STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0870

State of Minnesota,
Respondent,

vs.

Daniel Martin Kaufman,
Appellant.

Filed April 3, 2023
Affirmed in part, reversed in part, and remanded
Smith, Tracy M., Judge

Becker County District Court
File No. 03-CR-21-280

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

Brian McDonald, Becker County Attorney, Detroit Lakes, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Max Brady Kittel, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this sentencing appeal, appellant Daniel Martin Kaufman argues that the district court abused its discretion by imposing ten-year stays of execution of his sentences for theft and arson without identifying substantial and compelling reasons to depart from the

presumptive five-year stays under the sentencing guidelines. He also argues that the district court abused its discretion by ordering that he pay $1,168,727.45 in restitution, including minimum monthly payments of $100 during his probation. Because the district court abused its discretion by departing from the sentencing guidelines without identifying substantial and compelling reasons, we reverse and remand for the imposition of the presumptive sentences. Because the district court did not abuse its discretion when ordering restitution, we affirm that order.

FACTS

On the evening of December 29, 2020, police officers responded to a fire at the sales building of a recreational-vehicle dealership in Becker County. The resulting police investigation implicated appellant Daniel Martin Kaufman in the arson and in the theft of a fish house, which was valued at approximately $30,000. Respondent State of Minnesota charged Kaufman with one count of second-degree arson, in violation of Minnesota Statutes section 609.562 (2020), and one count of theft, in violation of Minnesota Statutes section 609.52, subdivision 2(a)(1) (2020). Kaufman entered *Alford* pleas to both counts.[1]

At a sentencing hearing, after adjudicating Kaufman guilty of both offenses, the district court imposed concurrent prison sentences of 23 months and 15 months, respectively, and stayed their execution for ten years, placing Kaufman on supervised probation. The district court stated that it believed "that ten years is an appropriate

[1] Under an *Alford* plea, a court may accept a defendant's guilty plea, even though the defendant maintains their innocence. *See State v. Goulette*, 258 N.W.2d 758, 760-61 (Minn. 1977) (discussing *North Carolina v. Alford*, 400 U.S. 25 (1970)).

probationary period for the offense, because of the extended time you may need to pay restitution." The district court did not characterize the length of the stays as a sentencing departure or identify any aggravating factors justifying a departure. The warrant of commitment notes that the sentences do not depart from the sentencing guidelines.

At a March 2022 restitution hearing, the district court received evidence about damages from the dealership and its owners and from representatives of the affected insurance providers. An affidavit for restitution from the recreational-vehicle dealership stated that it had $173,054.89 in damages remaining unpaid after insurance. The insurers submitted affidavits requesting $910,617.74 and $85,054.82 in restitution for claims they paid to the dealership and its owners.

The district court also heard testimony from Kaufman about his finances and ability to pay. Specifically, Kaufman testified that he was unemployed and had been receiving disability payments since 2013, when he crushed his ankles and heels in an accident and became unable to walk or stand for long periods of time. He said he was currently receiving $1,139 a month in disability payments. He also stated that he received an additional $548 a month in disability payments on his son's behalf but that payment would stop when his son turned 18 in April 2022. He stated that his monthly expenses are $590 for rent, $125 for car payments, $320 for auto insurance for his and his son's cars, $74.80 for trash service, $120 for natural gas, $130 for electricity, and $48.64 for cellphone service. Kaufman testified that he just started receiving annual energy assistance of $900 for gas and $178 for electricity but was unsure how long that would last. He testified that he was

already financially "overextended" but estimated that he would be able to pay $20 a month in restitution.

The district court ordered Kaufman to pay restitution of $1,168,727.45. Despite Kaufman's limited income, the district court believed that he "would be able to pay some amount of the judgment ordered." The district court required Kaufman to make monthly payments of $100 until the end of his probationary term, at which time the balance would be payable in full or converted to a civil judgment.

Kaufman appeals.[2]

DECISION

I. The district court abused its discretion in ordering that Kaufman's sentences be stayed for ten years.

Kaufman argues that the district court abused its discretion by imposing ten-year stays of execution of his sentences. We agree.

Appellate courts "'afford the [district] court great discretion in the imposition of sentences' and reverse sentencing decisions only for an abuse of that discretion." *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014) (quoting *State v. Spain*, 590 N.W.2d 85, 88 (Minn. 1999)). However, whether a sentence conforms to the requirements of the sentencing guidelines is a question of law reviewed de novo. *See State v. Williams*, 771 N.W.2d 514, 520 (Minn. 2009).

The applicable sentencing guideline reads:

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[2] The state did not file a brief on appeal. Thus, this matter was considered on the merits pursuant to Minnesota Rule of Civil Appellate Procedure 142.03 (providing that if respondent fails to file a brief, the case shall be determined on the merits).

> When the court stays execution or imposition of sentence for a felony offense, including an attempt or conspiracy, the pronounced length of stay must not exceed five years or the length of the statutory maximum punishment, whichever is less, unless the court identifies and articulates substantial and compelling reasons to support a departure from this rule.

Minn. Sent'g Guidelines 3.A.2.a. (2020). The comments to the rule specify that "a pronounced length of stay longer than provided in section 3.A.2 is defined as an aggravated durational departure." Minn. Sent'g Guidelines cmt. 3.A.202.

