STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2005

State of Minnesota,
Respondent,

vs.

Robert Darrell Boettcher, Petitioner,
Appellant.

Filed May 13, 2013
Affirmed
Stauber, Judge

Anoka County District Court
File No. 02CR11686

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

Anthony C. Palumbo, Anoka County Attorney, Marcy S. Crain, Assistant County Attorney, Anoka, Minnesota (for respondent)

David Merchant, Chief Appellate Public Defender, Cathryn Young Middlebrook, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Stauber, Judge; and Harten, Judge.*

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

U N P U B L I S H E D O P I N I O N

STAUBER, Judge

Appellant contends that the district court improperly rejected his plea agreement with the state in sentencing him for second-degree burglary. We affirm.

FACTS

On January 26, 2011, the State of Minnesota (the state) charged appellant Robert Darrell Boettcher with first-degree burglary, terroristic threats, second-degree burglary, and fifth-degree controlled-substance crime. Appellant and the state negotiated a plea agreement. The agreement was that if appellant pleaded guilty to first- and second-degree burglary, cooperated with his conditions of release and his pre-sentence investigation (PSI), remained law abiding, and appeared for his sentencing hearing, he would be sentenced to second-degree burglary and the first-degree-burglary charge would be dismissed. The state would also request a bottom-of-the-box disposition of 41 months in prison on the second-degree-burglary charge. If appellant violated these conditions, however, the state would withdraw the plea agreement, and appellant could be sentenced on the first-degree-burglary charge, which carried a presumptive sentence of 108 months in prison.

Appellant agreed to this arrangement. Appellant pleaded guilty to first-degree and second-degree burglary and was released on his own recognizance to appear for his sentencing hearing. The other charges against him were dismissed.

At appellant's sentencing hearing on August 25, 2011, the district court noted that the PSI report recommended sentencing appellant to 108 months in prison on the first-

degree-burglary charge instead of 41 months for second-degree burglary. This recommendation was based on appellant's conduct since his guilty plea on July 5. Specifically, on August 2, 2011, appellant drove away from a gas station without paying for gas. Police stopped appellant, and he admitted to police that he intended to drive off without paying for the gas. Police searched the vehicle appellant was driving, finding a make-up case containing methamphetamine and a syringe. When questioned, appellant denied that the make-up case was his but admitted that he had used methamphetamine the night before. As a result, theft and controlled-substance charges were pending against appellant at the time of his sentencing hearing.

At the sentencing hearing, the district court determined that appellant's use of methamphetamine constituted a failure to remain law abiding and was a violation of his conditions of release. The district court sentenced appellant for second-degree burglary, but to 48 months in prison, the presumptive sentence, instead of the 41-month sentence set forth in the plea agreement. The district court dismissed the first-degree-burglary charge.

Appellant moved the district court to correct his sentence. The court denied his motion. Appellant challenges the denial of his motion, as a postconviction appeal, contending that he is entitled to specific performance of the plea agreement. Appellant contends that his failure to remain law abiding was not a violation of the plea agreement.

D E C I S I O N

The district court has broad discretion in sentencing matters, and we will not reverse the district court absent a clear abuse of discretion. *State v. Lundberg*, 575 N.W.2d 589, 591 (Minn. App. 1998), *review denied* (Minn. May 20, 1998). Only in a "rare" case will a reviewing court reverse the district court's imposition of the presumptive sentence. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). "This court will generally not exercise its authority to modify a sentence within the presumptive range absent compelling circumstances." *State v. Delk*, 781 N.W.2d 426, 428 (Minn. App. 2010), *review denied* (Minn. July 20, 2010) (quotation omitted). "Abuse of discretion is also the standard for reviewing denials of postconviction relief." *Dillon v. State*, 781 N.W.2d 588, 594 (Minn. App. 2010), *review denied* (Minn. July 20, 2010).

