

*This opinion is nonprecedential except as provided by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
A25-0266**

State of Minnesota,
Respondent,

vs.

Brandon Lee Gardas,
Appellant.

**Filed December 22, 2025
Affirmed in part, reversed in part, and remanded
Wheelock, Judge**

Wright County District Court
File Nos. 86-CR-22-3064, 86-CR-22-3065

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

Brian A. Lutes, Wright County Attorney, Jennifer K. Buske, Assistant County Attorney,
Buffalo, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bentley, Presiding Judge; Wheelock, Judge; and Larson,
Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

In this direct appeal from his conviction for attempted second-degree intentional murder, appellant Brandon Lee Gardas argues the district court erred by (1) imposing a sentence in the middle of the presumptive range of the sentencing guidelines without

addressing his argument for a sentence at the bottom of the range and (2) imposing a \$300 fine. Because the district court properly imposed a presumptive sentence, we affirm Gardas's term of imprisonment, but we reverse in part and remand for vacation of the fine because the district court improperly imposed an unauthorized fine for attempted second-degree intentional murder.

FACTS

On June 20, 2022, Wright County law enforcement received a report from Gardas's pastor that, while the pastor was visiting Gardas's residence, Gardas pulled out a gun and waved it in the pastor's face. Officers also received a report from another source that Gardas possessed a high-powered assault rifle. Due to these reports, law enforcement obtained a warrant to search for firearms at Gardas's residence. Gardas had multiple prior convictions that made him ineligible to possess a firearm and outstanding warrants for failing to appear in court in other matters. Gardas's residence is located in an urban neighborhood near other houses, businesses, apartment complexes, and an elementary school. For the safety of those in the surrounding area, law enforcement decided to use a "contain and call out" method to prompt Gardas to leave his residence that involved officers surrounding his home and commanding anyone inside to peacefully exit.

On June 21, an armored-vehicle convoy that included Wright County Emergency Response Team members and the St. Cloud SWAT Team arrived at Gardas's property and gave commands for all occupants to immediately exit the residence. Officers were aware that Gardas and his 13-year-old son were present in the residence. Although officers gave the commands several times, nobody exited the residence.

Officers used a breaching tool attached to an armored vehicle to breach the front door of the residence and deliver a chemical agent inside, after which Gardas's son exited, but Gardas did not. Gardas called Wright County dispatch and said he was going to start firing at police officers. Gardas then began firing a gun, and multiple bullets struck the St. Cloud SWAT Team's vehicles; one of the bullets Gardas fired came close to hitting a deputy in one of the vehicles.

To gain access to the residence, officers began to dismantle it from the outside. During this process, Gardas fired 12 rounds at another armored vehicle from what appeared to be an automatic weapon. Over 24 hours after first arriving on the scene, officers entered the residence. Gardas fired multiple shots at officers once they entered the residence. Officers returned fire, striking Gardas in the chest; then they tased Gardas and arrested him. Officers found numerous firearms in his residence, including assault rifles and semi-automatic weapons. Officers also found 324 grams of marijuana plant, 26.2 grams of marijuana wax, and 72.6 grams of psilocybin mushrooms.

Respondent State of Minnesota charged Gardas with two counts each of attempted first-degree intentional murder of a peace officer and first-degree assault of a peace officer and one count each of illegal possession of a firearm, second-degree drug possession, fifth-degree drug possession, and felony threats of violence. It amended the charges against Gardas to include attempted second-degree intentional murder in violation of Minn. Stat.

§ 609.19, subd. 1(1) (2020), and illegal possession of a firearm in violation of Minn. Stat. § 624.713, subd. 1(2) (2020). Gardas entered an *Alford* plea to the amended charges.¹

The plea agreement allowed Gardas to argue at sentencing for a downward durational departure to 120 months' imprisonment for the attempted second-degree murder offense. The district court clarified at the plea hearing that the maximum sentence for that offense would be 153 months per the plea agreement and that "the court would have discretion in between those two." Gardas's counsel agreed, then noted that the maximum penalty for second-degree intentional murder is 40 years and that, for an attempt of the same offense, the punishment is reduced by half for a maximum of 20 years. Gardas's counsel also stated, "There is no fine on second degree intentional murder." The district court agreed, and the state did not object.

At the sentencing hearing, the district court noted that it had received the presentence-investigation (PSI) report, which included a recommendation for a sentence of 153 months; sentencing worksheets; a letter from Gardas's wife; and submissions from Gardas, including a report from the dispositional advisor at the public defender's office, letters of support from jail staff, and a list of programming in which Gardas participated while in jail. The prosecutor then recited the facts of the case and asked for a midrange presumptive sentence under the guidelines—153 months' imprisonment. In response to

¹ An *Alford* plea allows a district court to accept a guilty plea from a defendant, even if the defendant asserts innocence, provided that there is a "strong factual basis" for the plea. *State v. Theis*, 742 N.W.2d 643, 649 (Minn. 2007); *see also North Carolina v. Alford*, 400 U.S. 25, 38 (1970).

