

*This opinion is nonprecedential except as provided by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
A25-1775**

State of Minnesota,
Respondent,

vs.

Robert Kappon Evans,
Appellant.

**Filed April 27, 2026
Affirmed in part, reversed in part, and remanded; motion granted
Segal, Judge***

Hennepin County District Court
File No. 27-CR-24-28325

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appellant)

Considered and decided by Cochran, Presiding Judge; Larkin, Judge; and Segal,
Judge.

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

NONPRECEDENTIAL OPINION

SEGAL, Judge

In this direct appeal from a judgment of conviction for aiding and abetting the importation of controlled substances across state borders, appellant argues that the district court abused its discretion by denying his motion for a downward dispositional departure or, in the alternative, a downward durational departure. He additionally argues that the district court erred in its calculation of his criminal-history score. We affirm the district court's denial of appellant's departure motions, but we reverse appellant's sentence and remand for further findings. We also grant respondent's motion to strike portions of appellant's addendum as being outside of the record on appeal.

FACTS

In December 2024, respondent State of Minnesota charged appellant Robert Kappon Evans with aiding and abetting the importation of controlled substances across state borders in violation of Minn. Stat. § 152.0261, subd. 1 (2022), and first-degree controlled-substance sale in violation of Minn. Stat. § 152.021, subd. 1(1) (Supp. 2023). The criminal complaint alleged that Evans aided and abetted the shipment from California to Minnesota of two parcels that contained 16.129 pounds of cocaine.

Pursuant to a plea agreement reached between Evans and the state, Evans pleaded guilty to the importation charge in exchange for the state's agreement to dismiss the sale charge. The plea was entered as a straight plea with no agreement on sentencing, except that it was understood that Evans would move for downward departures and that the state

would “likely” seek a sentence within the guidelines range. The plea petition also indicated that Evans had a criminal-history score of six.

Prior to sentencing, Evans filed motions for both a downward dispositional and durational departure. In support of his motions, Evans submitted information that detailed his difficult childhood, his success in overcoming drug addiction, that he was a good father and sole custodian of his young son, and his significant community involvement. He also submitted 13 letters of support.

At the sentencing hearing, the district court noted that it had carefully reviewed and considered the materials provided by Evans in support of his motions for a downward departure. The district court, nevertheless, denied the motion for a downward dispositional departure because Evans failed to establish that he was particularly amenable to probation given his history of noncompliance with supervised-release conditions. The district court also denied his motion for a downward durational departure, concluding that the offense, involving over 16 pounds of cocaine, was not less serious than the typical aiding and abetting importation offense. The district court sentenced Evans to a bottom-of-the-box sentence of 135 months in prison based on a criminal-history score of six.¹

¹ The district court’s sentence and criminal-history score are consistent with the presentence investigation report, which is confidential and not available to the public.

DECISION

I. The district court’s denial of Evans’s departure motions was not an abuse of discretion.

District courts are “afford[ed] great discretion in the imposition of sentences” and appellate courts “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 district court’s discretion, however, is limited by the Minnesota Sentencing Guidelines. *Id.* at 308. The sentencing range prescribed in the guidelines is “presumed to be appropriate” and the sentencing court “must pronounce a sentence within the applicable range unless there exist identifiable, substantial, and compelling circumstances” to justify a departure. *Id.* (quoting Minn. Sent’g Guidelines 2.D.1 (2012)). A sentence within the guidelines range will be reversed only in a “rare case.” *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). “[A]s long as the record shows the [district] court carefully evaluated all the testimony and information presented before making a determination,” we will not reverse the district court’s refusal to depart. *State v. Pegel*, 795 N.W.2d 251, 255 (Minn. App. 2011) (quotation omitted).

Evans challenges the denial of his motions for both a downward dispositional departure and a downward durational departure.

A. Downward Dispositional Departure

A downward dispositional departure “places the offender in a different setting than that called for by the presumptive guidelines sentence”—e.g., probation instead of prison. *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016). “[A] defendant’s particular amenability to individualized treatment in a probationary setting will justify departure in

the form of a stay of execution of a presumptively executed sentence.” *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). Factors relevant to assessing “particular amenability” include “the defendant’s age, his prior record, his remorse, his cooperation, his attitude while in court, and the support of friends and/or family.” *Id.*

Evans argues that he presented substantial evidence that he is particularly amenable to probation. Evans cites his age of 46, his difficult childhood, that he is a productive member of society, his success in chemical-dependency treatment, that his criminal history was based on offenses that had occurred many years earlier, between 1998 and 2009, that he is a devoted father with sole custody of his seven-year-old son, and that he pleaded guilty to take responsibility for the offense.

