

*This opinion is nonprecedential except as provided by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
A23-0958**

Brandon Maurice Baker, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed January 29, 2024
Affirmed
Slieter, Judge**

Ramsey County District Court
File No. 62-CR-19-8404

Cathryn Middlebrook, Chief Appellate Public Defender, Rebecca Ireland, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

John J. Choi, Ramsey County Attorney, Alexandra Meyer, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Considered and decided by Slieter, Presiding Judge; Cochran, Judge; and Larson, Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

In this appeal from an order denying postconviction relief, appellant argues that the postconviction court abused its discretion in denying his petition for two reasons: (1) the sentencing court erred by assigning a severity level 9 to the offense of aiding an offender

after the fact and (2) the sentencing court erred by denying his motion for a downward durational departure. Because the sentencing court acted within its discretion by assigning a severity level 9 to the unranked offense and by denying a sentencing departure, we affirm the postconviction court's denial of appellant's petition.

FACTS

Appellant Brandon Maurice Baker filed a petition for postconviction relief in district court, seeking resentencing for his conviction of intentionally aiding an offender as an accomplice after the fact in violation of Minn. Stat. § 609.495, subd. 3 (2018).

In October 2019, officers responded to multiple 911 calls reporting a shooting. Baker and Baker's brother were later arrested. Baker's brother, as the gunman, was ultimately convicted of second-degree murder for killing one individual, and of attempted second-degree murder for injuring another. Baker entered an *Alford* plea¹ to two counts of intentionally aiding an offender pursuant to subdivision 3 of section 609.495, which is an unranked offense pursuant to the sentencing guidelines. Baker was convicted of both counts but sentenced on only one. The sentencing court assigned the offense a severity level 9 and imposed an executed guidelines prison sentence of 86 months.

In his petition for postconviction relief, Baker claimed that the sentencing court abused its discretion by assigning a severity level 9 to the offense and by denying his

¹ An *Alford* plea allows a defendant to plead guilty while maintaining innocence of the charged offense. *State v. Goulette*, 258 N.W.2d 758, 760-61 (Minn. 1977) (discussing *North Carolina v. Alford*, 400 U.S. 25 (1970)).

motion for a downward durational departure. The postconviction court denied Baker's petition.

Baker appeals.

DECISION

Baker contends that the postconviction court abused its discretion by denying his petition: (1) by determining that the sentencing court had properly assigned a severity level 9 to his offense; and (2) by determining that the sentencing court properly denied his motion for a downward durational departure. We disagree.

"We review the denial of a petition for postconviction relief for an abuse of discretion." *Pearson v. State*, 891 N.W.2d 590, 596 (Minn. 2017). Legal conclusions are reviewed *de novo* and findings of fact are reviewed for clear error. *Id.*

A. The sentencing court acted within its discretion in assigning a severity level 9 to appellant's offense.

Before a district court sentences a defendant for a felony-level offense, it must determine the presumptive sentence based on the severity level of the offense and the offender's criminal-history score. *State v. Bertsch*, 707 N.W.2d 660, 666 (Minn. 2006). The Minnesota Sentencing Guidelines specify a severity level for most criminal offenses. Minn. Sent'g Guidelines 2.A (Supp. 2019). However, certain crimes are not assigned a severity level and are left unranked. Aiding an offender in violation of Minn. Stat. § 609.495, subd. 3, is an unranked offense. Minn. Sent'g Guidelines 5.A (Supp. 2019).

For unranked offenses, the sentencing court "must assign an appropriate severity level for the offense and specify on the record why that particular level was assigned."

Minn. Sent’g Guidelines 2.A.4 (Supp. 2019). The assignment of an appropriate severity level to an unranked offense is guided by consideration of the following factors:

- (1) The gravity of the specific conduct underlying the unranked offense;
- (2) The severity level assigned to any ranked offense with elements that are similar to the elements of the unranked offense;
- (3) The conduct of and severity level assigned to other offenders for the same unranked offense; and
- (4) The severity level assigned to other offenders engaged in similar conduct.

State v. Kenard, 606 N.W.2d 440, 443-44 (Minn. 2000). An appellate court reviews a district court’s severity-level determination for an abuse of discretion. *Id.* at 442.

In denying Baker’s petition, the postconviction court examined the transcript from Baker’s sentencing hearing and determined: “the sentencing court was thoughtful, spent a significant time researching, reviewing, and considering the facts and the parties’ arguments, laid out the sentencing court’s application of each of the *Kenard* factors, and correctly assigned a severity level 9.” It further noted that, after hearing the state’s arguments for assigning a severity level 10 and Baker’s arguments for assigning a severity level 8:

[T]he sentencing judge found that (1) the gravity of the specific conduct underlying the unranked offense, (2) the severity level assigned to any ranked offense whose elements are similar to those of the unranked offense, (3) the conduct of and severity level assigned to other offenders for the same unranked offense, and (4) the severity level assigned to other offenders who engaged in similar conduct led to a rank of severity level 9.

