STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2091

State of Minnesota,
Respondent,

vs.

Walter Ernest Peterson,
Appellant.

Filed October 7, 2008
Affirmed
Toussaint, Chief Judge

Carver County District Court
File No. 10-CR-04-645

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

James Keeler, Carver County Attorney, Martha E. Mattheis, Assistant County Attorney, Carver County Justice Center, 604 East Fourth Street, Chaska, MN 55318 (for respondent)

Richard L. Swanson, 207 Chestnut Street, Suite 235, P.O. Box 117, Chaska, MN 55318 (for appellant)

Considered and decided by Shumaker, Presiding Judge; Toussaint, Chief Judge; and Collins, Judge.*

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

U N P U B L I S H E D O P I N I O N

TOUSSAINT, Chief Judge

In this first-degree criminal-sexual-conduct appeal, appellant Walter Ernest Peterson claims the district court abused its discretion when it sentenced him to a 144-month stayed prison sentence, placed him on probation for 30 years and required him to spend 365 days in jail as a condition of his probation. Because the jail time was reasonably related to the purposes of sentencing and was not unduly restrictive, we affirm.

D E C I S I O N

Appellant argues that the district court abused its discretion because it did not adequately consider the factors favoring or opposing a sentencing departure. Appellant's argument is without merit.[1]

The district court may require a defendant "to serve up to one year incarceration in a county jail" as a condition of probation. Minn. Stat. § 609.135, subd. 4 (2006). The determination of probationary jail time is within the district court's discretion. *State v. Sutherlin*, 341 N.W.2d 303, 305 (Minn. App. 1983). There are no specific guidelines applicable to conditions of probation. *State v. McCalister*, 462 N.W.2d 407, 409 (Minn. App. 1990) (citing Minn. Sent. Guidelines III.A.2). But "conditions of probation must be reasonably related to the purposes of sentencing and must not be unduly restrictive."

[1] Both parties address the district court's imposition of jail time as a departure issue. We note that appellant's stay of execution constituted a downward dispositional departure, but appellant does not challenge the stay. The condition that appellant complete one year of jail time is a condition of probation, not a sentence subject to a dispositional departure.

State v. Friberg, 435 N.W.2d 509, 515 (Minn. 1989). "The trial court may consider the defendant's health in exercising its discretion to set conditions of probation, including jail time." *State v. McLaughlin & Schulz, Inc.*, 397 N.W.2d 9, 11 (Minn. App. 1986).

Here, the district court did not abuse its discretion in sentencing appellant to one year in jail as a condition of his probation. When sentencing appellant, the district court pointed out that the condition of one year of jail time was much less than the 12-year presumptive prison sentence. The district court reasoned that a consequence was necessary for appellant's actions, and his request for house arrest would not serve as a consequence because it would not constitute "much of a change" from his current lifestyle. The imposition of jail time included furlough release to allow appellant to attend sex-offender treatment. Although the district court could consider appellant's health or age in setting conditions of probation, it was not required to do so. The district court's imposition of the 365-day jail term as a condition of appellant's probation was reasonable and not unduly restrictive.

Affirmed.