We are not persuaded, however, that Evans’s arguments demonstrate an abuse of discretion by the district court. Evans does not identify any error of law nor does he contend that the district court failed to consider either the materials he submitted or the arguments that he made. *See Pegel*, 795 N.W.2d at 255. And the transcript from the sentencing hearing supports the contrary conclusion—that the district court fully considered his submissions and argument but chose to exercise its discretion to sentence Evans within the low end of the guidelines range. Consequently, this is not the rare case that warrants reversal.

B. Downward Durational Departure

“[A] durational departure is a sentence that departs in length from the presumptive guidelines range.” *Solberg*, 882 N.W.2d at 624. To justify a downward durational

departure, the defendant's conduct must be "significantly less serious than that typically involved in the commission of the offense." *Id.* (quotation omitted).

Although Evans acknowledges this standard, he does not advance an argument that his conduct was "significantly less serious" than what is typical of the offense of aiding and abetting the importation of a controlled substance. Indeed, as the district court noted during the sentencing hearing, the amount of cocaine involved in Evans's offense of over 16 pounds was "about 145 times greater than the first-degree possession threshold[]" of 50 grams, the level of offense to which Evans pleaded guilty. *See* Minn. Stat. §§ 152.021, subd. 2(a)(1) (Supp. 2023), .0261, subd. 1. We thus discern no abuse of discretion by the district court in denying Evans's motion for a downward durational departure.

II. The district court abused its discretion in its calculation of Evans's criminal-history score.

Evans next challenges the district court's calculation of his criminal-history score. He argues that his 2002 convictions for two of the three counts in a federal case (2002 federal case) should not count toward his criminal-history score. Evans did not object to the calculation of his criminal-history score at sentencing. But a court may, at any time, "correct a sentence not authorized by law." Minn. R. Crim. P. 27.03, subd. 9. And "because a sentence based on an incorrect criminal history score is an illegal sentence," a defendant may not forfeit review of a criminal-history score calculation. *State v. Maurstad*, 733 N.W.2d 141, 147 (Minn. 2007).

In the addendum to his appellate brief, Evans included several documents contained in the court file of his 2002 federal case. Those documents, however, were not part of the

record before the district court and the state moved to strike the documents. The record on appeal consists of the “documents filed in the trial court, the exhibits, and the transcript of the proceedings.” Minn. R. Civ. App. P. 110.01. “An appellate court may not base its decision on matters outside the record on appeal, and may not consider matters not produced and received in evidence below.” *Thiele v. Stich*, 425 N.W.2d 580, 582-83 (Minn. 1988).

Evans, in response to the motion to strike, appears to concede that these documents are not part of the record on appeal but nonetheless argues that inclusion of these documents is necessary to determine his criminal-history score. That may well be, but as the state notes in its brief, the district court is the proper place to submit such documentation in the first instance. Because these documents are not part of the record on appeal, we grant the state’s motion to strike the three federal court documents contained in Evans’s addendum. *See, e.g., Fabio v. Bellomo*, 489 N.W.2d 241, 246 (Minn. App. 1992) (noting that this court “will strike documents included in a party’s brief[ing] that are not part of the appellate record”), *aff’d*, 504 N.W.2d 758 (Minn. 1993).

On the merits of his sentencing challenge, Evans argues that it was error to add four and one-half points to his criminal-history score because the state failed to prove that he was sentenced on more than one of the convictions from his 2002 federal case. *See* Minn. Sent’g Guidelines 2.B.1 (Supp. 2023) (providing that points should be added to a criminal-history score for prior felony convictions only when “a felony sentence was stayed or imposed before the current sentencing or a stay of imposition of sentence was given before the current sentencing”); *see also State v. Campbell*, 814 N.W.2d 1, 7 (Minn. 2012). We

“review determinations of a defendant’s criminal history score for an abuse of discretion.” *State v. Edwards*, 900 N.W.2d 722, 727 (Minn. App. 2017), *aff’d*, 909 N.W.2d 594 (Minn. 2018).

The state “has the burden at a sentencing hearing of establishing the facts necessary to justify consideration of out-of-state convictions in determining a defendant’s criminal history score.” *State v. McAdoo*, 330 N.W.2d 104, 109 (Minn. 1983). To meet this burden, the state must “produce evidence to establish by a fair preponderance of the evidence the validity of the prior convictions, the fact that the defendant was the person involved, and that the crimes constituted felonies in Minnesota.” *State v. Griffin*, 336 N.W.2d 519, 525 (Minn. 1983).