Our review of the sentencing hearing compels our agreement with the postconviction court. The sentencing court carefully considered all of the *Kenard* factors before assigning a severity level 9. We now consider how the sentencing court considered each factor.

The Gravity of the Underlying Conduct

The sentencing court found that Baker committed multiple acts of concealment and that the relevant conduct was ongoing rather than isolated; that he actively participated in destroying evidence by cleaning out the van used to flee the crime scene; and that he initially left and subsequently returned, continuing to help conceal the crime by driving the van to another state. The sentencing court's consideration of this factor supports its assignment of a severity level 9.

The Severity Level Assigned to any Ranked Offense with Similar Elements

The sentencing court correctly noted that Minn. Stat. § 609.495, subd. 1 (2018), has similar elements to the offense for which Baker was convicted and is ranked at the lowest severity level of one. *See id.* at 443-44 (determining that the “ranked offense most similar to [Minn. Stat. § 609.495, subd. 3] is aiding an offender under Minn. Stat. § 609.495, subd. 1(a)” and concluding that, while subdivision 1 offenses have a severity level of one, “[o]bviously, the legislature considers convictions under subdivision 3 more serious than those under subdivision 1”). The sentencing court then noted its reasons to consider that Baker's offense was much more serious than that ranked offense and reiterated its reasoning that we describe above in the first factor. The sentencing court's consideration of this factor supports its assignment of a severity level 9.

The Conduct of and Severity Level Assigned to Other Offenders for the Same Unranked Offense, and the Severity Level Assigned to Other Offenders Engaged in Similar Conduct

The sentencing court combined its consideration of the third and fourth *Kenard* factors. It reviewed several cases involving offenders sentenced for the same unranked offense as Baker, and it compared the severity levels assigned in those cases based on the similarity of the offender's conduct to Baker's to inform its own severity level assignment. It summarized its approach as follows:

I took to heart what some of the case law said and that is that the Court cannot pick a number and then find a severity level or an area to fit that number. I actually did what the case law said, I looked at the law and I looked at other similar cases. I looked at the sentencing guidelines; history of unranked offenses, I went to our Judge's Criminal Bench book, and I'll indicate some of the cases that I've reviewed later. But I've looked at the law first before addressing the severity level. I also reviewed the memos.

It is evident, therefore, that the sentencing court methodically considered all the *Kenard* factors before assigning a severity level 9 to the offense for which Baker was sentenced. The district court acted within its discretion to deny Baker's postconviction petition on this basis.

B. The sentencing court acted within its discretion to deny Baker's request for a downward durational departure.

Baker argues that "[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," and he contends that his conduct "was significantly less serious and less onerous than that typically involved in the commission of this offense."

Appellate courts “afford the [sentencing] 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) (quotation omitted). A sentence that is prescribed by the sentencing guidelines is “presumed to be appropriate.” Minn. Sent’g Guidelines 1.B.13 (Supp. 2019). “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.” *State v. Delk*, 781 N.W.2d 426, 428 (Minn. App. 2010), *rev. denied* (Minn. July 20, 2010).

In denying postconviction relief, the district court “carefully review[ed] the record” and concluded that the sentencing court considered Baker’s argument for a departure, before rejecting it. Our review of the sentencing hearing transcript supports the district court’s conclusion.

A district court may depart from a presumptive sentence if “identifiable, substantial, and compelling circumstances” warrant a departure. Minn. Sent’g Guidelines 2.D.1 (Supp. 2019). However, a district court is not required to depart from a presumptive sentence merely because it has the discretion to do so. *State v. Olson*, 765 N.W.2d 662, 664-65 (Minn. App. 2009) (concluding that “[i]t is within the district court’s broad discretion to reach [the] conclusion” that “the presumptive sentence was appropriate”).

Notably, the durational departure sought by Baker was to a sentence of 48 months’ imprisonment. This is the presumptive mid-range sentence for a severity level 8 offense, the severity level he argued should have been assigned to this unranked offense. As we have already explained, the sentencing court carefully considered the *Kenard* factors before

assigning a severity level 9 to Baker's offense. By rejecting Baker's argument to be sentenced at a lower severity level, the sentencing court necessarily found that Baker's conduct was not less serious than usual for this offense. Therefore, the sentencing court acted within its discretion by denying Baker's departure motion.²

Affirmed.

² Baker also claims that the sentencing court abused its discretion by imposing a middle-of-the-box level 9 sentence instead of a bottom-of-the-box level 9 sentence. However, any sentence within the presumptive range is considered a presumptive sentence. *State v. Jackson*, 749 N.W.2d 353, 359 n.2 (Minn. 2008) (stating that "the lowest is not a downward departure, nor is the highest an upward departure"). Therefore, the postconviction court acted within its discretion to deny relief on this basis.