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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-303**

State of Minnesota,
Respondent,

vs.

Clarence Eugene Coleman,
Appellant.

**Filed December 15, 2009
Affirmed
Klaphake, Judge**

Ramsey County District Court
File No. 62-K7-07-002772

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

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

Marie L. Wolf, Interim Chief Appellate Public Defender, Ngoc Lan Nguyen, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Klaphake, Presiding Judge; Halbrooks, Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

KLAPHAKE, Judge

In this sentencing appeal, Clarence Eugene Coleman challenges the aggregate 132-month sentence imposed by the district court for nine counts of second-degree burglary, in violation of Minn. Stat. §§ 609.582, subd. 2(a), 609.05, subd. 1 (2006). Consistent with a plea agreement under which the state agreed not to seek an upward durational departure based on appellant's status as a career criminal, the court imposed concurrent executed sentences, all within the presumptive range 43-, 48-, 60-, 60-, and 60-month sentences for five offenses, and imposed four consecutive 18-month sentences for the remaining four offenses. The plea agreement did not address whether the sentences were to run concurrently or consecutively. Appellant claims that the district court abused its discretion by refusing to downwardly depart from the presumptive sentences in either disposition or duration, and by imposing consecutive sentences for four offenses. Because we conclude that the court properly exercised its discretion by declining to impose either a downward durational or dispositional sentencing departure and by imposing consecutive sentences for four of the nine offenses, we affirm.

DECISION

A district court's decision on whether to depart from the presumptive guidelines sentence must be supported by substantial and compelling circumstances. Minn. Sent. Guidelines II.D. (2008). "A district court's departure decision will not be reversed absent a clear abuse of discretion." *State v. Abrahamson*, 758 N.W.2d 332, 337 (Minn. App. 2008), *review denied* (Minn. Mar. 31, 2009). "A district court's discretion is broad, and

only in a rare case warrants reversal of the refusal to depart.” *Id.* (citing *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981)).

Durational Departure

Appellant argues that his conduct was less serious than the typical second-degree burglary offense because he avoided occupied buildings, used no weapons, and took care that no one would get hurt. Most of appellant’s arguments were taken into account in charging appellant with aiding and abetting second-degree burglary, however. *Compare* Minn. Stat. § 609.582, subd. 1 (2008) (defining first-degree burglary to include burgling an occupied dwelling or assaulting a person while burgling a building) *with* Minn. Stat. § 609.582, subd. 2 (defining second-degree burglary to include burgling a dwelling). Further, while appellant argues that he was less culpable because he played a passive role in the burglaries, the district court rejected this argument by finding that appellant was a “key player” in the burglaries. The record supports the district court’s decision not to impose a downward durational departure.¹

Dispositional Departure

The district court was required to consider appellant as an individual in ordering a sentence disposition and to weigh relevant factors such as his amenability to probation, age, prior record, remorse, cooperation, attitude while in court, and any support of friends or family. *State v. Wright*, 310 N.W.2d 461, 462 (Minn. 1981); *Abrahamson*, 758

¹ Appellant also argues that the burgled residences in this case may not have constituted dwellings for purposes of second-degree burglary, but he specifically conceded this fact during his plea hearing, at which he agreed that the burgled residences were dwellings and were used for habitation.

N.W.2d at 337. The court weighed appellant's past and pending criminal history, failed prior probations, and his probationary status during the commission of the current offenses, against appellant's exemplary attitude while in court and his cooperation with police in investigating the burglaries. The court noted that appellant's drug addiction may have played a part in motivating him to commit these crimes but concluded that appellant has had many opportunities to address his drug dependency but has not done so. Labeling appellant a "one-man crime wave," the court declined to dispositionally depart. This ruling was also within the district court's discretion. *See State v. Hennum*, 441 N.W.2d 793, 801 (Minn. 1989) (stating that it is a "'rare' case that merits reversal of district court's decision not to dispositionally depart). We reject appellant's contention that the district court must consider his motive to reform independent from consideration of his criminal history; appellant's continuing commission of crimes demonstrates that he has little motive to reform or amenability to probation.

Consecutive Sentences

This court will generally not alter a district court's decision on whether to impose a consecutive sentence "unless the sentence is disproportionate to the offense or unfairly exaggerates the criminality of the defendant's conduct." *State v. McLaughlin*, 725 N.W.2d 703, 715 (Minn. 2007) (quotation omitted). A court's decision on whether to impose a consecutive or concurrent sentence for multiple burglary offenses is permissive, Minn. Sent. Guidelines II.F.2 (2008), and an appellate court will not reverse "absent a clear abuse of discretion." *McLaughlin*, 725 N.W.2d at 715.

Here, the court imposed an aggregate sentence that was 55 months less than the sentence recommended in appellant's presentence investigation report. While the statutory maximum for a single second-degree burglary offense is 10 years, Minn. Stat. § 609.582, subd. 2, appellant was sentenced for nine separate offenses and received an 11-year sentence for all offenses in total. Further, while appellant urges that no crime against a person occurred in this case, the sentence imposed was not disproportionate and did not exaggerate the criminality of appellant's conduct because the crimes involved nine separate victims. The district court properly exercised its discretion in deciding to impose some consecutive sentences.

Because we conclude that the district court did not abuse its discretion by declining to order either a downward durational or dispositional departure or in imposing consecutive sentences for four of the nine offenses, we affirm.

Affirmed.