

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0272**

State of Minnesota,
Respondent,

vs.

Tanisha Amiea Dunn,
Appellant.

**Filed August 29, 2022
Affirmed
Reyes, Judge**

Hennepin County District Court
File No. 27-CR-21-8344

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

Michael O. Freeman, Hennepin County Attorney, Anna R. Light, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Charles Clippert, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Larkin, Judge; and Reyes, Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

On direct appeal from her conviction of aiding and abetting attempted second-degree murder of an unborn child, appellant argues that the district court abused its discretion by denying her motion for a larger downward durational departure. We affirm.

FACTS

In April 2021, appellant Tanisha Amiea Dunn's codefendant asked her to go with him while he ran errands. After they got into the codefendant's car, the codefendant told appellant that he actually wanted her to help him assault the victim, who was pregnant with his child, in an attempt to terminate the pregnancy. Appellant went with the codefendant and helped him assault the victim. Appellant used mace on the victim, hit the victim, and held the victim down while the codefendant tased and kicked the victim's stomach.

Respondent State of Minnesota charged appellant with (1) aiding and abetting attempted second-degree murder of an unborn child; (2) aiding and abetting attempted aggravated first-degree robbery; and (3) aiding and abetting attempted first-degree murder of an unborn child. In exchange for appellant's guilty plea to the first charge, the state agreed to dismiss the other charges and cap appellant's sentence at 150 months in prison, a downward durational departure from the presumptive sentencing range. The agreement allowed appellant to seek a larger departure at sentencing.

Appellant pleaded guilty to aiding and abetting attempted second-degree murder of an unborn child in violation of Minn. Stat. § 609.2662, subd. 1 (2020). Appellant then moved for a downward durational departure, arguing that she should receive a sentence of 36 to 60 months in prison. In support of her motion, appellant submitted a mitigation report detailing her traumatic past and explaining how her mental-health issues and history of victimization related to her state of mind and culpability for her current offense. Hennepin County Corrections submitted a presentence investigation (PSI) report, which calculated the presumptive sentencing range for appellant's offense as 164 to 231 months in prison.

The PSI report noted that appellant admitted to her involvement in the attack but stated that she felt threatened by her codefendant. The PSI report also described appellant's history of trauma and her struggles with mental health and addiction. Ultimately, the PSI recommended a presumptive sentence of 164 months.

At appellant's sentencing hearing, the victim gave an impact statement and the district court viewed surveillance video showing the attack. The district court considered the parties' arguments and explained that it had reviewed the PSI and mitigation reports. It acknowledged that it struggled to find the appropriate sentence but ultimately sentenced appellant to 150 months in prison. This appeal follows.

DECISION

Appellant argues that the district court abused its discretion by denying her motion for a larger downward durational departure because she (1) acted under duress and (2) lacked substantial capacity for judgment when she committed the offense. We disagree.

The Minnesota Sentencing Guidelines establish presumptive sentences for criminal offenses. Minn. Sent. Guidelines 2.D (2020); *see also* Minn. Stat. § 244.09, subd. 5 (2020). The district court "must" impose a sentence within the presumptive range unless it identifies "substantial and compelling circumstances to support a departure." Minn. Sent. Guidelines 2.D.1. If such circumstances exist, the district court "may depart" from the presumptive sentence. *Id.* A downward durational departure occurs when the district court orders a sentence shorter than the presumptive range. *See* Minn. Sent. Guidelines 1.B.5.b (2020). "Substantial and compelling circumstances for a durational departure are those which demonstrate that the defendant's conduct was significantly more or less serious than

that typically involved in the commission of the crime in question.” *State v. Rund*, 896 N.W.2d 527, 532 (Minn. 2017) (quotation omitted). While dispositional departures may be based on offender-related factors, *durational* departures must be based on “the nature of the *offense*, not the individual characteristics of the offender.” *State v. Solberg*, 882 N.W.2d 618, 625 (Minn. 2016).

“We review a district court’s decision to depart from the presumptive sentence for an abuse of discretion.” *Id.* at 623. “A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record.” *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019) (quotation omitted). Because the district court “is in the best position to evaluate the offender’s conduct and weigh sentencing options,” *State v. Bendzula*, 675 N.W.2d 920, 921 (Minn. App. 2004) (quotation omitted), we generally will not interfere with a sentencing decision so long as the record shows that the district court “carefully evaluated all the testimony and information presented,” *State v. Pegel*, 795 N.W.2d 251, 255 (Minn. App. 2011).

We first note that the presence of a mitigating factor does not *obligate* the district court to impose a shorter sentence. *Wells v. State*, 839 N.W.2d 775, 781 (Minn. App. 2013). The district court therefore had no obligation to impose *any* downward durational departure when sentencing appellant.

Regarding appellant’s asserted mitigating factors, the record shows that the district court carefully considered those factors when sentencing appellant. The state explained that its requested 150-month sentence represented a slight downward durational departure

to account for the pressure that appellant's codefendant exerted on her.¹ The mitigation report also relayed appellant's fear of her codefendant and its effect on her decision to participate in the attack. And the district court stated at the hearing that the 150-month sentence represented an appropriate reduction from the presumptive sentence, "taking into the account" the factors described in the mitigation report.

Additionally, to the extent that appellant argues that her mental illness and history of victimization made her susceptible to coercion and "impeded her ability to control her actions" during the offense, the record shows that the district court considered those arguments too. The mitigation report, which the district court commended as "excellent," explained how appellant's history of physical and domestic abuse and her resulting post-traumatic-stress disorder made her particularly susceptible to duress. The district court acknowledged appellant's history of trauma and mental-health issues, and it agreed that appellant was "not thinking clearly on the day of the assault." But it also weighed those mitigating factors against the seriousness of the offense and appellant's active participation in the assault on the victim. Because the record shows that the district court carefully considered all the information and testimony presented when sentencing appellant to 150 months in prison, we conclude that the district court did not abuse its discretion when it denied appellant's request for a larger downward durational departure.

Affirmed.

¹ The presumptive guidelines sentence for appellant's offense ranged from 164 to 231 months. The district court's 150-month sentence therefore represented a downward durational departure of 14 months.