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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1158**

State of Minnesota,
Respondent,

vs.

Adrian Martinez,
Appellant.

**Filed May 9, 2011
Affirmed
Wright, Judge**

Nobles County District Court
File No. 53-CR-09-532

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

Gordon L. Moore, III, Nobles County Attorney, Travis J. Smith, Assistant Nobles County Attorney, Worthington, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Sean M. McGuire, Assistant State Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Stoneburner, Judge; and Wright, Judge.

UNPUBLISHED OPINION

WRIGHT, Judge

Appellant challenges the district court's imposition of the presumptive guidelines sentence of 74 months' imprisonment for his conviction of first-degree assault, arguing

that there are substantial and compelling reasons for a downward durational or dispositional departure. We affirm.

FACTS

On May 3, 2009, appellant Adrian Martinez drove to the home of his girlfriend K.P.'s brother in Worthington and waited in a nearby parking lot for K.P. to arrive. When K.P. arrived, she was accompanied by R.V. Martinez became angry because he disapproved of K.P.'s drug use and her association with R.V., and he assumed they had been acquiring or using drugs together. Martinez drove up behind K.P.'s car, parked, and exited his car carrying an aluminum baseball bat. As R.V. exited K.P.'s car, Martinez approached him, struck him in the head three times with the baseball bat, and fled by car. Martinez surrendered to the police later that day. As a result of the assault, R.V. suffered a closed head injury, which involved bleeding inside his brain cavity and temporary disabilities. R.V. required physical therapy and was unable to work for several months.

Martinez was charged with attempted first-degree murder, a violation of Minn. Stat. § 609.185 (a)(1) (2008); first-degree assault, a violation of Minn. Stat. § 609.221, subd. 1 (2008); and second-degree assault with a dangerous weapon resulting in substantial bodily harm, a violation of Minn. Stat. § 609.222, subd. 2 (2008). Martinez pleaded guilty to first-degree assault and advised the district court and the state of his intention to move for a downward durational or dispositional departure.¹ When he

¹ The remaining charges were dismissed.

entered his guilty plea, Martinez knew that the state could contest the downward departure motion and seek a sentence at the low end of the presumptive-guidelines range.

The presentence investigation report indicated that Martinez has prior convictions of disorderly conduct and traffic offenses. He was expelled from school for bringing a knife to school, and he later dropped out of school. The sentence recommended in the presentence investigation report was 86 months' imprisonment, which is in the middle of the presumptive-guidelines range.

At the sentencing hearing, Martinez and three character witnesses testified in support of the downward departure motion. The district court denied the motion and imposed the presumptive guidelines sentence of 74 months' imprisonment. This appeal followed.

D E C I S I O N

The district court must impose the presumptive guidelines sentence unless there are "substantial and compelling circumstances" that warrant a downward departure. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). "[A] sentencing court has no discretion to depart from the sentencing guidelines unless aggravating or mitigating factors are present." *State v. Spain*, 590 N.W.2d 85, 88 (Minn. 1999). The decision to depart from the sentencing guidelines rests within the district court's sound discretion. *State v. Oberg*, 627 N.W.2d 721, 724 (Minn. App. 2001), *review denied* (Minn. Aug. 22, 2001); *State v. Anderson*, 463 N.W.2d 551, 555 (Minn. App. 1990) (applying abuse-of-discretion standard when evaluating downward departure), *review denied* (Minn. Jan. 14, 1991). Ordinarily, we will not disturb the district court's imposition of the presumptive

guidelines sentence, even when reasons for a downward departure exist. *State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006).

The district court may consider only offense-related mitigating factors to support a downward durational departure. *See State v. Behl*, 573 N.W.2d 711, 713 (Minn. App. 1998) (holding that nonoffense-related conduct is not relevant to durational-departure decision), *review denied* (Minn. Mar. 19, 1998); *see also State v. Chaklos*, 528 N.W.2d 225, 228 (Minn. 1995) (holding that offense-related factors may be used to support durational departure). But when considering a downward dispositional departure, the district court may also focus “on the defendant as an individual and on whether the presumptive sentence would be best for him and for society.” *State v. Heywood*, 338 N.W.2d 243, 244 (Minn. 1983). A relevant factor to consider when determining whether to impose a downward dispositional departure is the defendant’s amenability to probation. *Id.* Other relevant factors include the defendant’s age, criminal history, remorse, cooperation, attitude while in court, and support from family and friends. *Id.* (citing *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982)). If the district court “considers reasons for departure but elects to impose the presumptive sentence,” an explanation for denying the downward departure motion is not necessary. *State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985).

Martinez argues that the district court abused its discretion because he presented substantial and compelling reasons for a downward durational or dispositional departure, including evidence regarding his age, the support he receives from his family and friends,

his cooperation with the police, his feelings of remorse and acceptance of responsibility for his actions, and his lack of a criminal history.² Martinez's arguments are unavailing.

The existence of mitigating factors does not require the imposition of a downward departure. *State v. Wall*, 343 N.W.2d 22, 25 (Minn. 1984). Although the district court did not expressly discuss each mitigating factor, it considered the "tremendous amount of information that was brought before the Court" and observed that Martinez has people who support him and that prison may not benefit him. But the district court concluded that these mitigating factors were overcome by the "brutal, premeditated, [and] unprovoked" nature of the attack and its adverse effect on the community. Moreover, the district court imposed 74 months' imprisonment, which is at the lowest end of the presumptive-guidelines range.

Our careful review of the record establishes that the district court considered the relevant mitigating factors and that there is an ample basis for the district court's decision to deny Martinez's motion for a downward durational or dispositional departure. Accordingly, the district court's sentencing decision was a sound exercise of its discretion.

Affirmed.

² The presentence investigation report and pretrial evaluation indicate, however, that Martinez has prior convictions of disorderly conduct, driving after license suspension, driving while impaired by a controlled substance, selling or possessing a controlled substance while driving, and other traffic offenses.