Under the separation-of-powers doctrine, the power to decide whom to prosecute and what charge to file is vested in the executive branch, but "the final disposition of a criminal case is ultimately a matter for the judiciary." *Johnson v. State*, 641 N.W.2d 912, 917 (Minn. 2002). "[T]he separation of powers doctrine gives the state the authority to enter into plea agreements with a defendant. However, a district court may, in its discretion, refuse to accept a plea agreement and is not bound by a plea agreement as to any sentence to be imposed." *Id.* at 917-18.

Generally, after the district court accepts a plea containing an agreement on sentencing, the terms of the agreement should be fulfilled. *State v. Pearson*, 479 N.W.2d 401, 405 (Minn. App. 1991), *review denied* (Minn. Feb. 10, 1992). But a court is not required to honor a plea agreement that has been breached. *State v. Brown*, 606 N.W.2d

670, 674 (Minn. 2000). A defendant who breaches a plea agreement is not entitled to specific performance of the agreement. *See State v. Rud*, 372 N.W.2d 434, 435 (Minn. App. 1985) (affirming sentence exceeding sentence provided for in plea agreement when defendant violated plea agreement and had been warned that violation would result in execution of sentence), *review denied* (Minn. Sept. 26, 1985). "In determining whether a plea agreement was violated, courts look to what the parties to the plea bargain reasonably understood to be the terms of the agreement." *Brown*, 606 N.W.2d at 674 (quotations omitted).

The state represented the plea agreement at the July 5 hearing the following way:

> [Appellant] will be pleading guilty to both Counts 1 and 3 of the Complaint. Count 1 is Burglary in the First Degree. Count 3 is Burglary in the Second Degree. If [appellant] appears at the sentencing and cooperates with his conditions of release, he would be sentenced to the Count 3, the Second Degree Burglary. And we're asking for a bottom of the box disposition then per the sentencing guidelines. If [appellant] does not appear at sentencing, he would then be sentenced to Count 1, the First Degree Burglary, per the Minnesota Sentencing Guidelines. . . . We also ask that [appellant] remain law-abiding, that he show for his sentencing, that he cooperate with the PSI. *And if any of the conditions of release are violated, that there will be no agreement.*

(Emphasis added). In response, appellant's counsel stated, "That's understood, Your Honor." After appellant pled guilty, the district court stated the following:

> On the condition, [appellant], that you remain law-abiding and of good behavior, that you appear for sentencing . . . and that you cooperate fully with the Pre-Sentence Investigation. If you fail to comply with one or any of those terms or all of those terms, you will be sentenced on Count 1. . . .

To which appellant responded "Okay." When asked if he had any questions, appellant responded in the negative.

Appellant contends on appeal that he was unaware that chemical use would constitute a violation of his conditions of release and, consequently, a breach of the plea agreement. We acknowledge that the state was unclear in presenting the plea agreement to the district court. A reasonable argument could be made that the state intended that appellant's sentencing was dependent only upon his appearance at his sentencing hearing, not on his compliance with the law. The district court, however, clarified the state's representation and informed appellant that one of his conditions of release was to remain law abiding and that a violation of the conditions of release would result in a conviction and sentence for first-degree burglary.

Appellant admitted at his sentencing hearing that he had used methamphetamine, clearly a violation of the law. As a result, the district court imposed the presumptive sentence for second-degree burglary of 48 months in prison, instead of the negotiated 41-month sentence. Based upon appellant's criminal activity and the terms of the plea agreement, the district court had the authority to sentence appellant to first-degree burglary, with a presumptive sentence of 108 months in prison. But the district court gave appellant a break and sentenced him on the second-degree burglary charge.

The district court did not abuse its discretion in finding that appellant broke the law and breached the terms of the plea agreement. The district court imposed the presumptive sentence, a decision that is entitled to considerable deference. This is not the "rare" case requiring reversal. The district court did not abuse its discretion in rejecting

the plea agreement based upon appellant's breach and in imposing the presumptive sentence.

Affirmed.