Here, it appears that the sole documentation in the record related to Evans’s convictions in the 2002 federal case is contained in the presentence investigation report (PSI). Having reviewed the confidential PSI, we agree with Evans that it does not indicate whether he was sentenced on all three counts in the 2002 federal case. Based on a recent precedential decision of this court, we conclude that the information in the PSI, by itself, is not sufficient to satisfy the state’s burden of proof to support the district court’s inclusion of four and one-half points for the convictions in the 2002 federal case. *See State v. Johnson*, 31 N.W.3d 566 (Minn. App. 2026).

In *Johnson*, the district court added points to the defendant’s criminal-history score based on three out-of-state convictions. *Id.* at 568-71. The only evidence presented to the court concerning the out-of-state convictions were summaries contained in the PSI and a criminal sentencing worksheet. *Id.* at 570-71. The state did not present any testimony

from the probation officer who prepared the PSI or any other evidence to support the existence of the out-of-state convictions. *Id.* The defendant did not object to the inclusion of points for the out-of-state convictions, but neither did he “admit facts relating to any of those convictions” nor “concede that the PSI’s descriptions of the convictions were accurate.” *Id.*

On appeal, the defendant in *Johnson* challenged the inclusion of the out-of-state convictions on the ground that the summary in the PSI was inadequate to satisfy the state’s burden of proof. *Id.* at 568. While underscoring that a certified copy of an out-of-state conviction is not necessarily required, we agreed that the PSI, without more, was not sufficient. *Id.* at 572-74; *see also Griffin*, 336 N.W.2d at 525 (explaining that, despite the absence of a certified copy of conviction, the state introduced sufficient information to meet its burden of proving that the defendant had a prior conviction); *State v. Jackson*, 358 N.W.2d 681, 682-83 (Minn. App. 1984) (explaining that in-court statements from probation officer outlining efforts undertaken to prove conviction provided sufficient “[o]ther evidence of the contents of official records” in the absence of a certified copy of a conviction).

We held that “the state does not satisfy its burden of establishing the validity of the convictions and that the defendant was the person involved by relying solely on a PSI that does not meet the standard set forth in [Minnesota Rule of Evidence] 1005.”² *Johnson*, 31

² Minnesota Rule of Evidence 1005 provides:

The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or

N.W.3d at 575. The opinion concludes that the PSI, by itself, was not sufficient and failed to satisfy the standards of rule 1005 because:

The PSI is not a certified copy of the conviction records, it is unsupported by the testimony of any witness “who has compared it with the original” conviction records, and there is no showing that a copy of the conviction records complying with the rule “cannot be obtained by the exercise of reasonable diligence.”

Id. at 573 (quoting Minn. R. Evid. 1005). We therefore reversed and remanded to allow the state to further develop the sentencing record. *Id.* at 575-76.

Our review of the record, here, does not reveal information regarding Evans’s out-of-state convictions other than information contained in the PSI. Applying our holding in *Johnson*, we conclude that this, by itself, is inadequate to satisfy the state’s burden of proof that four and one-half points should be added to Evans’s criminal-history score based on the 2002 federal case.

The state, which did not have the benefit of our recently released opinion in *Johnson* when it submitted its brief, cites to *State v. Dixon* in arguing that the state met its burden by relying on the PSI because Evans does not dispute the fact of conviction. 415 N.W.2d 414, 419 (Minn. App. 1987), *rev. denied* (Minn. Jan. 20, 1988). But in *Dixon*, the defendant only disputed the failure to provide better documentation of his conviction, while

filed, including data compilations in any form, if otherwise admissible, may be proved by copy, certified as correct in accordance with Rule 902 or testified to be correct by a witness who has compared it with the original. If a copy which complies with the foregoing cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given.

conceding that he was convicted. *Id.* By contrast here, Evans is not challenging the lack of documentation that he was convicted in the 2002 federal case. Instead, he argues that there was inadequate evidence presented to prove that he was sentenced on all three convictions in his 2002 federal court case. *Dixon* is thus inapposite to the issue presented here.

Evans seeks a remand to the district court for additional findings as to the sentencing in the 2002 federal case. We agree that is the proper disposition. *See Johnson*, 31 N.W.3d at 575-76. On remand, the state may “further develop the sentencing record so that the court can make a proper determination.” *Id.*

Affirmed in part, reversed in part, and remanded; motion granted.