

*This opinion is nonprecedential except as provided by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
A23-0898**

State of Minnesota,
Respondent,

vs.

Dennis Lee Heard,
Appellant.

**Filed September 16, 2024
Affirmed
Ede, Judge**

Hennepin County District Court
File No. 27-CR-22-13086

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

Mary F. Moriarty, Hennepin County Attorney, Nicole Cornale, Assistant County Attorney, Tacota Lemuel (certified student attorney), Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Leah C. Graf, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Frisch, Presiding Judge; Ede, Judge; and Halbrooks, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

EDE, Judge

Appellant challenges his sentence for first-degree assault, arguing that the district court abused its discretion by imposing a 204-month sentence—the top of the presumptive guidelines range—because its determination was contrary to law, logic, and the facts in the record. Because we conclude that the district court did not abuse its discretion in deciding to impose a sentence within the presumptive guidelines range, we affirm.

FACTS

According to the criminal complaint, Minneapolis police officers responded to a shooting at a gas station in June 2022. Upon their arrival on the scene, the officers learned that the shooting had been captured on the gas station’s surveillance camera. The surveillance footage showed a male, later identified as appellant Dennis Lee Heard, exchanging words with the victim. At one point, the victim stepped toward Heard. Heard pulled out a firearm and shot the victim in the chest. The victim immediately fell to the ground. After shooting the victim, Heard walked back to his vehicle, turned around, and shot at the victim again, but missed. Heard left the scene in his vehicle. The victim sustained injuries to his left lung, spleen, stomach, diaphragm, and vertebra.

Respondent State of Minnesota charged Heard with: (1) attempted second-degree murder, in violation of Minnesota Statutes section 609.19, subdivision 1(1) (2020), with reference to Minnesota Statutes section 609.17, subdivision 4(2) (2020); (2) first-degree assault, in violation of Minnesota Statutes section 609.221, subdivision 1 (2020); and

(3) possession of a firearm by an ineligible person, in violation of Minnesota Statutes section 624.713, subdivision 1(2) (2020).

In February 2023, Heard entered a guilty plea to first-degree assault under a plea agreement. In exchange for Heard's plea of guilty, the parties agreed to the dismissal of counts one, attempted second-degree murder, and three, unlawful possession of a firearm. The parties also agreed to a sentencing range of 150 to 204 months, with the final sentence left to the district court's discretion. Heard's defense counsel explained to the district court that the sentencing range included two sentencing enhancements—a three-month enhancement because Heard's criminal-history score exceeded those on the Minnesota Sentencing Guidelines grid and a 12-month enhancement because the first-degree assault offense was Heard's second violent felony.¹ *See* Minn. Sent'g Guidelines 2.B.2.c, 2.G.14.b. After Heard waived his right to a jury trial and provided a factual basis—including specific admissions that he had a 2005 first-degree assault conviction that qualified as a prior severe violent offense for purposes of the 12-month enhancement, *see* Minn. Sent'g Guidelines 2.G.14.a.(1), 8 (Supp. 2021)—the district court found that Heard had provided a knowing and voluntary waiver of his rights and the court accepted Heard's guilty plea.

¹ To be clear, the parties' agreed-upon sentencing range of 150 to 204 months was based on 15 months in enhancements (i.e., three months per Minnesota Sentencing Guidelines 2.B.2.c (Supp. 2021) plus 12 months per Minnesota Sentencing Guidelines 2.G.14.b (Supp. 2021)) added to the guidelines range of 135 to 189 months, which in turn arose from the severity level of nine assigned to first-degree assault and the fact that Heard had a criminal-history score greater than six, *see* Minn. Sent'g Guidelines 4.A (Supp. 2021).

Before sentencing, a probation agent from Hennepin County Community Corrections completed a presentence investigation report (PSI). The agent reported in the PSI that first-degree assault carried a severity level of nine and that Heard had a criminal-history score of seven. The agent reiterated that, under the plea agreement, the parties had agreed that Heard's sentencing range was 150 to 204 months. The agent also noted that, at the time of this offense, Heard was under federal supervised release due to a 2017 conviction for possession of a firearm by a prohibited person. Heard's criminal history included prior charges of felon in possession of a pistol, none of which resulted in a conviction.

