

State v. Ackerson

Court of Appeals of Minnesota

April 13, 2020, Filed

A19-0562

Reporter

2020 Minn. App. Unpub. LEXIS 302 *

State of Minnesota, Respondent, vs. Jeffrey George Ackerson, Jr., Appellant.

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Opinion

[*1] Filed April 13, 2020

Affirmed

Cochran, Judge

Renville County District Court

File No. 65-CR-18-110

Keith Ellison, Attorney General, St. Paul, Minnesota; and

David Torgelson, Renville County Attorney, Olivia, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sara J. Euteneuer, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Cochran, Judge; and Segal, Judge.

UNPUBLISHED OPINION

COCHRAN, Judge

In an appeal from a judgment of conviction and sentence for first-degree arson, appellant Jeffrey George Ackerson, Jr. argues that the district court abused its discretion

by denying his motion for a sentencing departure. Because the district court did not abuse its discretion, we affirm.

FACTS

In January 2018, on a very cold winter day, Ackerson set fire to his home while the family dog was inside. The fire destroyed the house and the family dog died. Three weeks after the incident, Ackerson confessed that he lit a cigarette using a culinary torch, locked the torch in the "on" position, and threw the torch on the house floor. At the time, Ackerson was in a room that he used for woodworking. The floor [*2] was covered with a thick layer of sawdust. The sawdust ignited when the torch hit the floor. After starting the fire, Ackerson walked out of the house, passing his sleeping dog on his way out.

In October 2018, Ackerson pleaded guilty to one count of first-degree arson of a dwelling under Minn. Stat. § 609.561, subd. 1 (2016), and one count of cruelty to animals resulting in death under Minn. Stat. § 343.21, subds. 7, 9(d) (2016). In exchange for pleading guilty, the state dismissed one count of insurance fraud under Minn. Stat. § 609.611, subd. 1(a)(2) (2016). At the plea hearing, Ackerson stated that he acted impulsively when he started the fire. He explained that he did so because he was struggling financially and emotionally.

Prior to sentencing, Ackerson moved for a departure. A dispositional advisor from the public defender's office filed a memorandum in support of Ackerson's motion. The advisor recommended a dispositional departure to probation based on her view that Ackerson is particularly amenable to probation and her opinion that his offense was less serious than the typical arson offense. Alternatively, the advisor recommended a

durational

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departure, emphasizing again her opinion that Ackerson's offense was less serious than the typical first-degree arson offense.

The district [*3] court held a hearing on the motion. At the hearing, the dispositional advisor testified on behalf of Ackerman. In support of a dispositional departure, the advisor testified that 62% of defendants with a criminal history score of zero, like Ackerson, received a mitigated dispositional departure for first-degree arson. Her testimony was based on a review of 61 offenders sentenced from 2012 to 2016 under Minn. Stat. § 609.561, subd. 1, for first-degree arson. The advisor further testified that Ackerson is "particularly amenable" to probation because he took responsibility for his actions, showed remorse, and had successfully completed probation in the past. The advisor acknowledged that Ackerson had a probation violation for alcohol use when he was previously on probation, but the probation violation did not change her opinion regarding his amenability to probation. The advisor also emphasized that Ackerson has a history of mental-health problems, making him psychologically "more vulnerable" than the typical defendant and perhaps in need of treatment that he would not receive in prison. The advisor also testified that, in her opinion, Ackerson's offense was less serious than the typical offense because Ackerson set [*4] fire to his own single-family home, as opposed to a multi-unit building, and only his property was damaged.

The state, in opposition to the departure motion, presented the testimony of a deputy state fire marshal and a firefighter from the local fire department. The deputy fire marshal testified that he spoke with Ackerson the day of the fire and Ackerson "basically" denied starting the fire. The deputy spoke with him again the next day and Ackerson gave the

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same response. According to the deputy, Ackerson did not admit to starting the fire until approximately three weeks later when fire investigators presented Ackerson with "evidence that proved that he had been lying." The deputy also testified that, in his opinion, the fire at the Ackerson home was more serious than typical. According to the deputy, the frigid temperature and wind chill made responding to the fire more difficult and dangerous.

The firefighter who testified was one of several firefighters who responded to the fire. He agreed with the deputy that the extreme cold made fighting the fire more dangerous. He noted that two members of the fire response team sustained injuries resulting from fighting the fire in the cold. [*5] He explained that the fire was also more dangerous for firefighters than the typical fire because the house was under renovation at the time, making it more likely that the roof would collapse. He further testified that "a lot" of firefighting equipment was damaged as a result of fighting the fire.

The state also called Ackerson's insurance agent, who testified that Ackerson texted him about the fire not long after it started. The insurance agent further testified that he submitted a fire-loss insurance claim on behalf of Ackerson and that Ackerson received a payment from his insurance company.

No other witnesses testified at the departure hearing. The judge continued the sentencing to a later date to consider the evidence before pronouncing a sentence. The parties reserved final arguments until the sentencing hearing.

