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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1527**

State of Minnesota,
Respondent,

vs.

Ibrahim Abdullahi Mohamed,
Appellant.

**Filed April 1, 2013
Affirmed
Peterson, Judge**

Hennepin County District Court
File No. 27-CR-09-19950

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

Michael O. Freeman, Hennepin County Attorney, Lee W. Barry, Assistant County
Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Sara Jean Euteneuer, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Peterson, Presiding Judge; Ross, Judge; and Chutich,
Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this sentencing appeal after remand, appellant argues that the district court failed to properly resentence him to the presumptive guidelines sentence after the court initially imposed an unsupported aggravated durational departure. We affirm.

FACTS

In April 2009, appellant Ibrahim Abdullahi Mohamed fired multiple shots from a handgun at M.A., striking him four or five times. Four police officers, who arrived on the scene while appellant was firing at M.A., began firing toward appellant, and appellant fired a shot in the officers' direction.

Appellant was charged with five counts of attempted second-degree murder of M.A. and the four police officers and four counts of first-degree assault against a peace officer engaged in the performance of duty. In two separate cases, appellant had pending charges of one count of attempted first-degree murder and one count of drive-by shooting. Appellant pleaded guilty to the count of attempted second-degree murder of M.A. and one count of first-degree assault against a peace officer, and the remaining charges in this case and the charges in the other two cases were dismissed.

A plea agreement provided for consecutive sentences with a total range of 180-240 months. The district court first sentenced appellant to a term of 120 months for the assault conviction, increasing his criminal-history score to two, and then imposed a 207-month sentence for the attempted-murder conviction, which was within the presumptive range for a person with a criminal-history score of two. The court imposed concurrent

sentences to stay within the range provided for in the plea agreement. Appellant filed two motions to withdraw his plea, and the district court denied both motions.

On appeal, this court affirmed the denial of appellant's motions to withdraw his plea but reversed appellant's sentence and remanded for resentencing because the district court erred in sentencing appellant first for assault against a peace officer when the assault occurred after the attempted murder. *State v. Mohamed*, No. A10-783, 2011 WL 52996641, at *4 (Minn. App. Nov. 7, 2011), *review denied* (Minn. Jan. 17, 2012).

On remand, the district court sentenced appellant to concurrent terms of 180 months for the attempted second-degree murder and 120 months for the assault against a peace officer. This appeal followed.

D E C I S I O N

This court reviews a district court's sentencing decision for an abuse of discretion. *State v. Franklin*, 604 N.W.2d 79, 82 (Minn. 2000). Only in a "rare case" will an appellate court reverse the imposition of a presumptive sentence. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

Appellant argues that the 180-month sentence for attempted second-degree murder is a departure from the presumptive sentence. Appellant contends that the presumptive sentence is 153 months. For a person with a criminal-history score of zero, the presumptive-sentence range for attempted second-degree murder is 130.5 months to 183.5 months. Minn. Sent. Guidelines II.G & IV (2008). In *State v. Delk*, this court rejected the argument that the presumptive sentence is only the first number in the box on the sentencing-guidelines grid. 781 N.W.2d 426, 428-29 (Minn. App. 2010), *review*

denied (Minn. July 20, 2010). This court stated: “[A]ny sentence within the presumptive range for the convicted offense constitutes a presumptive sentence. A sentence within the range provided in the appropriate box on the sentencing guidelines grid is not a departure from the presumptive sentence.” *Id.* (citations omitted). Because appellant’s 180-month sentence is within the presumptive range, it is not a departure.

Appellant construes this court’s previous opinion as requiring a 153-month sentence. But this court’s previous opinion addressed only the order of sentencing and not the length of sentences.

The district court did not abuse its discretion in sentencing appellant to a 180-month term for the attempted-second-degree-murder offense.

Affirmed.