Gardas’s argument for a durational departure, the prosecutor said, “[T]here’s really no reason to deviate from the middle of the box of 153 months.”

Gardas’s counsel requested that the district court grant Gardas either a downward durational departure to 120 months or “in the alternative something at the low end of the box . . . 130.5 months.” To support that request, Gardas’s counsel cited Gardas’s improvements during his incarceration and his desire to work on himself. Gardas also read a statement to the district court, after which the court observed that Gardas’s behavior had vastly improved over the past two years and that it was clear that Gardas was working on himself: “I believe that you have made a significant effort to change your life for the better.” Notwithstanding these positive steps, the district court found that “substantial and compelling reasons” did not exist to support a departure from the sentencing guidelines because Gardas’s offense was *more* serious than other attempted-murder cases.

The district court sentenced Gardas to 153 months’ imprisonment and a \$300 fine on the attempted second-degree murder conviction, and to a concurrent 60 months’ imprisonment on the firearm-possession conviction.

Gardas appeals.

DECISION

I. The district court did not err in sentencing Gardas to a presumptive sentence.

A district court has broad discretion to impose sentences, and an appellate court will not reverse a sentencing decision absent an abuse of that discretion. *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014). “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). Only in a rare case will a reviewing court reverse a district court’s imposition of a presumptive sentence. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). “[A]n explanation is not required when the [district] court considers reasons for departure but elects to impose the presumptive sentence.” *State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985); *see also Delk*, 781 N.W.2d at 428-29 (noting that “[a] sentence within the range provided in the appropriate box on the sentencing guidelines grid is not a departure from the presumptive sentence”).

The Minnesota Sentencing Guidelines establish presumptive sentences for felony offenses. *See* Minn. Stat. § 244.09, subd. 5 (2020). The guidelines include grids, and the presumptive sentence range is determined by looking at the cell that appears at the intersection of the offender’s criminal-history score and the severity level of the offense on the applicable sentencing grid. Minn. Sent’g Guidelines 2.C.1 (Supp. 2021). If the cell contains three numbers, the middle number (“middle of the box”) is the “presumptive fixed sentence” and the other two numbers represent a range extending from 15% below the fixed sentence (“bottom of the box”) to 20% above the fixed sentence (“top of the box”). *Id.*; *see also State v. Jackson*, 749 N.W.2d 353, 359 n.2 (Minn. 2008). All three numbers in the cell represent a presumptive sentence. *Delk*, 781 N.W.2d at 428.

Per the plea agreement, Gardas’s sentence for the attempted second-degree murder offense was capped at a maximum of 153 months; however, the presumptive range for attempted second-degree intentional murder is 130.5 to 183.5 months, with 153 months as

the middle-of-the-box sentence.² Although Gardas was sentenced to the maximum sentence allowed under the plea agreement, it was still a sentence in the middle of the presumptive range and was not “inconsistent with statutory requirements, unreasonable, inappropriate, excessive, unjustifiably disparate, or not warranted.” Minn. Stat. § 244.11, subd. 2(b) (2020) (providing guidance for what appellate courts may review regarding an imposed or stayed sentence). Moreover, because the district court imposed a presumptive sentence, it was not required to explain its reasoning. *See Van Ruler*, 378 N.W.2d at 80.

Gardas agrees that the district court is not required to explain its reasons for imposing a presumptive sentence but asserts that the district court erred when it did not address his argument for a sentence at the low end of the presumptive range. In support of this assertion, Gardas cites *State v. Curtiss*, 353 N.W.2d 262, 264 (Minn. App. 1984), for the proposition that this court remanded “for the trial court to exercise discretion at sentencing to consider proper facts.” *Curtiss* is inapposite, however, because the facts involved a remand based on the district court’s denial of the appellant’s motion for a downward durational departure. 353 N.W.2d at 262. Because Gardas challenges the imposition of a presumptive sentence and not the district court’s denial of a downward

² The sentencing guidelines show that a presumptive sentence for second-degree intentional murder is 261 to 367 months, with 306 months as the middle-of-the-box duration. Minn. Sent’g Guidelines 4.A (Supp. 2021). Because the penalty for an attempted crime is half of the attempted crime’s punishment, Minn. Stat. § 609.17, subd. 4(2) (2020), the presumptive range for attempted second-degree intentional murder is 130.5 to 183.5 months, with 153 months as the middle-of-the-box sentence.

durational departure, we agree with the state that *State v. Nadler*, No. A24-0398, 2025 WL 669805 (Minn. App. Mar. 3, 2025),³ is more on point with the present facts.