Under the guidelines, the length of a stay of execution is presumptively the *lesser* of five years or the maximum sentence. Minn. Sent'g Guidelines 3.A.2.a. The maximum statutory prison term for both second-degree arson and theft is ten years. *See* Minn. Stat. §§ 609.562, .52, subd. 3(2) (2020). As a result, the presumptive stays in this case were five years. By staying Kaufman's sentences for ten years, the district court departed from the guidelines sentence. *See* Minn. Sent'g Guidelines cmt. 3.A.202 (stating that a stay longer than that provided by 3.A.2.a. constitutes a departure). In pronouncing sentence, though, the district court did not recognize the length of the stays as an aggravated departure. It explained only that it thought ten years was appropriate in light of Kaufman's restitution obligation. It did not identify any facts that constituted "substantial and compelling reasons to support a departure." Minn. Sent'g Guidelines 3.A.2.a. And, indeed, the warrant of commitment does not reflect a sentencing departure.

Because the district court did not identify or articulate any reasons for departing, we reverse and remand for the imposition of the presumptive five-year stays of execution of both Kaufman's sentences. *See State v. Geller*, 665 N.W.2d 514, 517 (Minn. 2003) (holding

that, when no reasons for departure were given by the district court, a reviewing court must reverse and remand for the imposition of the presumptive guidelines sentence).

II. The district court did not abuse its discretion when ordering restitution.

Kaufman argues that the district court abused its discretion by ordering him to pay $100 each month toward a $1,168,727.45 restitution award because the record shows that he cannot afford it. We disagree that the district court abused its discretion.

Appellate courts "generally review a restitution order for an abuse of the district court's broad discretion." *State v. Wigham*, 967 N.W.2d 657, 662 (Minn. 2021) (quotation omitted). That broad discretion, however, "is constrained by the statutory requirements set forth in Minn. Stat. § 611A.045." *Id.* Section 611A.045 requires courts to "consider" two factors when deciding whether to order restitution and setting the amount of restitution: "(1) the amount of economic loss sustained by the victim as a result of the offense; and (2) the income, resources, and obligations of the defendant." Minn. Stat. § 611A.045, subd. 1 (2020).

As to the second factor, a district court "considers" a defendant's income, resources, and obligations when it "affirmatively take[s] into account the defendant's ability to pay when awarding and setting the amount of restitution." *Wigham*, 967 N.W.2d at 663. The district court must expressly state that it considered the defendant's ability to pay. *Id.* at 659. The district court need not make express findings about the defendant's income, resources, and obligations to support its express statement that it considered the defendant's ability to pay, but the record must include sufficient information on those topics to permit the district court to consider the defendant's ability to pay. *Id.* at 659.

Kaufman acknowledges that the district court did "consider" his ability to pay. But he argues that the district court nevertheless abused its discretion because, based on the record and the district court's own findings, it "goes against all logic and facts in the record" to conclude that he could afford monthly payments of $100 toward a restitution award of over $1 million.

In its restitution order, the district court explained:

> Finally, the Court received testimony on the Defendant's ability to pay any amount ordered by this Court. While this Court is required to consider the Defendant's ability to pay under Minn. Stat. § 611A.045, subd. 1 the Court notes that it is not required to make specific findings concerning the Defendant's ability to pay. *State v. Wigham*, 967 N.W.2d 657, 663 (Minn. 2021). In making a determination on the appropriate amount of restitution the Court is aware of Defendant's lack of employment and disability status due to difficulties in walking or standing for long periods of time. Because of his disability status, Defendant testified that he collects disability payments of $1,139.00 per month from the State of Minnesota and that he would lose an approximate $500 in additional monthly income due to his son's age making him no longer eligible as a dependent in the coming months. Despite this, the Court does believe the Defendant would be able to pay some amount of the judgment ordered. Further, the Court notes any judgement issued by this Court would be subject to either State or Federal laws concerning garnishment of disability payments. Additionally, any undisclosed assets of the Defendant's would be subject to levy on attachment.

(Other citation omitted.) The district court further wrote that "[b]ecause of the Defendant's disability status and the enormity of the total amount owed," it would require Kaufman to make monthly payments of $100 until the end of his probationary term, whereupon any balance remaining will be converted to a civil judgment.

Kaufman argues that the district court abused its authority because the record establishes that his expenses exceed his income each month. He relies on *State v. Maidi*, 537 N.W.2d 280 (Minn. 1995), in which the supreme court affirmed a restitution order of approximately $150,000, set to be paid in $200 monthly payments. *Maidi*, 537 N.W.2d at 281. Kaufman notes that the supreme court affirmed the restitution order, even though Maidi could not afford the full restitution amount, because he could afford the monthly payments. *Id.* at 286. He argues that the same is not true here. But we are not persuaded that the monthly payment of $100 ordered by the district court was an abuse of discretion on this record.

Kaufman has a stable monthly income, subject to garnishment. And the district court provided that the remaining restitution will be converted to a civil judgment at the end of Kaufman's probationary term. Furthermore, at the restitution hearing, Kaufman testified he could handle $20 a month in restitution. On this record, we disagree that the district court abuse its broad discretion when it ordered a payment plan of $100 a month. In addition, the restitution statute requires district courts to consider not just the defendant's ability to pay but also the first factor—the amount of economic loss sustained by the victim. Here, the district court properly considered the loss sustained by the victims, finding that the "evidence makes clear [the recreational-vehicle dealership] and its insurers suffered significant financial losses as a direct result of the Defendant's actions." The monthly payment plan ordered by the district court recognizes the substantial loss suffered by the victims while keeping Kaufman's monthly payment relatively low. We conclude that the

district court acted within its broad discretion in awarding restitution and setting the payment terms.

Affirmed in part, reversed in part, and remanded.