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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1586
A10-1587**

State of Minnesota,
Respondent,

vs.

Michael Eugene Goodwin, Jr.,
Appellant.

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

Winona County District Court
File Nos. 85-CR-09-960; 85-CR-09-957

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

Karin Sonneman, Winona County Attorney, Kevin P. O’Laughlin, Assistant County Attorney, Winona, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Benjamin J. Butler, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Schellhas, Presiding Judge; Halbrooks, Judge; and
Randall, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges his sentence for his conviction of first-degree controlled-substance crime arguing that the district court abused its discretion by denying his motion for a downward durational departure. We affirm.

FACTS

Respondent State of Minnesota charged appellant Michael Goodwin Jr. with two counts of first-degree controlled-substance crime in violation of Minn. Stat. § 152.021, subd. 2(1) (2008), and two counts of fifth-degree controlled-substance crime in violation of Minn. Stat. § 152.025, subd. 2(1) (2008), in connection with his alleged conduct on April 11, 2009. The state alleged that a confidential reliable informant (CRI) approached Goodwin, who owned a clothing store, and asked him if he was willing to exchange clothing for marijuana or cocaine. Goodwin expressed interest, and the CRI and Goodwin discussed the type and quantity of the controlled substances.

On April 10, the CRI and Goodwin met at Goodwin's clothing store. At that time, Goodwin complained to the CRI about the quality of cocaine and cost of marijuana he already possessed. Goodwin showed the CRI the drugs, which consisted of two bags of cocaine each containing one-eighth of an ounce of cocaine and a one-pound bag of high-grade marijuana. The CRI told Goodwin that he had high-quality cocaine and lower-grade marijuana for sale. Goodwin agreed to purchase four pounds of marijuana and one ounce of cocaine from the CRI. Goodwin told the CRI that he might not have all the

money for the purchase but could pay the balance within a day or two after moving the drugs.

On April 11, Goodwin purchased seven pounds of marijuana and two ounces of cocaine from the CRI. Goodwin paid \$4,000, which covered only a portion of the purchase price, but the CRI “fronted” the drugs to Goodwin, who agreed to pay \$750 per ounce for the cocaine. Shortly after Goodwin completed his purchase, the police arrested him.

On April 14, Goodwin escaped from a locked unit at a hospital after law-enforcement officers transported him there for medical treatment. On June 29, law-enforcement officers arrested Goodwin in Florida, and the state charged Goodwin with escape from custody in violation of Minn. Stat. § 609.485, subd. 2(1) (2008).

On March 23, 2010, Goodwin pleaded guilty to one count of first-degree controlled-substance crime and escape from custody. The state dismissed the remaining charges. Goodwin also admitted willfully violating his probation on a prior second-degree controlled-substance conviction, two prior third-degree controlled-substance convictions, and a prior third-degree assault conviction.

On May 27, Goodwin filed a motion for downward dispositional and durational sentencing departures. The district court denied the motion and sentenced Goodwin to the presumptive sentence of 161 months for his conviction of first-degree controlled-substance crime.¹ The district court also sentenced Goodwin concurrently to a

¹ First-degree controlled-substance crime is a severity-level-nine offense. Minn. Sent. Guidelines V (2008). Goodwin had a criminal-history score of nine. Goodwin’s

presumptive sentence of 26 months for his conviction of escape from custody.² The district court also revoked Goodwin's probation on the four prior offenses and executed sentences of 98 months for second-degree controlled-substance crime, 57 months each for the two third-degree controlled-substance crimes, and 24 months for third-degree assault to all run concurrently with the 161 months.

This appeal follows.

DECISION

Whether to depart from the sentencing guidelines rests within the district court's discretion, and the district court will not be reversed absent an abuse of that discretion. *State v. Spain*, 590 N.W.2d 85, 88 (Minn. 1999). Notwithstanding its discretion, the district court must pronounce a sentence within the applicable guideline range unless identifiable, substantial, and compelling circumstances exist supporting a departure. Minn. Sent. Guidelines II.D (2008); *see State v. Cameron*, 370 N.W.2d 486, 487 (Minn.

criminal-history score consisted of eight felony points and one custody-status point. Goodwin had one custody-status point because he was on probation for a felony conviction when he committed the current offense. *See* Minn. Sent. Guidelines II.B.2 (2008). The presumptive sentence for a person convicted of a severity-level-nine offense with a criminal-history score of nine is 158 months. *See* Minn. Sent. Guidelines IV (2008). The district court added three months to the 158 months because Goodwin had one custody-status point and a criminal-history score of six or more without the custody-status point. *See* Minn. Sent. Guidelines II.B.2. Goodwin's presumptive sentence therefore was 161 months.