The district court held a sentencing hearing in March 2023. At the start of the hearing, the district court confirmed that the plea agreement called for a sentencing range of 150 to 204 months, that a term within that range would be a presumptive guidelines sentence, and that a sentence within that range was not a departure. Both the prosecutor and defense counsel agreed. The district court also stated that it had received and reviewed the PSI.

The state requested that the district court impose a sentence of 204 months, highlighting that this was Heard's "sixth felony conviction[,] " that Heard's prior convictions included "two prohibited person convictions[,] " and that Heard has consistently engaged in criminal activity "with an escalating pattern." Defense counsel requested that the district court impose a sentence of 150 months, pointing to Heard's struggle with mental health, the fact that Heard armed himself with a weapon on the day of the offense intending to harm himself, and the presence of Heard's family at the hearing.

The district court sentenced Heard to 204 months, explaining:

I have to look at the facts of this case. I also have to look at Mr. Heard's history. I have no doubt clearly that as a whole, this system certainly hasn't done what I think we all wished it could do for a person like Mr. Heard, who entered the system at age 15. And would appear, has not been able to get out. However, I have to look at public safety. And Mr. Heard has—it would appear regularly been in possession of a firearm unlawfully since going back to at least 2011 and has, as indicated by the State at the time that this offense happened, he was on Federal supervised release. He has seven criminal history points. I have no doubt that Mr. Heard . . . has remorse and that he very much regrets the decision he made. I have no doubt, and it's very clear he has a family here that loves him very much. And Mr. Heard is more than his worst day. However, I need to take into consideration the public safety. And Mr. Heard has consistently shown that he is . . . a great risk to public safety, and as the state pointed out, his behavior has escalated. And in this case, someone almost died. And for those reasons, I am going to sentence you to the top of the range, Mr. Heard.

This appeal follows.

DECISION

Heard maintains that the district court abused its discretion when it imposed the 204-month sentence because the district court's decision was contrary to law, logic, and the facts in the record.² We disagree.

“Sentences imposed by the district court are reviewed for abuse of discretion.” *State v. Delk*, 781 N.W.2d 426, 428 (Minn. App. 2010), *rev. denied* (Minn. July 20, 2010). A

² Heard does not challenge his guidelines sentencing range of 135 to 189 months per Minnesota Sentencing Guidelines 4.A or the application of the three-month and 12-month enhancements under Minnesota Sentencing Guidelines 2.B.2.c and 2.G.14.b, which resulted in the parties' agreed-upon sentencing range of 150 to 204 months.

district court abuses its discretion when its decision is contrary to law or against logic and the facts on record. *Riley v. State*, 792 N.W.2d 831, 833 (Minn. 2011). A district court rarely abuses its discretion when it imposes a sentence within the presumptive guidelines range. *See Delk*, 781 N.W.2d at 428-29. “This court will generally not exercise its authority to modify a sentence within the presumptive range ‘absent compelling circumstances.’” *Id.* (quoting *State v. Freyer*, 328 N.W.2d 140, 142 (Minn. 1982)). Appellate courts may modify a presumptive sentence when the sentence is “inconsistent with statutory requirements, unreasonable, inappropriate, excessive, unjustifiably disparate, or not warranted by the findings of fact issued by the district court.” Minn. Stat. § 244.11, subd. 2(b) (2020).

The Minnesota Sentencing Guidelines establish presumptive sentences for felony offenses. Minn. Sent’g Guidelines 2.C (Supp. 2021). For any given offense, the guidelines sentence is “presumed to be appropriate for all typical cases sharing criminal history and offense severity characteristics.” Minn. Sent’g Guidelines 1.B.13 (Supp. 2021). Accordingly, the district court “must pronounce a sentence . . . within the applicable [presumptive guidelines] range . . . unless there exist identifiable, substantial, and compelling circumstances to support a departure.” Minn. Sent’g Guidelines 2.D.1 (Supp. 2021). “[A]ny sentence within the presumptive range . . . constitutes a presumptive sentence.” *Delk*, 781 N.W.2d at 428.