A week later, the district court heard final arguments from Ackerson and the state. Ackerson argued for a dispositional departure. Ackerson emphasized that the majority of defendants with a criminal-history score of zero, like him, received a dispositional

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departure. He also argued that a dispositional departure should be granted because he is particularly amenable to probation. [*6] Ackerson noted that he took responsibility for his actions by pleading guilty, and he claimed to be remorseful. He also asserted that his conduct was the result of a mental breakdown. He argued that he is more likely to receive the mental health services that he needs while on probation than in prison. Alternatively, Ackerson argued that a durational departure was warranted because his offense was less serious than typical.

The state opposed a durational departure, arguing that the fire was more serious than typical. The state emphasized that the fire caused significant hardship to the fire department and that the fire destroyed the entire house. The state also opposed a dispositional departure, arguing that Ackerson is not particularly amenable to probation. The state noted that Ackerson did not confess until three weeks after he started the fire and asserted that he had not shown any genuine

remorse. The state also disagreed that a dispositional departure should be granted based on Ackerson's mental health concerns, noting that no testimony was offered that Ackerson had applied for or been accepted into any treatment program in the community. The state also argued that Ackerson no [*7] longer had the support of his family, a factor to be considered in determining whether to grant a dispositional departure.

The district court considered the parties' arguments and the record, and concluded that it could not find a legal justification for a downward departure. The district court denied Ackerson's departure motion and imposed a 41-month sentence—the lower limit of the presumptive range of 41 to 57 months for Ackerson's offense.

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Ackerson appeals.

DECISION

The Minnesota Sentencing Guidelines establish presumptive sentences for felony offenses. Minn. Stat. § 244.09, subd. 5 (2018). A district court "may" depart from the presumptively appropriate guidelines sentence only if "identifiable, substantial, and compelling circumstances" warrant doing so. *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016) (quotation omitted). However, even if mitigating factors are present, the district court is not obligated to depart from the guidelines. *State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006). We "afford the [district] court great discretion in the imposition of sentences and reverse sentencing decisions only for an abuse of that discretion." *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014) (quotation omitted).

Here, the district court imposed a sentence within the presumptive guidelines range. When the district court imposes a sentence within the presumptive [*8] guidelines range, we generally will not interfere "as long as the record shows the sentencing court carefully evaluated all the testimony and information presented before making a determination."

State v. Pegel, 795 N.W.2d 251, 255 (Minn. App. 2011) (quotation omitted). It would be a "rare case" which would warrant reversal of the refusal to depart. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

Ackerson argues that the district court abused its discretion when it denied his motion. Ackerson contends that the district court's decision to deny a dispositional

departure should be reversed because Ackerson established that he is particularly amenable to probation. He argues that he is particularly amenable to probation because "there is

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community programming to address his mental health crisis, he accepted responsibility for his behavior by confessing, he showed remorse for the impact on his family and the fire department, and he showed great respect to the court." He also argues that the district court's decision to deny a durational departure should be reversed because his offense was significantly less serious than the typical offense. He contends that his offense was less serious than the typical arson offense because he set fire to his own house as opposed to someone else's house, [*9] and he acted impulsively.

Based on our review of the record, we conclude that the district court did not abuse its discretion when it denied Ackerson's request for a departure. While Ackerson made arguments in support of a departure, there were also reasons for denying a departure.

First, there is evidence in the record that suggests that Ackerson is not particularly amenable to probation. The supreme court, in *State v. Trog*, identified a number of factors that are relevant to whether an individual is particularly amenable to probation. 323 N.W.2d 28, 31 (Minn. 1982). The factors include "the defendant's age, his prior record, his remorse, his cooperation, his attitude while in court, and the support of friends and/or family." *Id.* Here, the record demonstrates that Ackerson did not cooperate until nearly three weeks into the investigation when he was confronted with evidence of his involvement. The record also contains evidence of a prior probation violation and evidence calling into doubt Ackerson's claim of remorse. And, while Ackerson maintains that he would benefit from mental health treatment in the community, there is nothing in the record to indicate that Ackerson has been admitted into an outpatient treatment [*10] program.

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Accordingly, we conclude that the district court did not abuse its discretion in denying Ackerson's dispositional departure motion.

Similarly, the record demonstrates that the district court did not abuse its discretion when it denied his request for a durational departure. A downward durational departure is justified when the offender's conduct is

significantly less serious than that typically involved in the commission of the offense. *State v. Rund*, 896 N.W.2d 527, 532 (Minn. 2017). But here, there is evidence to support that the fire was actually more serious-not less serious-than the typical arson because the fire destroyed the entire structure, the family dog died, and the weather conditions created dangerous conditions for the firefighters and first responders.

In sum, the district court carefully considered Ackerson's request for a departure and determined a departure was not warranted by the record. See *State v. Johnson*, 831 N.W.2d 917, 925 (Minn. App. 2013) (stating that the sentencing court does not abuse its discretion so long as it considers all the evidence presented before imposing a sentence) *review denied* (Minn. Sept. 17, 2013). The district court did not abuse its broad discretion when it imposed a sentence within the presumptive guidelines range.

Affirmed.

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