STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1256

State of Minnesota,
Respondent,

vs.

William Dee Barnett,
Appellant.

Filed June 27, 2011
Affirmed
Worke, Judge

Ramsey County District Court
File No. 62-CR-09-13782

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

John J. Choi, Ramsey County Attorney, Mark N. Lystig, Assistant County Attorney, St. Paul, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Ngoc Nguyen, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Chief Judge; Worke, Judge; and Muehlberg, 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

WORKE, Judge

Appellant challenges the district court's denial of his request for imposition of the low end of the presumptive guidelines range and its imposition of the top end of the range on his second-degree murder conviction. Because the district court did not abuse its discretion in imposing this presumptive sentence, we affirm.

FACTS

On June 11, 2009, appellant William Dee Barnett went to an apartment complex where his mother lived. His mother had been involved in an ongoing dispute with the residents of another unit, T.B. and I.L. Appellant broke down the exterior door to T.B. and I.L.'s building and broke through the entrance door to their apartment. I.L. was able to flee, but T.B. was intoxicated and sitting on his bed. Appellant threw a brick at T.B., and repeatedly punched and kicked him over a period of five to ten minutes. Appellant then fled the scene before police arrived. T.B. was in a coma for three weeks before he died from the injuries he sustained during the assault. Appellant was arrested several weeks later and charged with unintentional second-degree murder while committing a felony.

Appellant agreed to enter a straight plea to the charge. At the plea hearing, appellant was specifically told that there was no agreement as to sentencing, that there were no guarantees as to sentencing, and that the prosecutor would seek a sentence at the high end of the presumptive range based on appellant's criminal-history score.

At sentencing, appellant sought the low end of the presumptive guidelines range given his criminal-history score and the severity level of his offense. Appellant noted that he pleaded guilty without a plea agreement, took full responsibility for his actions, has a history of depression, was cooperative during his arrest, and maintained a discipline-free record while in custody. The state argued for a sentence at the top end of the presumptive range. The state emphasized that the victim was brutally assaulted with a brick while in his home or zone of privacy, the victim was intoxicated and in a particularly vulnerable state, and the assault was particularly cruel, lasting five to ten minutes with appellant failing to render any aid to the victim.

The district court imposed a 270-month prison sentence, the high end of the presumptive guidelines range. The court noted that appellant had almost constant contact with the criminal justice system since the age of 18, that he had several assault-type convictions, and that he had been discharged from supervised release for second-degree assault only 12 days before he broke into T.B.'s apartment and assaulted him. The court further found that appellant was minimizing the brutality of the assault and that T.B. was vulnerable and intoxicated at the time of the attack. This appeal follows.

D E C I S I O N

A sentence within the presumptive guidelines range is not a departure and is generally not subject to appellate review. *State v. Delk*, 781 N.W.2d 426, 428-29 (Minn. App. 2010), *review denied* (Minn. July 20, 2010). A district court has broad discretion in sentencing and only in "rare" cases will we interfere with the district court's discretionary

decision to impose a sentence within the presumptive range. *See State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

Appellant first claims that the district court accepted his guilty plea "with the understanding by his trial counsel that he will get the low [end] of the offense box." This statement is inaccurate. Appellant was specifically told at the plea hearing that "there are no guarantees to what you're going to be sentence[d] to," that it was up to the district court judge to decide, and that "wherever you fall on this grid, the highest possible sentence that you serve would be the largest number in the box." Appellant's argument fails.

Next, appellant characterizes his 270-month sentence as an upward departure necessitating the presence or existence of aggravating factors. But appellant's sentence is within the presumptive guidelines range; because the sentence is not a departure, aggravating factors were not required. *See Delk*, 781 N.W.2d at 428-29. This argument also fails.

Appellant also attempts to minimize his offense and to justify it as an "unfortunate death" that occurred because the victim and his roommate were harassing and verbally abusing appellant's mother. Appellant claims that he should have been convicted of the lesser offense of manslaughter because he was acting in self-defense or in the heat of passion. But appellant specifically admitted that he was not claiming self-defense at the plea hearing. An adequate factual basis was clearly established to support appellant's guilty plea to unintentional second-degree murder, and appellant's current attempt to minimize the severity of his offense is unavailing.

Finally, appellant challenges his criminal-history score for the first time in his pro se reply brief. Because this issue is not properly before us, we decline to address it. *See* Minn. R. Civ. App. P. 128.02, subd. 3 (providing that reply brief must be confined to new matter raised in respondent's brief); *Berg v. State*, 557 N.W.2d 593, 596 (Minn. App. 1996) (issues first raised in reply brief are not properly before this court and will not be considered).

Affirmed.