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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2270**

State of Minnesota,
Respondent,

vs.

Jason James Loveless,
Appellant.

**Filed October 24, 2011
Affirmed
Schellhas, Judge**

Stearns County District Court
File No. 73-CR-10-2834

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

Janelle P. Kendall, Stearns County Attorney, Carl Ole Tvedten, Assistant County Attorney, St. Cloud, Minnesota (for respondent)

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

Considered and decided by Schellhas, Presiding Judge; Klaphake, Judge; and
Larkin, Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges his sentence for his conviction of harassment, arguing that the district court abused its discretion by not granting him a downward dispositional departure. We affirm.

FACTS

Respondent State of Minnesota charged appellant Jason Loveless with one count of harassment—pattern of harassing conduct—in violation of Minn. Stat. § 609.749, subd. 5(a) (2008), and two counts of violating an order for protection (OFP) within ten years of the first of two or more previous qualified domestic-violence-related offense convictions in violation of Minn. Stat. § 518B.01, subd. 14(d)(1) (2008), for his conduct in March 2010 in Stearns County.

The complaint alleged that on October 29, 2009, the district court issued an OFP that prohibited Loveless from having any contact with his ex-girlfriend D.K. Loveless violated the OFP and served an unspecified amount of time in the Sherburne County Jail. Shortly after his release from jail on February 25, 2010, while the OFP remained in effect, Loveless began calling D.K. numerous times per day. During most of the calls, Loveless either remained silent or played music by his favorite band, which had performed a concert that he and D.K. attended together while they were dating. On March 6, Loveless spoke with D.K. and referenced the OFP and the charges from Sherburne County. D.K. notified law enforcement, and officers arrested Loveless on March 8.

Pursuant to a plea agreement, Loveless pleaded guilty to harassment,¹ and the state dismissed the remaining counts. During the plea hearing, Loveless acknowledged that the plea agreement was the only agreement he had entered and that, while he could argue to the district court for a downward departure at sentencing, the state would argue for an executed prison sentence.

Loveless moved the district court for a downward dispositional departure, arguing that substantial and compelling circumstances warrant the departure. Loveless argued that he suffers from chemical dependency and a traumatic brain injury as the result of an automobile accident in which he drove with excessive speed while intoxicated. He argued that he should be placed on probation through the Stearns County domestic-violence court and placed in a secure long-term residential-treatment program in Brainerd.

The presentence investigation report (PSI) stated that Loveless “is chemically dependent and in need of chemical dependency treatment” and “is also a calculating individual that knows exactly what he is doing and uses his chemical dependency as an excuse.” The PSI also stated that Loveless “has shown no remorse . . . and in fact . . . minimizes his actions.” Further, Loveless “has a lengthy history of assaultive and violent behavior involving the victim and others,” including an incident in which he struck

¹ To convict a person for engaging in a pattern of harassing conduct, the state must prove, among other things, that the person knew or had reason to know that the conduct “would cause the victim under the circumstances to feel terrorized or to fear bodily harm.” Minn. Stat. § 609.749, subd. 5(a). Appellant utilized an *Alford* plea for this element. An *Alford* plea is entered by a defendant who maintains his or her innocence, but the record establishes that the state has sufficient evidence to obtain a conviction. See *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160 (1970); *State v. Goulette*, 258 N.W.2d 758, 760 (Minn. 1977).

D.K.’s new boyfriend with his vehicle, and “is at high risk of future violence towards his partners and towards others.” The PSI recommended the presumptive 38-month sentence.

Relying on the PSI, the state submitted a letter opposing a downward departure. The state noted that “there is a pattern of [Loveless] abusing [D.K.] or violating court orders shortly after being released from custody,” including an incident in which he removed his ankle bracelet, went to D.K.’s home, which was in his exclusion zone, and knelt next to her bed holding her necklaces while she slept. When she awoke, he attempted to “rekindle their relationship.” The state argued that “no substantial or compelling circumstances” exist and requested that the district court impose the presumptive 38-month sentence.

After reviewing the submissions and hearing statements from Loveless and his mentor, the district court denied his motion for a downward dispositional departure, stating, “It appears to the Court . . . that a departure is not appropriate for all the reasons that are noted in the presentence investigation report and from the [state’s] letter that documents some of the history in further detail.” The district court sentenced Loveless to the presumptive 38-month sentence.

This appeal follows.

D E C I S I O N

Loveless argues that the district court abused its discretion by not granting him a downward dispositional departure. We apply an abuse-of-discretion standard to review a district court’s decision not to impose a downward dispositional departure. *State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006). Notwithstanding its discretion, the district

court must pronounce a sentence within the applicable guideline range unless identifiable, substantial, and compelling circumstances exist supporting a departure. Minn. Sent. Guidelines II.D (2008); see *State v. Cameron*, 370 N.W.2d 486, 487 (Minn. App. 1985) (stating that the district court must order the presumptive sentence provided in the sentencing guidelines unless “substantial and compelling circumstances” warrant a departure), *review denied* (Minn. Aug. 29, 1985). Only a rare case warrants reversal of a district court’s refusal to depart. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

When considering a downward dispositional departure, a district court focuses “on the defendant as an individual and on whether the presumptive sentence would be best for [the defendant] and for society.” *State v. Heywood*, 338 N.W.2d 243, 244 (Minn. 1983). A relevant factor in determining whether to impose a downward dispositional departure is the defendant’s amenability to probation. *Id.* Other relevant factors include the defendant’s age, prior criminal history, remorse, cooperation, attitude while in court, and support from family and friends. *Id.*

Loveless argues that he “put forth substantial and compelling reasons justifying a downward dispositional departure.” He points to evidence that he is chemically dependent and “sustained a traumatic brain injury from the car accident.” He emphasizes that he expressed remorse, cooperated throughout the process, and has the support of his family and friends.

But the existence of mitigating factors does not compel the district court to impose a downward departure. *State v. Wall*, 343 N.W.2d 22, 25 (Minn. 1984). And the record reflects that the district court carefully considered Loveless’s arguments and decided that

the circumstances do not warrant a downward dispositional departure. The court noted that it had reviewed Loveless's motion and supporting documents, the PSI, and the state's letter. The district court also heard statements from Loveless and his mentor. The PSI and the state's letter outlined Loveless's abusive criminal history with D.K. and characterized Loveless as an "extremely dangerous individual" who is "obsessed and focused on the victim" and "poses an extreme threat to the victim and this community."

Loveless states in his pro se supplemental brief that defense counsel "told me that if I agreed to the plea that the judge would hear the dispositional departure and the state would not argue the disposition" and "[n]one of that took place." The record does not support Loveless's statements.

We conclude that the district court did not abuse its discretion by denying Loveless's motion for a downward dispositional departure.

Affirmed.