State v. Leonida

Nonprecedential opinion (2021)

Minnesota Court of Appeals

A20-1059 | August 30, 2021

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STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1059

State of Minnesota,
Respondent,

vs.

Brian John Leonida,
Appellant.

Filed August 30, 2021
Affirmed
Larkin, Judge

Washington County District Court
File No. 82-CR-18-4916

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Pete Orput, Washington County Attorney, Nicholas A. Hydukovich, Assistant County Attorney, Stillwater, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, John Donovan, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Hooten, Judge; and Smith, Tracy M., Judge.

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NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant challenges his sentence for felony violation of an order for protection (OFP), arguing that the district court violated his constitutional right to an impartial fact-finder and the code of judicial conduct by independently investigating and relying on extra-record information regarding another felony OFP violation that appellant committed while pending sentencing. Appellant also argues the district court abused its discretion in denying his motion for a downward durational departure. We conclude that under the unique facts of this case, the district court did not violate appellant's constitutional right to an impartial fact-finder or the code of judicial conduct. We further conclude that the district court did not abuse its discretion in denying appellant's request for a downward durational departure. We therefore affirm.

FACTS

In November 2018, respondent State of Minnesota charged appellant Brian John Leonida with felony violation of an OFP in Washington County.[1] In January 2020, Leonida pleaded guilty to that offense, admitting that he violated an OFP in November 2018 by sending a text message to his ex-wife. At the plea hearing, Leonida informed the district court that he would request a downward durational departure at sentencing. The district court stated that its ruling on that request would be based on whether Leonida's Source PDF page 3 offense was less serious than other similar offenses, and it noted that Leonida was "in the hunt" for a departure because his offense involved only text messages. The district court also stated that it would consider Leonida's conduct between the plea hearing and sentencing.

Leonida was on conditional release pending sentencing. In February 2020, a probation officer reported that Leonida had been charged with a felony in Dakota County for violating a no-contact order, which was a violation of his conditional release. Leonida "allegedly had contact with the same protected party identified in the Washington County matter."

In March 2020, the district court held a hearing regarding the alleged conditional-release violation, before a different judge, at which the following exchange occurred:

> DEFENSE COUNSEL: Thank you, Your Honor. In regard to that [presentence-investigation report (PSI)], *Mr. Leonida believes that he completed a PSI down in Dakota and obviously that would be able to be transfer[red] up here*. He just spent three more days in custody down in Dakota County. I'm not sure if we can verify that PSI completion.
>
> THE COURT: I'll look right now. If he did that, *is the request to use that PSI for this sentencing*, which is an update?
>
> DEFENSE COUNSEL: *Yes, Your Honor*, I wouldn't see any reason to repeat.
>
> THE COURT: I have that he's got sentencing pending in Dakota County before Judge Prenzell on April 23rd, has, does that mean he thinks he completed the PSI for that case and he has not been sentenced?
>
> LEONIDA: Absolutely I have.
>
> THE COURT: You've been sentenced on that one? It's a pending Felony Violation of an Order for Protection and sentencing is scheduled, according to what I'm looking at, for April the 23rd.
>
> LEONIDA: I have been asking that same question for the last two weeks they held me in custody and I thought the 45 days I Source PDF page 4 just put in, I plead guilty to a 90-day sentence and I thought this would be adequate to cover that and *they told me they were going to send the PSI to here* so I could skip that so I can get out of here right away. I got three children at home. My father's in the courtroom he can verify they said that.

(Emphasis added.) Further discussion led to a conclusion that a PSI had not been completed in Dakota County. The district court ordered that Leonida be held in custody pending an expedited

hearing before the judge who had presided over his plea hearing and who was scheduled to preside over the sentencing hearing.

In May 2020, the district court held a sentencing hearing on the underlying offense. The PSI regarding the Washington County offense described the circumstances surrounding the new Dakota County offense. The PSI reported that Leonida had been charged with felony violation of an OFP in Dakota County for contacting his ex-wife. It also reported that Leonida had pleaded guilty to that Dakota County offense and was awaiting sentencing.

At the sentencing hearing, the district court denied Leonida's request for a downward durational departure. In reaching that determination, the district court referenced its statement at the plea hearing that it would consider Leonida's conduct between the plea hearing and sentencing. The district court then discussed Leonida's new Dakota County charge for felony violation of an OFP:

> And then you had that new Dakota County case come out. And I went into that file to see, okay, is that pending, what's happening. I read the complaint and the allegations there; again, text messaging, but it's a matter of where the line is and crossing that line. And then I saw that there was a plea. I have seen that pre-sentence investigation as well, and I know that sentencing is upcoming.

