” (Emphasis added.) In June 2020, in a separate matter, the state sought another competency evaluation, and the evaluator concluded that Luepke was competent to stand trial. The state provided a copy of the Rule 20 report to the district court in this matter, which in turn found that Luepke’s condition had improved, he was no longer abusing substances, and he was not suffering from a mental illness. The district court then found Luepke competent to proceed.

On October 5, 2021, the district court held a bench trial and issued the following uncontested findings of fact.¹ On December 30, 2018, law-enforcement officers were looking for Luepke following reports that he was involved in a domestic assault. The officers located Luepke at his grandmother’s house where he had locked himself inside her basement. After the officers entered the basement room, they found a makeshift bed on the floor adjacent to a loaded rifle and ammunition. The district court noted that Luepke had been found guilty of a controlled-substance crime in 2012, that he had been put on a

¹ The record does not contain any pretrial or trial transcripts. Nevertheless, both parties agree that the existing record is sufficient for us to properly conduct appellate review.

25-year term of probation, and that the conviction constitutes a crime of violence. The district court found Luepke guilty of illegally possessing firearms or ammunition.²

On October 27, 2021, the district court received information that Luepke did not cooperate in the preparation of a presentence investigation (PSI) report. Luepke refused to meet with the investigating agent. The agent reported that Luepke told the agent, “I am so sick of you little b-tches in probation . . . I ain’t meeting with you, you can go f--k yourself and take your papers and shove them up your a-s.” Luepke also sent several letters directly to the district court, including one stating that he would not be “going back to court for any more bull sh-t f--kin head games.”

On November 8, 2021, the district court held a sentencing hearing. Luepke originally refused to attend but later appeared and told the court: “You said that you weren’t putting me on probation, that I don’t do well on probation. I was . . . under the understanding that I was f--king finally done with all of this sh-t.” The district court then sua sponte indicated that it was considering imposing a downward departure of unspecified nature from the Minnesota Sentencing Guidelines and invited the state and Luepke to comment on a potential sentencing departure. The state opposed any departure, citing both the seriousness of the offense and Luepke’s demonstrated rejection of probationary services. The state also highlighted Luepke’s recent escalation of troubling activity as presenting a significant public-safety risk, citing multiple probation violations and

² At oral argument, Luepke conceded that he did not raise a mental-incapacitation defense at trial. Luepke also acknowledges in his brief that the facts here do not support a defense of lack of capacity.

violations of pretrial release conditions, a domestic-assault guilty verdict, a fourth-degree assault guilty verdict related to Luepke fighting with law-enforcement officers, and, while awaiting sentencing for the assault, being found by law enforcement driving without a license and in possession of alcohol. Luepke repeatedly interrupted the state's sentencing argument with profane diatribes, again claiming that the district court told him that he would not be sentenced to probation. After the state presented its argument, Luepke's counsel requested that the district court sentence Luepke to probation or impose a durational departure of 36 months' imprisonment.

After hearing from both parties, the district court noted the statutory mandatory-minimum sentence of 60 months' imprisonment but stated that it had the authority to depart from that sentence if it found substantial and compelling reasons to do so. The district court then found that Luepke's mental health was "substantially impaired at the time the offense occurred, around that period of time." It also noted that the underlying crime of violence that rendered Luepke ineligible to possess a firearm occurred "over ten years ago" and that Luepke was not the sort of defendant that the "five year mandatory minimum was designed to apply to." The district court also found that the same reasons justifying a durational departure also supported not placing Luepke on probation. The district court then sentenced Luepke to 365 days in custody, with credit for time served, representing a durational departure from the Minnesota Sentencing Guidelines. The district court later completed a sentencing worksheet, noting that the sentence imposed constituted a downward durational departure because Luepke "lacked substantial capacity for judgment (not drug/alc)."

The state appeals.

DECISION

The sole issue in this appeal is whether the district court abused its discretion in imposing a gross-misdemeanor sentence for Luepke's conviction for illegal possession of a firearm under Minnesota Statutes section 624.713, subdivision 1(2), a crime which carries a mandatory-minimum prison term of 60 months. Minn. Stat. § 609.11, subd. 5(b) (2018). That statute provides that a district court may depart from that mandatory sentence if it identifies "substantial and compelling reasons to do so." *Id.*, subd. 8(a) (2018).

"A durational departure must be based on factors that reflect the seriousness of the offense, not the characteristics of the offender." *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016) (emphasis omitted). District courts have great discretion when imposing sentences, and we reverse sentencing decisions only when a district court abuses that discretion. *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014). A district court abuses its discretion if its reasons for departing are "improper or insufficient and there is insufficient evidence of record to justify the departure." *Id.* at 308 (quotations omitted). "When the district court gives improper or inadequate reasons for a downward departure, we may scrutinize the record to determine whether alternative grounds support the departure." *Solberg*, 882 N.W.2d at 623 (emphasis omitted). If the record contains insufficient evidence to justify a departure, we must reverse. *Williams v. State*, 361 N.W.2d 840, 844 (Minn. 1985).

A downward departure is justified if a mental impairment caused the offender to lack a substantial capacity for judgment when the offense was committed. Minn. Sent. Guidelines 2.D.203.3.a(3) (2018); *State v. Martinson*, 671 N.W.2d 887, 891 (Minn. App. 2003). To support a downward departure on the basis of mental impairment, the impairment must be “extreme” and deprive the defendant “of control over his actions.” *State v. McLaughlin*, 725 N.W.2d 703, 716 (Minn. 2007); *see also State v. Wilson*, 539 N.W.2d 241, 247 (Minn. 1995); *State v. Lee*, 491 N.W.2d 895, 902 (Minn. 1992). Although we review the district court’s decision to grant a departure for an abuse of discretion, we review whether the district court’s reason for a departure was proper under a de novo standard of review. *Dillon v. State*, 781 N.W.2d 588, 595 (Minn. App. 2010), *rev. denied* (Minn. July 20, 2010).

