STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1660

State of Minnesota,
Respondent,

vs.

Jeremy James Potter,
Appellant.

Filed August 17, 2010
Affirmed
Toussaint, Chief Judge

Becker County District Court
File No. 03-CR-08-3114

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael Fritz, Becker County Attorney, Gretchen D. Thilmony, Assistant County Attorney, Detroit Lakes, Minnesota 56501 (for respondent)

David W. Merchant, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Toussaint, Chief Judge; Peterson, Judge; and Willis, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving 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

Appellant Jeremy James Potter challenges the district court's denial of his request for a "middle-of-the-box" guidelines sentence. Because the district court did not abuse its discretion in sentencing appellant to a term within the guidelines box, because the sentence imposed did not constitute a departure, and because the record supported the district court's decision, we affirm.

D E C I S I O N

Appellant pleaded guilty to kidnapping – not released in a safe place, in violation of Minn. Stat. § 609.25, subds. 1, 2(2) (2008). It is undisputed that appellant has a criminal-history score of three and that this is a severity-level VIII offense. *See* Minn. Sent. Guidelines V (2008) (Offense Severity Reference Table). The guidelines range is thus 67 months to 93 months, with a "middle-of-the-box" sentence of 78 months. *See* Minn. Sent. Guidelines IV (Sentencing Guidelines Grid).

Appellant argues that the circumstances of this case "demonstrate a mitigated offense severity" and that the district court's decision "unfairly exaggerate[ed] the criminality of [his] conduct." But at the plea hearing, appellant admitted that he and his co-defendant beat the victim until he was unconscious and placed him in the back of a vehicle, with his arms and legs duct-taped together. Appellant further acknowledged that his co-defendant drove away, accidentally crashed the vehicle, and left the victim at the scene in the overturned vehicle. Appellant insists that while he participated in the assault and helped his co-defendant place the victim in the vehicle, he did not instigate the

assault, did not assist his co-defendant in binding the victim with tape, and did not crash the vehicle and leave the victim at the crash scene. Appellant further complains that the more culpable party, his co-defendant, received a less-severe sentence than appellant.

But as the state notes, the 93-month sentence is within the presumptive sentence for this offense and for this offender; appellant was aware when he pleaded guilty that he was subject to a presumptive sentence of 78 to 93 months; appellant's co-defendant pleaded guilty to a different offense (second-degree assault, which is ranked at a lower severity level than the kidnapping offense to which appellant pleaded guilty); and, at sentencing, the district court made specific reference to the facts supporting its decision to impose a 93-month sentence.

This court recently held that a sentence within the presumptive range, even a sentence at the high end of the box, is not a departure and is generally not subject to appellate review of the district court's discretion. *State v. Delk*, 781 N.W.2d 426, 428-29 (Minn. App. 2010), *review denied* (Minn. July 20, 2010). In *Delk*, this court rejected arguments substantially similar to the ones made by appellant in this case. We believe that the analysis set out in *Delk* is sound and governs the arguments made here.

Affirmed.