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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1602**

State of Minnesota,
Respondent,

vs.

Matthew Demetrius Sims,
Appellant.

**Filed June 13, 2011
Affirmed
Muehlberg, Judge***

Ramsey County District Court
File No. 62-CR-10-245

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

John Choi, Ramsey County Attorney, Mark Nathan Lystig, Assistant County Attorney,
St. Paul, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Suzanne M. Senecal-Hill,
Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Chief Judge; Worke, Judge; and Muehlberg,
Judge.

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

UNPUBLISHED OPINION

MUEHLBERG, Judge

Following a guilty plea, appellant Matthew Demetrius Sims was convicted of second-degree manslaughter and sentenced to 93 months in prison. He challenges the district court's denial of his request for a 67-month "low-end-of-the-box" guidelines sentence and its decision to sentence him to 93 months, which is at the high end of the presumptive range or the "top of the box." Because the district court did not abuse its discretion in imposing this presumptive sentence, we affirm.

FACTS

On January 10, 2010, appellant and his friend J.D.B. were at appellant's house drinking alcohol, playing video games, and playing with a revolver when J.D.B. was fatally shot. Appellant was charged with possession of a firearm by an ineligible person and second-degree manslaughter under Minn. Stat. §§ 624.713, subd. 1(2) (Supp. 2009), 609.205(1) (2008). Appellant agreed to plead guilty to second-degree manslaughter, and the firearm possession charge was dismissed.

At the plea hearing, appellant testified that he and J.D.B. were at appellant's house playing with the revolver, which he claimed that the two friends owned together. Appellant knew that the revolver was loaded with one bullet. Appellant stated that when they heard appellant's mother coming, J.D.B. tossed the gun to him. Appellant claimed that the gun went off when he caught it; the bullet struck J.D.B. and killed him. At the time of the incident, appellant was awaiting sentencing on another felony offense and was not supposed to drink alcohol or be in possession of a firearm.

DECISION

It is undisputed that appellant has three criminal-history points and that second-degree manslaughter is a severity level VIII offense. The presumptive guidelines range for this offense and offender is thus between 67 and 93 months, with a middle-of-the-box sentence of 78 months. *See* Minn. Sent. Guidelines IV (2090).

Appellant argues that the 93-month sentence imposed on him is unreasonable and excessive, and fails to accurately reflect what is proportional to the severity of his offense. At sentencing, appellant requested imposition of a 67-month sentence, which is at the low end of the presumptive range, citing his remorse and his cooperation with police. He further cites the tragic nature of the incident; on appeal he questions whether he was, in fact, culpably negligent for what he characterizes as a “tragic fluke” or “accident.”

The state requested imposition of a 93-month sentence, which is at the high end of the presumptive range, citing appellant’s use of alcohol, possession of a firearm despite his ineligibility to do so, and pending sentence on another felony matter. The district court sentenced appellant to 93 months in prison, noting that appellant had been drinking alcohol but should not have been because it was a condition of his probation in another matter; he possessed a firearm even though he was a prohibited person; and he was awaiting sentencing on another felony at the time of the incident.

In a recent published opinion, this court held that a sentence within the presumptive guidelines range is not a departure and is generally not subject to appellate review. *State v. Delk*, 781 N.W.2d 426, 428-29 (Minn. App. 2010), *review denied* (Minn.

July 20, 2010). Appellate courts rarely interfere with the imposition of a sentence within the presumptive range. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). Moreover, a district court is not required to provide reasons to support imposition of a presumptive sentence. Minn. Sent. Guidelines II.C, .D (2009); *see State v. Curtiss*, 353 N.W.2d 262, 263 (Minn. App. 1984) (holding that district court must consider mitigating factors if they exist but is not required to depart downward even if mitigating factors are shown).

In this case, the district court imposed a sentence within the presumptive range and cited several reasons to support its decision to impose a sentence at the high end of that range: the shooting occurred only ten days before appellant was scheduled to be sentenced on another felony, while appellant was drinking alcohol and in possession of a firearm. Granted, these are facts that could not be used to support an upward durational departure. But the sentence is not a departure and is within the presumptive guidelines range. The district court did not abuse its discretion in considering these facts as indicative of appellant's attitude and apparent belief that the criminal sanctions he faced were not serious or important enough for him to change his behavior and follow the law and the conditions of his probation.

Because the 93-month sentence did not constitute a departure and the sentence was proportional to the severity of the offense, the district court did not abuse its discretion by sentencing appellant to a term at the high end of the guidelines range. We therefore affirm the district court's sentencing decision.

Affirmed.