² Escape from custody is a severity-level-three offense. Minn. Sent. Guidelines V. Including Goodwin's conviction of first-degree controlled-substance crime, his criminal-history score was 11, consisting of ten felony points and one custody-status point. The presumptive sentence for a severity-level-three offense with a criminal-history score of 11 is 23 months. *See* Minn. Sent. Guidelines IV. The district court added three months to the 23 months because Goodwin had one custody-status point and a criminal-history score of six or more without the custody-status point. *See* Minn. Sent. Guidelines II.B.2. Goodwin's presumptive sentence therefore was 26 months.

App. 1985) (stating that the district court must order the presumptive sentence provided in the sentencing guidelines unless “substantial and compelling circumstances” warrant a departure), *review denied* (Minn. Aug. 29, 1985). Only a rare case warrants reversal of a district court’s refusal to depart. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

Goodwin argues that the district court erred by denying his motion for a downward durational departure because two identifiable, substantial, and compelling reasons justified a departure.

Minor or Passive Role

Goodwin first argues that he played a minor or passive role in the crime because the CRI approached him; he did not approach the CRI, who brought drugs to Goodwin’s public place of business.

That “[t]he offender played a minor or passive role in the crime” is a mitigating factor upon which a district court may base a sentencing departure. Minn. Sent. Guidelines II.D.2.a.(2). But Goodwin’s argument in this case is unpersuasive because Goodwin was the sole actor in purchasing the drugs. He therefore did not play a minor or passive role in the crime. *See State v. Bendzula*, 675 N.W.2d 920, 924 n.5 (Minn. App. 2004) (citing Minn. Sent. Guidelines II.D.2.a.(2), and rejecting defendant’s claim that his culpability was mitigated because he played a minor or passive role in the crime, when defendant was the sole actor in getting a quantity of drugs and selling them, resulting in first-degree controlled-substance conviction). And instead of rejecting the CRI’s offer to exchange drugs for clothing, Goodwin negotiated the price and quantity of drugs and purchased a large quantity of drugs. The evidence does not establish that Goodwin

played a minor or passive role. Lastly, even if Goodwin played a minor or passive role, “[t]he fact that a mitigating factor [is] clearly present [does] not obligate the court to place [a] defendant on probation or impose a shorter term than the presumptive term.” *State v. Wall*, 343 N.W.2d 22, 25 (Minn. 1984).

We conclude that the district court did not abuse its discretion by denying Goodwin’s motion for a downward dispositional or durational departure based on his claim that he played a passive role in the commission of the crime.

Other Substantial Grounds

Goodwin argues that his crime is a “classic police-created crime” and that “[b]ut for law-enforcement’s involvement, the crime would not have happened.” He claims that “he was induced to take the cocaine that formed the basis for the conviction even though he could not afford it.” He also argues that “[b]y setting the price of the cocaine at an artificially low amount, the [CRI] increased appellant’s sentencing exposure.” Citing federal sentencing guidelines, Goodwin argues that the district court should therefore have given him “a reduced sentence.”³ And he claims that the circumstances constitute “[o]ther substantial grounds . . . which tend to excuse or mitigate the offender’s culpability, although not amounting to a defense.” Minn. Sent. Guidelines II.D.2.a.(5). We disagree.

First, Goodwin failed to raise this argument to the district court. Appellate courts “generally will not consider arguments raised for the first time on appeal.” *State v.*

³ Goodwin concedes that the government’s conduct does not amount to entrapment or unconstitutional sentencing manipulation.

Gauster, 752 N.W.2d 496, 508 (Minn. 2008). Defense counsel stated at the sentencing hearing that people do not usually have drugs delivered to their door “for zero cost.” But neither the motion for downward departure nor the sentencing transcript contains any argument that the government induced Goodwin to purchase more cocaine than he could afford because it set the price of the drugs at an artificially low amount. This argument is waived.

Second, the record contains no evidence that the government’s price set for the drugs was artificially low.

We conclude that the district court did not abuse its discretion by declining to depart downward dispositionally or durationally in sentencing Goodwin.

Affirmed.