Heard contends that the district court relied on dismissed felon-in-possession charges when it sentenced him and that such reliance on an unsubstantiated pattern of prior firearm possession was contrary to law. In support of his argument, Heard quotes *State v.*

Womack, 319 N.W.2d 17, 19-20 (Minn. 1982), asserting that the district court was ““not entitled to act as factfinder and determine whether’ Heard had engaged in conduct that was the subject of dismissed charges and charges for which he was acquitted.” In a nonprecedential but persuasive opinion, we rejected the appellant’s use of *Womack* to support a similar contention. See *State v. Middleton*, No. A21-1291, 2022 WL 3349044, at *3 (Minn. App. Aug. 15, 2022), *rev. denied* (Minn. Oct. 26, 2022).³ In *Middleton*, we concluded that *Womack* did not apply because—unlike the district court in *Womack*, which imposed an upward durational departure—the district court in *Middleton* imposed a presumptive guidelines sentence. *Id.* We therefore noted in *Middleton* that the applicable jurisprudence was “the well-developed caselaw . . . that an appellate court ‘generally will not interfere with a sentencing court’s decision to impose a term within the presumptive sentence range.’” *Id.* (quoting *State v. Kangbateh*, 868 N.W.2d 10, 14 (Minn. 2015)). And because appellant cited no authority “for the proposition that a district court errs by considering conduct underlying dismissed charges when imposing a presumptive sentence[,],” we concluded that appellant had not established that the district court erred by considering such conduct. *Id.*

Consistent with our persuasive reasoning in *Middleton*, we decline to extend *Womack* here, where the district court likewise imposed a presumptive guidelines sentence instead of an upward durational departure. And, as in *Middleton*, because Heard neglected

³ See Minn. R. Civ. App. P. 136.01, subd. 1(c) (“Nonprecedential opinions . . . are not binding authority . . . , but nonprecedential opinions may be cited as persuasive authority.”).

to cite any authority to support his argument, we conclude that Heard has failed to establish that the district court abused its discretion by considering the entirety of Heard's prior firearm-possession conduct in imposing a presumptive sentence. *Id.*

Even assuming without deciding that the district court erred by relying on an unproven pattern of firearm possession, the district court did not abuse its discretion in sentencing Heard to 204 months because that sentencing decision was supported by other facts in the record. *See State v. Lopez*, 988 N.W.2d 107, 116 (Minn. 2023) (explaining that “[a] clearly erroneous finding . . . does not require a new trial when independent findings of fact, decisive of the case, are supported by the record.” (citing *Hanka v. Pogatchnik*, 276 N.W.2d 633, 636 (Minn. 1979)) (other citation omitted)).

The district court based its decision to sentence Heard to 204 months on the following: that Heard had seven criminal-history points; that Heard's conduct over time had demonstrated that he posed “a great risk to public safety”; that Heard was on federal supervised release at the time of the charged incident; and that the victim almost died. These facts are reasonably supported by the record. The PSI specified that Heard's criminal-history score was seven, and the parties confirmed that score as correct at the start of the sentencing hearing. The PSI also noted that Heard was on federal supervised release at the time of the incident. Heard's criminal history and the facts of Heard's underlying conviction reasonably support the district court's determination that Heard is a risk to public safety. And the record establishes that Heard shot the victim in the chest and that the victim sustained serious injuries. We therefore conclude that the district court's factual findings adequately sustain its sentencing determination. *See Lopez*, 988 N.W.2d at 116.

