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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0951**

Ryan Daniel Jones-Adams, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed March 3, 2014
Affirmed
Bjorkman, Judge**

Hennepin County District Court
File No. 27-CR-10-3559

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer L. Lauermann, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Michael O. Freeman, Hennepin County Attorney, Lee W. Barry, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Bjorkman, Judge; and Hooten, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges his 420-month sentence for second-degree murder, arguing that (1) the district court abused its discretion by extending the deadline for the state to

reply to his postconviction petition, (2) the sentence unfairly exaggerates the criminality of his conduct, and (3) he received ineffective assistance of counsel. We affirm.

FACTS

On January 17, 2010, appellant Ryan Jones-Adams was walking with two friends when they encountered the victim and two of his friends. An argument broke out, and Jones-Adams fired two shots at the victim, who was killed.

Jones-Adams was charged with first-degree murder and first-degree murder for the benefit of a criminal gang. On October 25, 2010, he pleaded guilty to second-degree intentional murder, waived his *Blakely* rights, and agreed to a sentence of 420 months' imprisonment, an upward departure from the presumptive sentence of 306 months. On November 22, Jones-Adams moved to withdraw his guilty plea. The district court denied the motion and imposed the agreed-upon sentence.

On November 26, 2012, Jones-Adams filed a petition for postconviction relief, which the district court denied. This appeal follows.

DECISION

I. The district court did not abuse its discretion by extending the statutory deadline for the state to respond to Jones-Adams's postconviction petition.

We review the denial of a motion for postconviction relief for an abuse of discretion. *Dillon v. State*, 781 N.W.2d 588, 595 (Minn. App. 2010). After a petitioner files a request for postconviction relief, "the county attorney, or the attorney general . . . shall respond to the petition by answer or motion." Minn. Stat. § 590.03 (2012). This

response is due “[w]ithin 20 days after the filing of the petition . . . or within such time as the judge to whom the matter has been assigned may fix.” *Id.*

Jones-Adams filed his petition on November 26, 2012. On January 8, 2013, the judge’s law clerk informed the state that its response was past due. The state’s attorney requested an additional three weeks to file a response. Over the defense’s objection, the district court granted the extension.

Jones-Adams argues that the district court abused its discretion because the law requires that any response be submitted within 20 days after a postconviction petition is filed. We disagree. The postconviction statute expressly provides otherwise. And our supreme court has rejected this argument, concluding that “[u]nder the plain wording of § 590.03, the 20-day limit is not absolute and the state may be granted an extension of the time for filing a responsive pleading.” *Dhaemers v. State*, 286 Minn. 250, 255, 175 N.W.2d 457, 461 (1970). On this record, we conclude that the district court did not abuse its discretion by granting a brief extension.

II. Substantial and compelling circumstances support the upward durational departure.

A district court may depart from the presumptive sentence only if “substantial and compelling circumstances based on aggravating factors warrant an upward departure.” *Dillon*, 781 N.W.2d at 595 (quotation omitted). “Substantial and compelling circumstances are those demonstrating that the defendant’s conduct in the offense of conviction was *significantly* more or less serious than that typically involved in the commission of the crime in question.” *Tucker v. State*, 799 N.W.2d 583, 586 (Minn.

2011) (quotation omitted). But an upward departure is not permitted “if the sentence will unfairly exaggerate the criminality of the defendant’s conduct.” *State v. Edwards*, 774 N.W.2d 596, 601 (Minn. 2009).¹ Whether the district court’s departure ground is proper is a legal issue that we review de novo. *Dillon*, 781 N.W.2d at 595. If the departure is based on proper grounds, “we review [the district court’s] decision *whether* to depart for an abuse of discretion.” *Id.*

The district court sentenced Jones-Adams to 420 months’ imprisonment, an upward departure of 114 months from the presumptive sentence. The district court based this departure on Jones-Adams’s admission that his conduct “placed a number of people potentially at great risk, given the residential area and the people standing in the vicinity.” Jones-Adams challenges the validity of this departure ground and the district court’s decision to depart. We address each argument in turn.