In *Nadler*, the appellant challenged a middle-of-the-box presumptive sentence, arguing that the district court abused its discretion by not granting a “bottom-of-the-range” sentence and not “explaining its reasons for imposing a presumptive midrange sentence.” *Nadler*, 2025 WL 669805, at *1-2. We affirmed the district court’s ruling, noting that the record showed the district court “carefully evaluated all the testimony and information presented before making a determination” and therefore did not abuse its discretion when it did not “articulate reasons for imposing a sentence within the presumptive range.” *Id.* at *2.

“[A]s long as the record shows the sentencing court carefully evaluated all the testimony and information presented before making a determination,” this court “may not interfere with the sentencing court[’]s exercise of discretion.” *Van Ruler*, 378 N.W.2d at 80-81. After acknowledging all of Gardas’s positive changes since his arrest, the district court found that there were not “substantial and compelling reasons” to grant Gardas a durational departure because his crime was “much more serious than other attempted-murder cases” due to the fact that, during the standoff with Gardas, numerous officers were at risk and the safety and security of the community was put in danger.

Though the district court was not required to give any reasoning on the record for granting a presumptive sentence, it indicated that it was following the recommendations of

³ Nonprecedential opinions are not binding authority but may be cited for their persuasive value. Minn. R. Civ. App. P. 136.01(c).

the plea agreement and that Gardas’s behavior contributed to this decision. “I am going to honor the plea negotiation that you arrived at in this case, and I think in many ways [the] plea negotiation acknowledges the hard work that you’ve done in the—two years since this event.” The record shows the district court carefully evaluated all the information presented before sentencing Gardas to a presumptive sentence of 153 months’ imprisonment. The district court was not required to grant Gardas a “low end of the box” sentence or specifically address his argument for such a sentence.

Because the district court evaluated all the information before it in making a sentencing determination and was not required to articulate its reasoning for imposing a presumptive sentence, we conclude that the district court did not abuse its discretion in its sentencing decision.

II. The district court erred by imposing a \$300 fine for a conviction for attempted second-degree intentional murder.

The parties agree that the district court erred when it imposed a fine for Gardas’s attempted-murder conviction because the fine was not authorized by statute. We agree.

An appellate court reviews the legality of a sentence *de novo*. *State v. DeRosier*, 719 N.W.2d 900, 903 (Minn. 2006). The legislature has the power to define what acts are considered criminal conduct and what punishment for those acts should be. *State v. Osterloh*, 275 N.W.2d 578, 580 (Minn. 1978). A district court’s role in sentencing is “that of the executor of the legislative power,” *id.*, and “[j]udicial sentencing must strictly adhere to statutory authorization,” *State v. Jonason*, 292 N.W.2d 730, 733 (Minn. 1980). A district court, when imposing a sentence, must do so within the bounds created by the legislature.

As Minn. Stat. § 609.17, subd. 4(2), provides, the penalty for an attempted crime is “not more than one-half of the maximum imprisonment or fine or both provided for the crime attempted.” The statute for second-degree intentional murder provides only for a maximum sentence of 40 years; it does not mention a fine. Minn. Stat. § 609.19, subd. 1 (2020).

Both parties cite *State v. Welch* for its persuasive value. No. A22-1515, 2023 WL 6799594 (Minn. App. Oct. 16, 2023). In *Welch*, we reversed the district court’s imposition of a fine when the statute did not authorize it. *Id.* at *3. At sentencing in *Welch*, the district court imposed a \$50 fine in addition to a 480-month prison sentence for the appellant’s conviction for second-degree intentional murder. *Id.* at *1. In reversing the district court’s imposition of a fine, we observed that the legislature established the punishment for second-degree murder as “imprisonment for not more than 40 years” but did not provide for a fine, and we reasoned that, “[b]ecause the statute does not authorize a fine, the district court lacked the authority to impose one.” *Id.* We rejected the state’s argument that the fine was supported by Minn. Stat. § 609.101, subd. 4(1) (2020), which provides that, for “all felony offenses not previously accounted for in prior subdivisions, the court must impose a fine of ‘not less than 30 percent of the maximum fine authorized by law.’” *Id.* at *4 (quoting section 609.101, subdivision 4(1)). However, this court concluded that this subdivision applies only when a fine is “authorized by law” and that “the legislature authorized no fine by law for second-degree murder” as it included no language authorizing a fine in the statute for the offense. *Id.*

Because the punishment for the attempt of a crime is “not more than one-half of the maximum . . . fine . . . provided for the crime attempted,” Minn. Stat. § 609.17, subd. 4(2), and Minn. Stat. § 609.19, subd. 1, does not authorize a fine for second-degree intentional murder, we conclude that the district court erred in imposing a fine of \$300 for Gardas’s conviction and remand for the district court to amend the warrant of commitment.

Affirmed in part, reversed in part, and remanded.