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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1333**

State of Minnesota,
Respondent,

vs.

Casey R. Jones,
Appellant.

**Filed June 17, 2008
Affirmed
Halbrooks, Judge**

Isanti County District Court
File Nos. CR-06-1315, CR-06-1317

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

Jeffrey Edblad, Isanti County Attorney, 555 18th Avenue Southwest, Cambridge, MN 55008 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Mark F. Anderson, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Schellhas, Presiding Judge; Halbrooks, Judge; and Crippen, Judge.*

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

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges his sentence on the ground that the district court abused its discretion by imposing upward durational sentences for appellant's convictions of check forgery, theft by check, and terroristic threats. We affirm.

FACTS

On August 27, 2006, a Minnesota State Trooper stopped appellant Casey R. Jones for speeding. After appellant admitted that he did not have a valid driver's license or proof of insurance, the trooper placed him under arrest. In the course of conducting a search of appellant, the trooper found a checkbook belonging to D.L.J. in appellant's back pocket. A second checkbook in D.L.J.'s name was found in appellant's car during an inventory search. Appellant had recently written numerous checks totaling \$1,249.13 on D.L.J.'s account. Police later learned that two days prior to his arrest, appellant purchased an automobile for \$2,343 using funds from a checking account he had had in his name with the Sherburne State Bank. That checking account was closed as of August 8, 2006. Appellant wrote five additional checks totaling \$216.70 after the account was closed.

Respondent State of Minnesota charged appellant with four felony counts: terroristic threats in violation of Minn. Stat. § 609.713 (2006) (resulting from threatening remarks appellant made at the jail regarding the state trooper who arrested him); check forgery in violation of Minn. Stat. § 609.631, subds. 2(1), 4(3)(a) (2006) (property valued between \$250 and \$2,500); theft by check in violation of Minn. Stat. § 609.52, subds.

2(3)(i), 3(2) (2006) (value of property over \$2,500); and issuing a dishonored check in violation of Minn. Stat. § 609.535, subds. 2, 2a(a)(1) (value more than \$500).

Appellant pleaded guilty to the charges of check forgery, theft by check, and terroristic threats, and the state dismissed the charge of issuing a dishonored check. At the plea hearing, appellant waived his right to a sentencing jury under *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004). He also stipulated that he could be subject to sentencing enhancement for the convictions of check forgery and theft by check under Minn. Stat. § 609.1095, subd. 4 (2006), the career-offender statute.

The presentence investigation (PSI) revealed that appellant had been convicted of at least 24 felonies between 1993 and 2005, the majority of which were financial crimes. The state advised the district court that appellant was also convicted of at least two felonies after his arrest in this matter, and that appellant faced pending charges in Sherburne, Ramsey, Wadena, Wright, and Hennepin counties. Based on appellant's criminal history, the state requested that the district court depart upward and sentence appellant to the statutory maximum of 60 months for the conviction of check forgery and 120 months for the conviction of theft by check. The presumptive sentences for the check-forgery and theft-by-check convictions are 21 and 23 months, respectively. Minn. Sent. Guidelines IV.

The district court, relying on the career-offender statute, departed upward and sentenced appellant to executed terms of 60 months for check forgery and 90 months for theft by check. The court ordered a presumptive concurrent sentence of 30 months for the terroristic-threats conviction. This appeal follows.

DECISION

We may review a sentence imposed by a district court

to determine whether 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. This review shall be in addition to all other powers of review presently existing. The court may dismiss or affirm the appeal, vacate or set aside the sentence imposed or stayed and direct entry of an appropriate sentence or order further proceedings to be had as the court may direct.

Minn. Stat. § 244.11, subd. 2(b) (2006). “In addition to this authority, we have discretion to modify a sentence in the interest of fairness and uniformity.” *Neal v. State*, 658 N.W.2d 536, 546 (Minn. 2003). We review sentencing departures for an abuse of discretion. *State v. Thompson*, 720 N.W.2d 820, 828 (Minn. 2006). Reversal is warranted if the reasons for the departure are improper or inadequate and there is insufficient evidence to justify an aggravated sentence for the offense of which the defendant is convicted. *Taylor v. State*, 670 N.W.2d 584, 588 (Minn. 2003).

Appellant concedes that upward durational departures in sentencing are permissible under the career-offender statute, based on his criminal history. But he argues that this court should conclude that the 60- and 90-month sentences that he received are excessive. He asks this court to reduce those sentences to terms of 42 months for check forgery and 46 months for theft by check—durations that are twice the length of the respective presumptive sentences.

A district court may depart from the presumptive sentence when compelling circumstances exist. Minn. Sent. Guidelines II.D. An upward durational departure is

generally limited to a sentence that is double the maximum presumptive sentence. *State v. Evans*, 311 N.W.2d 481, 483 (Minn. 1981). But a district court may impose a sentence up to the statutory maximum when severe aggravating factors exist. *State v. Williams*, 608 N.W.2d 837, 840 (Minn. 2000).

In addition, when a departure is based upon a legislatively created enhancement provision, severe aggravating factors are not necessary to depart beyond the typical double departure. *Neal*, 658 N.W.2d at 545-46. Minn. Stat. § 609.1095, subd. 4 (2006), states:

Whenever a person is convicted of a felony, and the judge is imposing an executed sentence based on a Sentencing Guidelines presumptive imprisonment sentence, the judge may impose an aggravated durational departure from the presumptive sentence up to the statutory maximum sentence if the factfinder determines that the offender has five or more prior felony convictions and that the present offense is a felony that was committed as part of a pattern of criminal conduct.

At the sentencing hearing, the district court found that (1) appellant had 24 prior theft-related felony convictions based on the dates of conviction enumerated in the PSI;¹ (2) the thefts were committed as part of a pattern of criminal conduct; and (3) the present offenses are felonies. Appellant does not argue that the district court's findings are insufficient under the statute, only that the sentences imposed in the district court's exercise of its discretion were excessive. We disagree. The district court's findings are

¹ Appellant challenges the number of his prior felony convictions. Respondent states in its brief that appellant had 19 prior felony convictions. Regardless of whether the correct number is 24 or 19, it is undisputed that appellant's prior theft-related felony convictions far outnumber the five required by the career-offender statute.

well supported by the record, and the sentences that the district court imposed are both within its discretion and appropriate under the career-offender statute. In addition, appellant's argument in his pro se brief is without merit.

Affirmed.