A. Departure ground

Jones-Adams first argues that placing others at risk is not a proper departure ground because “[r]isk to others is typical of most, if not all criminal offenses committed in a public place.” He relies on *State v. Thao*, where our supreme court reversed an upward sentencing departure in the context of a drive-by shooting that occurred in a park next to a school. 649 N.W.2d 414, 422 (Minn. 2002). The supreme court held that the departure was improper because it was based on the repeated discharge of a gun in the

¹ Jones-Adams does not cite controlling law or facts to support his assertion that his sentence unfairly exaggerates the criminality of his conduct. Rather, his argument centers on the validity of the district court’s departure ground. We focus our analysis accordingly.

direction of a crowded park—factors that are “not so different than the offense described” in the statute defining the drive-by shooting offense. *Id.* at 424; *see also* Minn. Stat. § 609.66, subd. 1e(a) (2000) (defining drive-by shooting to include “recklessly discharge[ing] a firearm . . . at or toward a person”).

But in *Edwards*, an assault case, the supreme court affirmed an upward departure based on risk to the public. 774 N.W.2d at 607. The court distinguished *Thao*, concluding that “the legislature did not contemplate the risk associated with the firing of multiple shots into a group of people when it set the presumptive sentence for first-degree assault.” *Id.* at 605. Here, as in *Edwards*, Jones-Adams was convicted of a crime that does not specifically contemplate creation of a risk to the public as an element of the offense. A person commits second-degree intentional murder if they “cause[] the death of a human being with intent to effect the death of that person or another, but without premeditation.” Minn. Stat. § 609.19, subd. 1(1) (2008). Unlike the drive-by shooting offense in *Thao*, Jones-Adams’s conviction offense does not contemplate “reckless behavior,” commission of the crime in a public or semi-public location, or the use of a gun.

Jones-Adams next asserts that there are no “facts to substantiate whether there was an actual or substantial risk of harm to anyone other than [the victim],” noting that “appellant fired two shots directed at [the victim] and both shots hit [the victim].” But Jones-Adams has provided no legal support for the argument that the lack of harm to a bystander precludes the use of the public-risk departure ground. *See State v. Mitjans*, 408 N.W.2d 824, 834 (Minn. 1987) (“Even if defendant did not intend to kill [the victim], he

engaged in a course of conduct that involved a particularly grave danger to human life, firing not one but two shots in a public bar”). The district court did not err by determining that risk to the public is a substantial and compelling circumstance that supports an upward departure.

B. Decision to depart

Jones-Adams argues that the victim was “the verbal aggressor,” which should be considered a mitigating factor and weighs against an upward departure. We review this decision for an abuse of discretion. *Dillon*, 781 N.W.2d at 595.

The record supports the district court’s conclusion that Jones-Adams’s conduct placed bystanders at a risk of harm. Jones-Adams admitted that the shooting occurred in a city neighborhood in the middle of the day, with two individuals standing by Jones-Adams and two standing by the victim. The fact that the victim may have been verbally aggressive towards Jones-Adams is irrelevant to the question of whether Jones-Adams’s conduct placed bystanders at risk. Based on our careful review of the record, we discern no abuse of discretion with respect to the district court’s decision to depart.

III. Jones-Adams’s attorney was not ineffective.

In a pro se supplemental brief, Jones-Adams argues that he received ineffective assistance of counsel because his attorney (1) “failed to make sure that petitioner fully under[stood] the charge and his plea” and (2) “fail[ed] to provide petitioner with his motion of discovery so that he could have an idea of the evidence against him.” To prevail on an ineffective-assistance-of-counsel claim, an appellant must show that “(1) his counsel’s performance fell below an objective standard of reasonableness, and

(2) that a reasonable probability exists that the outcome would have been different but for counsel's errors." *Andersen v. State*, 830 N.W.2d 1, 10 (Minn. 2013). "There is a strong presumption that an attorney acted competently." *Dukes v. State*, 621 N.W.2d 246, 252 (Minn. 2001).

The record shows that Jones-Adams knew his plea would lead to a sentence of 420 months' imprisonment and that this was a departure from the presumptive sentence. At the plea hearing, he testified that he had been shown the sentencing guidelines, that he agreed to a longer sentence, and that he was giving up his right to a trial on the presence of aggravating factors. He provides no support for his assertion that his attorney failed to provide him with a "motion of discovery." Based on this record, there is nothing to indicate that Jones-Adams's attorney's performance fell below an objective standard of reasonableness.

Affirmed.