The district court departed from the mandatory-minimum sentence because it found that Luepke was “substantially impaired” at or around the time of the offense.³ We conclude that the district court abused its discretion because this finding is not supported by the record, nor is it a legally appropriate basis to durationally depart from the Minnesota Sentencing Guidelines.

³ The district court also “reasonably questioned whether or not Defendant is the type of defendant that [the] five year mandatory minimum was designed to apply to.” While it is unclear from the record whether the district court’s decision to depart was based on this rationale, we note that there is no legal basis to conclude that the statute does not apply to Luepke. Luepke was convicted of second-degree sale of a controlled substance in violation of Minn. Stat. § 152.022, subd. 1(1) (2012), a crime of violence. *See* Minn. Stat. § 624.712, subd. 5 (2018) (listing crimes of violence). And even so, such a rationale cannot support a durational departure because it is an *offender*-related characteristic, not an *offense*-related characteristic. *See Solberg*, 882 N.W.2d at 623.

The district court's finding that Luepke was "substantially impaired at the time the offense occurred, around that period of time" is not a sufficient basis to support a durational departure. To impose a durational departure based on diminished capacity, a district court may only consider factors affecting the defendant *at* the time of the offense. Minn. Sent. Guidelines 2.D.203.3.a(3). To justify a durational departure, the Minnesota Sentencing Guidelines and our caselaw require a district court to find that a defendant's mental impairment caused the offender to lack "a substantial capacity for judgment." *Id.*; *Martinson*, 671 N.W.2d at 891. Although the district court found Luepke to be "substantially impaired," it made no finding that, at the time of the offense, he either lacked a substantial capacity for judgment or that his impairment was so extreme that he was deprived of control or understanding of his actions. We are also troubled by the district court's qualification that Luepke experienced impairment "around" the "period of time" the offense occurred. Because the district court did not make any findings that Luepke lacked substantial capacity for judgment at the time the offense occurred, it abused its discretion in imposing a downward durational departure due to mental incapacity.

In addition, even if we were to liberally construe the district court's finding of substantial impairment to mean that Luepke lacked substantial capacity for judgment at the time of the offense, our review of the record shows both an absence of evidence to support such a conclusion and evidence that establishes that Luepke was not so impaired. Indeed, the district court's statements at sentencing appear to directly contradict its findings of fact after trial, namely that the state proved beyond a reasonable doubt that Luepke "exercised dominion and control of, and knowingly possessed" the firearm and ammunition on the

date of the offense, that he “was in a position to know where the rifle and bullets” were located, and that “there is no reason to believe” that Luepke “did not know the rifle and ammunition” were in his possession, ultimately concluding that “it is apparent Defendant brought the rifle and the ammunition to that location.”

With respect to Luepke’s capacity for judgment, the record contains only a summary of Luepke’s mental-health history, with no information regarding his mental-health status or capacity for judgment *at the time of the offense*. The record on appeal does, however, contain evidence expressing doubt that Luepke suffered from *any* natural mental impairment and attributing Luepke’s mental-health issues to the potential abuse of controlled substances. Even if Luepke’s substance abuse resulted in a diminished capacity at the time of the offense, such a drug-related impairment cannot form the basis for a durational departure. Minn. Sent. Guidelines 2.D.203.3.a(3) (“The voluntary use of intoxicants (drugs or alcohol) does not fall within the purview of this factor.”). Accordingly, there is an absence of record evidence to support a conclusion that Luepke’s mental impairment justifies a durational departure from the mandatory-minimum sentence.

Luepke argues that even if the district court abused its discretion in determining that his mental capacity justified a durational departure, we may nevertheless affirm the sentence because his conduct was significantly less serious than the typical illegal-possession-of-a-firearm case. It is true that if a district court’s stated reason for departure is improper, we may still review the entire record to determine whether an alternative basis exists to depart. *Solberg*, 882 N.W.2d at 623. “[A] downward durational departure is justified 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).

Our review of the record does not show that Luepke’s conduct was significantly less serious than the typical offense. Luepke argues that his conduct was less serious than typical because his possession of a firearm was incidental to law enforcement involvement, he was arrested without incident, and he only constructively possessed the firearm and ammunition. None of these facts, however, mitigate Luepke’s conscious act of possession, particularly given that the district court specifically found that Luepke “knowingly possessed” the rifle and ammunition and purposefully transported the same from his parents’ house to his grandmother’s house. And our review of the record reveals the seriousness of this offense: law enforcement was searching for Luepke related to his alleged involvement in a domestic assault; Luepke seemingly took the firearm and ammunition without permission; Luepke transported the firearm and ammunition to another location and barricaded himself in his grandmother’s basement with the firearm and ammunition; the rifle was loaded at the time it was recovered next to Luepke; an open alcoholic beverage was located with Luepke at the time of his arrest; and Luepke was on probation at the time of the offense.

We therefore conclude that the district court abused its discretion in imposing a downward durational departure from the mandatory-minimum sentence.⁴ We reverse the

⁴ Luepke does not argue that he qualifies for a downward dispositional departure, and we see no basis in the record to justify such a departure because the evidence in the record establishes that Luepke is not “particularly amenable to probation.” See Minn. Sent. Guidelines cmt. 2.D.303 (2018); *Soto*, 855 N.W.2d at 309.

district court's departure, vacate Luepke's sentence, and remand to the district court for the imposition of a guidelines sentence.

Reversed and remanded.