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The district court denied Leonida's request for a downward durational departure, stayed imposition of the sentence, and placed Leonida on probation for five years. Leonida appeals.

DECISION

I.

Leonida contends that his sentence must be reversed because the district court judge denied him the constitutional right to an impartial fact-finder and violated the code of judicial conduct. Leonida argues that the judge was required to disqualify himself and that this case must be remanded for resentencing before a different district court judge.

The United States Constitution guarantees criminal defendants the right to a trial before an impartial judge and fact-finder. *State v. Dorsey*, 701 N.W.2d 238, 249 (Minn. 2005). "An impartial trial requires that conclusions reached by the trier of fact be based upon the facts in evidence and prohibits the trier of fact from reaching conclusions based on evidence sought or obtained beyond that adduced in court." *Id.* at 249-50 (citation omitted). The denial of an impartial judge and fact-finder is a structural error, which requires reversal without consideration of prejudice. *Id.* at 253. We review de novo whether a judge's conduct denied a defendant the right to an impartial judge and fact-finder. *Id.* at 249.

The Minnesota Rules of Criminal Procedure and the Minnesota Code of Judicial Conduct protect a criminal defendant's right to an impartial judge. A judge must not preside at a trial or other proceeding if he or she is disqualified under the code of judicial conduct. Minn. R. Crim. P. 26.03, subd. 14(3). And a judge must disqualify himself or Source PDF page 6 herself "in any proceeding in

which the judge's impartiality might reasonably be questioned." Minn. Code Jud. Conduct Rule 2.11(A). The proper standard for determining whether a judge must be disqualified for an appearance of partiality is "whether a reasonable examiner, with full knowledge of the facts and circumstances, would question the judge's impartiality." *In re Jacobs*, 802 N.W.2d 748, 753 (Minn. 2011). Moreover, a judge "shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed." Minn. Code Jud. Conduct Rule 2.9(C). We review de novo whether a judge violated the code of judicial conduct. *Dorsey*, 701 N.W.2d at 246.

Leonida argues that the district court judge failed to remain impartial because he conducted an independent investigation and relied on extra-record facts in denying Leonida's request for a downward durational departure. Specifically, the judge investigated the facts underlying Leonida's new OFP violation in Dakota County by obtaining and reviewing the complaint and PSI from that case file.

Leonida relies on *Dorsey* as support for his position. The defendant in *Dorsey* had been charged with felony possession of marijuana, and the state sought an enhanced sentence based on the defendant's alleged possession of a firearm. *Id.* at 241-42. The district court held a court trial to determine whether the firearm belonged to the defendant. *Id.* at 242. The defendant called a witness who provided testimony suggesting that the firearm could have belonged to a deceased drug dealer. *Id.* The district court judge recognized the drug dealer's name and believed that he had died more recently than the witness had testified. *Id.* at 243. The judge asked her clerk to investigate the drug dealer's Source PDF page 7 date of death, and that research confirmed the judge's suspicion. *Id.* at 243-44. The judge took judicial notice of the drug dealer's date of death, found the witness not credible, in part because of the erroneous date of death, and found that the defendant was in possession of the firearm. *Id.* at 244-45.

The supreme court reversed the defendant's conviction, concluding that the judge conducted an independent investigation that deprived the defendant of an impartial fact-finder at trial. *Id.* at 253. In reaching that determination, the supreme court emphasized the "bright-line rule that judges may not engage in independent investigations of facts in evidence—regardless of whether the evidence and investigation involve immutable facts." *Id.* at 251. Additionally, when judges have "extra-record knowledge that is prejudicial to a defendant in a criminal trial," they may not disclose that knowledge, but instead must either disqualify themselves or set the knowledge aside. *Id.* at 252.

Leonida argues that *Dorsey* is factually similar and dispositive here. The state counters that the judge in this case did not conduct an independent investigation because the record in the Washington County case contained the material information that the judge considered from the Dakota County case file. But the record does not completely support the state's assertion. Although the PSI for the underlying case mentions that Leonida had been charged with felony violation of an OFP in Dakota County, that he had once again contacted his ex-wife, and that he had pleaded guilty to the charged offense, the district court judge here mentioned additional information from the Dakota County file at the sentencing hearing. Specifically, the district court judge stated that

Leonida had contacted his ex-wife in the Dakota County case by texting her, just as he had texted her in this case.

Source PDF page 8

The identical method of contact in the underlying case and the Dakota County case impacted the judge's sentencing decision: he explained that Leonida had "cross[ed]" the line by once again texting his ex-wife in violation of the OFP. In sum, although most of the facts regarding the Dakota County case were contained in the record, the judge expressly relied on one extra-record fact in denying the downward durational departure: the method of making prohibited contact.

