

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1359**

Justin Wayne Eastman, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed April 26, 2011
Affirmed
Worke, Judge**

Hennepin County District Court
File No. 27-CR-99-026202

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

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

Michael O. Freeman, Hennepin County Attorney, Thomas A. Weist, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Kalitowski, Judge; and Shumaker, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant argues that the district court abused its discretion by denying his postconviction petition. We affirm.

DECISION

Appellant Justin Wayne Eastman pleaded guilty to second-degree intentional murder in 1999 and received the maximum sentence of 480 months incarceration. Appellant now challenges the district court's denial of his postconviction petition. "A petitioner seeking postconviction relief has the burden of establishing, by a fair preponderance of the evidence, facts which warrant a reopening of the case." *State v. Rainer*, 502 N.W.2d 784, 787 (Minn. 1993). This court reviews a postconviction court's decision for an abuse of discretion. *Dukes v. State*, 621 N.W.2d 246, 251 (Minn. 2001). We review findings of fact to determine whether the evidence is sufficient to sustain the findings, and we will not reverse the findings unless they are clearly erroneous. *Id.* We review legal issues and mixed questions of fact and law de novo. *Butala v. State*, 664 N.W.2d 333, 338 (Minn. 2003).

Departure Grounds

Appellant first argues that the district court erred by denying his postconviction petition because the district court failed to articulate substantial and compelling reasons to depart from the presumptive sentence. Appellant and an accomplice held-up two men at gun-point in November 1998, and appellant shot one of the men in the head after the man refused to hand over his wallet. Appellant was charged with first-degree felony murder, second-degree intentional murder, first-degree aggravated robbery, and first-degree attempted aggravated robbery. Appellant accepted a plea agreement providing an upward departure to the maximum sentence for second-degree murder, and the state

dismissed the remaining charges, including the first-degree-felony-murder charge that carried a potential life sentence.

Appellant argues that the district court relied on the other crimes he was charged with in departing and asserts that evidence of another offense which does not result in a conviction may be considered only when the offense is committed in a particularly serious way. *See State v. Cox*, 343 N.W.2d 641, 643 (Minn. 1984). Appellant also argues that the district court failed to make findings that his crime was more serious than similar offenses in order to support the departure.

Appellant's arguments overlook the fact that the district court sentenced him according to his negotiated plea agreement. Appellant's plea occurred during a time when Minnesota permitted upward departures based solely on a plea negotiation. *See State v. Givens*, 544 N.W.2d 774, 777 (Minn. 1996) ("We see no reason not to allow a defendant to agree to a departure as part of a plea bargain with the prosecutor."), *superseded by statute*, Minn. Stat. § 244.09 (1998). In *State v. Misquadace*, however, the supreme court held that "all departures from the Minnesota Sentencing Guidelines must be supported by substantial and compelling circumstances, and that a plea agreement—standing alone—is not a sufficient basis to depart from the sentencing guidelines." 644 N.W.2d 65, 72 (Minn. 2002). But the supreme court expressly renounced any retroactive application of this holding, limiting the ruling "to pending and future cases." *Id.*; *see also State v. Kilgore*, 661 N.W.2d 654, 657 (Minn. App. 2003) (concluding that *Misquadace* does not apply to cases that were final on May 9, 2002), *review denied* (Minn. Aug. 19, 2003).

Appellant's conviction was final prior to the supreme court's decision *Misquadace*; therefore, the district court was allowed to depart from the sentencing guidelines without finding any factors warranting an upward departure, provided that appellant made an intelligent, knowing, and voluntary waiver of his right to be sentenced under the guidelines. *See Givens*, 554 N.W.2d at 777. A valid waiver occurs when a defendant is advised of his right to be sentenced under the guidelines, the possibility of a departure, and the opportunity to consult with counsel. *Id.*

Appellant argues that his waiver was not intelligent because the district court informed him that his presumptive sentence was 360 months, instead of 306 months. But appellant's PSI correctly listed the presumptive sentence as 306 months and, as the postconviction court noted, appellant fails to explain how knowledge of a lower presumptive sentence would have altered his agreement to the negotiated 480-month sentence. Moreover, the motive for appellant's plea appears to have been avoiding prosecution for first-degree felony murder and the possible life sentence, not attaining a favorable negotiated sentence for the second-degree-murder conviction. Appellant admitted to the underlying elements of first-degree felony murder by stating on the record that he murdered his victim during the commission of an armed robbery. This testimony occurred right after his counsel asked the district court if they should make a record of "the reasons"—presumably the reasons for his guilty plea. Because appellant's PSI correctly listed the presumptive sentence for second-degree murder and because the record demonstrates that appellant was aware that he was avoiding a life sentence for

first-degree felony murder by entering his plea, the apparent transposition of digits on the record did not render appellant's waiver unintelligent.

Appellant also argues that his waiver was not intelligent because the district court did not advise him of his rights consistent with Minn. R. Crim. P. 15.01, which requires a district court to ensure that defense counsel inform defendants of both the maximum and minimum penalties prior to accepting a guilty plea. But *Givens* did not *require* district courts to conform to rule 15; rather, the supreme court stated that an examination pursuant to rule 15 "will meet [the] requirement" of an intelligent waiver. 544 N.W.2d at 777. Here, appellant was represented by two attorneys during his plea hearing, informed of his proposed sentence, and advised that the sentence was an upward departure from the presumptive sentence based on the circumstances of the offense. Appellant agreed to the sentence as part of a plea negotiation that dismissed the first-degree-felony-murder charge, and appellant admitted the underlying elements of first-degree felony murder while entering his plea. This was a sufficient basis for the postconviction court to conclude that appellant intelligently waived his right to be sentenced under the guidelines, and the district court did not err in this respect. *See Lewis v. State*, 697 N.W.2d 624, 628-29, 626 (Minn. App. 2005) (concluding that a defendant validly waived his right to be sentenced under the sentencing guidelines when he was informed of and understood his sentence and was represented by counsel throughout the proceedings).

Proportionality of Sentence

Appellant finally argues that he is entitled to postconviction relief because his sentence unfairly exaggerates the criminality of his conduct. But this contention, again,

ignores the reality that appellant was sentenced pursuant to a plea agreement.

Appellant's argument is unavailing.

Affirmed.