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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2190**

State of Minnesota,
Respondent,

vs.

Blair Williams,
Appellant.

**Filed October 28, 2008
Affirmed
Schellhas, Judge**

Ramsey County District Court
File No. K0-05-2981

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

Susan E. Gaertner, Ramsey County Attorney, Mark N. Lystig, Assistant County Attorney, 50 West Kellogg Boulevard, Suite 315, St. Paul, MN 55102 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Ngoc L. Nguyen, 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 Harten, Judge.*

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

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges the denial of his petition for postconviction relief, arguing that the district court did not state the reasons for an upward durational departure on the record at the time of sentencing. Because at the time of sentencing, the prosecutor stated the substantial and compelling reasons for upward durational departure and the district court adopted those departure reasons on the record, we affirm.

FACTS

In August 2005, appellant Blair Williams was charged with first-degree aggravated robbery. In his plea agreement, appellant agreed to a 140-month sentence, an upward departure of 23 months from the presumptive sentence,¹ and waived his right to have a jury determine the facts justifying the upward departure. At appellant's plea hearing, the prosecutor asked appellant about his prior violent offenses; appellant confirmed that he had been convicted of attempted robbery, simple robbery, and second-degree assault in the past. At appellant's sentencing hearing, the prosecutor agreed to modify the plea agreement to reflect a 120-month sentence, a 3-month departure from the presumptive sentence. The prosecutor asked the court to adopt the following findings to support an aggravated sentence:

The factors for departure we would ask the court to adopt [are] that the defendant is a dangerous offender who

¹ Although the record submitted to this court does not include a sentencing worksheet, it appears that appellant's criminal history score was five, which indicates a presumptive sentence range of 84 to 117 months for this offense according to Section IV of the 2005 Minnesota Sentencing Guidelines.

commits a third violent crime, and that based on the prior convictions and his current behavior that the defendant is a threat to public safety.

We would also ask the court to base the departure on the fact that the defendant is a career-offender. He has five prior felonies and this felony was a part of a pattern of criminal conduct.

After appellant agreed to the 120-month sentence and again waived his right to have a jury determine the aggravating factors involved in his sentencing, the district court asked appellant if he had anything to say. Appellant apologized for what he did and said that he was aware that it was wrong. The district court then imposed a 120-month sentence, stating that the sentence was an upward departure and that “the court adopts those reasons which were stated on the record by the [prosecutor] . . . and to which [appellant] consented on the record.”

Appellant petitioned for postconviction relief, arguing that the district court erred because it failed to state the facts supporting the upward sentencing departure on the record. The district court denied appellant’s petition, and this appeal follows.

DECISION

A district court’s decision to depart from a presumptive sentence is reviewed under an abuse-of-discretion standard. *State v. Losh*, 721 N.W.2d 886, 895 (Minn. 2006). A denial of a petition for postconviction relief is also reviewed under an abuse-of-discretion standard. *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). In this case, no dispute exists about the relevant facts. The issue is whether the district court erred as a matter of law by not explicitly stating on the record the reasons for appellant’s enhanced

sentence. Questions of law are subject to de novo review. *State v. Misquadace*, 644 N.W.2d 65, 68 (Minn. 2002).

For felony convictions, a district court is required to “state, on the record, findings of fact as to the reasons for departure” when a sentence is imposed. Minn. R. Crim. P. 27.03, subd. 4(C); *see also State v. Geller*, 665 N.W.2d 514, 517 (Minn. 2003) (holding that the reasons for departure must be stated on the record at the time of sentencing). A district court is required to state its reasons for departure at the time of sentencing so that the defendant has “an opportunity to evaluate and prepare an appeal and to provide for meaningful review.” *State v. Peterson*, 405 N.W.2d 545, 547 (Minn. App. 1987). At appellant’s sentencing hearing on the record, the district court specifically adopted the departure reasons offered by the prosecutor on the record at the sentencing hearing. The prosecutor offered two reasons for an upward durational departure, that appellant is a career offender and “a dangerous offender who commits a third violent crime.” Both are valid aggravating factors under the Minnesota Sentencing Guidelines. Minn. Sent. Guidelines II.D.2.b.(8), (9). Appellant was not deprived of an opportunity to evaluate and prepare an appeal, nor is our ability to review this case compromised, simply because the district court referred to these reasons instead of repeating them.

Because the district court adopted the departure reasons stated by the prosecutor on the record, the district court satisfied the requirement that it stated the reasons for departure at the time of sentencing.

Affirmed.