Heard argues next that the district court relied on an escalation of criminal behavior that was not supported by the record. Beginning in 2004, Heard was convicted of: first-degree assault; aiding and abetting attempted theft of a motor vehicle; aiding an offender; third-degree drug possession; fleeing a peace officer in a motor vehicle; driving while impaired; and first-degree assault. Because the record evidence reasonably supports the district court's finding that Heard had exhibited an escalation in his criminal behavior over time, we conclude that this argument is unavailing.

Heard further contends that the district court's reliance on an escalation in his criminal behavior "as justification for a longer sentence, while simultaneously acknowledging that . . . 'th[e criminal justice] system certainly hasn't done what . . . we all wished it could do for a person like Mr. Heard,'" was contrary to logic. Although the district court acknowledged that incarceration had not worked before, the court conveyed that incapacitation of Heard through a long sentence was the only option available to address its concern about the demonstrated, significant, and escalating risk that Heard's behavior posed to public safety. Because the district court's public-safety determination is reasonably supported by the record, we conclude that its decision was not contrary to logic.

Heard maintains that the district court "did not expressly consider" his "suicidality at the time of the offense." But a district court "is not required to explain its reasons for imposing a presumptive sentence." *State v. Johnson*, 831 N.W.2d 917, 925 (Minn. App. 2013), *rev. denied* (Minn. Sept. 17, 2013). And appellate courts "may not interfere with the sentencing court's exercise of discretion, as long as the record shows the sentencing 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). Based on our careful review of the record, the district court evaluated all the information presented to it before rendering its sentencing decision.

Heard also asserts that compelling circumstances warrant a lower presumptive sentence. Heard seems to argue that his remorse, his family’s support, his cooperation, his attitude, and his suicidal ideations constitute compelling circumstances that would allow this court to order a sentence modification. But Heard bargained for a sentencing range of 150 to 204 months. And he received a presumptive guidelines sentence within that range, which is presumed reasonable. *See* Minn. Sent’g Guidelines 1.B.13. Given our review of the record, we do not discern any sufficiently compelling circumstances requiring reversal.

Moreover, although Heard expressed remorse at the sentencing hearing and his attorney noted that Heard had familial support, the district court was not persuaded by these circumstances. Instead, the district court noted that, while it had “no doubt” Heard felt remorse and it was clear that he had family present, the court nonetheless “need[ed] to take into consideration the public safety.” We will not interfere with the district court’s discretionary decision to discount Heard’s claims of remorse and familial support in favor of a guidelines sentence within the presumptive range. *See Kangbateh*, 868 N.W.2d at 14.

Heard relies on the same factors to argue that the interests of fairness warrant a lower sentence. As noted above, Heard received a guidelines sentence, which is “presumed to be appropriate for all typical cases sharing criminal history and offense severity characteristics.” Minn. Sent’g Guidelines 1.B.13. We therefore discern no unfairness in the district court’s sentencing determination.

Finally, we note that the plea agreement allowed Heard to avoid trial on the attempted second-degree murder charge and the risk of a longer sentence than agreed upon.⁴ Plea agreements “are in many ways analogous to a contract between the state and a defendant.” *State v. Meredyk*, 754 N.W.2d 596, 603 (Minn. App. 2008). Plea agreements essentially “represent a bargained-for understanding between the government and criminal defendants in which each side foregoes certain rights and assumes certain risks in exchange for a degree of certainty as to the outcome of criminal matters.” *Id.* (quotations omitted). That Heard agreed to a sentencing range of 150 to 204 months to avoid the sentencing risks associated with an attempted second-degree murder trial reinforces our conclusion that the district court did not abuse its discretion in sentencing Heard to 204 months. *See id.*

Affirmed.

⁴ With the stipulated enhancements, Heard’s guidelines range for attempted second-degree murder, in violation of Minnesota Statutes section 609.19, subdivision 1(1), with reference to Minnesota Statutes section 609.17, subdivision 4(2), would have been 189 to 247 months. *See* Minn. Sent’g Guidelines 2.B.2.c, 2.G.2 (Supp. 2021), 2.G.14.b, 4.A.