The state also counters that the judge's actions were permissible because the "district court's duties differ between trial and sentencing." But a judge "must maintain the integrity of the adversary system at all stages of the proceedings." *State v. Schlienz*, 774 N.W.2d 361, 367 (Minn. 2009). Thus, the fact that the judge's investigation occurred during the sentencing stage does not necessarily make it appropriate.

Finally, the state argues that the judge "did not make rulings on disputed facts at sentencing," noting that Leonida did not dispute that he had once again texted his ex-wife in violation of an OFP while pending sentencing in the underlying case. In that sense, this case is unlike *Dorsey*, in which the judge's independent investigation "directly impeach[ed] the veracity of a defense witness's testimony." 701 N.W.2d at 251. However, that difference regards the degree of prejudice resulting from the district court's investigation, and *Dorsey* states that the failure to provide an impartial judge is a structural error that requires automatic reversal, regardless of prejudice. *Id.* at 253.

However, at oral argument to this court, the state pointed out that when Leonida appeared before the district court to address the conditional-release violation based on the new Dakota County offense, he himself suggested that the district court in the Washington Source PDF page 9 County case could rely on the Dakota County PSI instead of waiting for completion of a PSI in Washington County. The record confirms that Leonida suggested that the Washington County judge should review the Dakota County PSI. The state argues that "an objective, unbiased layperson with full knowledge of the facts and circumstances would not question [the judge's] impartiality" in this case. The state notes that Leonida did not "allude[] to any allegation of partiality or improper conduct until this appeal." The state asserts that this record "demonstrates that a reasonable individual with full knowledge of the facts and circumstances of this case viewed [the judge's] conduct as reasonable."

The state's last argument is compelling. We recognize "the bright-line rule that judges may not engage in independent investigations of facts in evidence—regardless of whether the evidence and investigation involve immutable facts." *Id.* at 251. We also recognize that the majority in *Dorsey* stressed the uniform proposition that "when judges seek information outside of the record, it constitutes an impermissible independent investigation" and that allowing judicial investigation of even unchanging facts would open "a judicial Pandora's box regarding if, when, and how a judge sitting as the finder of fact may conduct independent investigations." *Id.* In sum, our criminal justice system is based on the "bedrock principle . . . that judges may not investigate or rely upon extra-record knowledge when sitting as the finder of fact." *Id.*

Nonetheless, the issue in *Dorsey* was "whether a defendant's right to due process is violated when a judge in a bench trial openly questions the veracity of a factual assertion made by a witness for the defense, independently investigates that fact, and reveals the results of her investigation to counsel." *Id.* at 245. The district court did nothing similar Source PDF page 10 here. Instead, the district court reviewed the complaint and PSI in the Dakota County case after the existence of that offense was brought to the district court's attention in an alleged conditional-release violation and after Leonida himself urged the district court to rely on the PSI in the Dakota County case instead of waiting for a PSI to be completed in Washington County. It is therefore not surprising that Leonida did not object when the district court revealed that it had reviewed the Dakota County case file in preparation for the sentencing hearing in this case.

Like the supreme court, we do not want to open a "judicial Pandora's box regarding if, when, and how" a judge may conduct independent investigations of facts affecting a sentencing decision. But the unique circumstances in this case are very different from the circumstances in *Dorsey*. And those circumstances—including Leonida's earlier indication that he did not object to the district court's reliance on the Dakota County PSI— assure us that "a reasonable examiner, with full knowledge of the facts and circumstances," would not question the judge's impartiality in this case. *Jacobs*, 802 N.W.2d at 753.

In sum, the district court judge did not violate Leonida's constitutional right to an impartial fact-finder or the code of judicial conduct.

II.

Leonida also contends that the district court abused its discretion in denying his request for a downward durational departure. He asks us to reverse his sentence and remand with instructions to impose a gross-misdemeanor sentence.

The Minnesota Sentencing Guidelines establish presumptive sentences for felony offenses. Minn. Stat. § 244.09, subd. 5 (2018). A district court may depart from the Source PDF page 11 presumptive sentence only when there exist "identifiable, substantial, and compelling circumstances to support a departure." Minn. Sent. Guidelines 2.D.1 (2018). Departures from the guidelines "are discouraged and are intended to apply to a small number of cases." *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016).

District courts have great discretion when imposing sentences, and we reverse sentencing decisions only when the district court abuses its discretion. *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014). We will reverse the district court's refusal to depart from the presumptive sentence only in a "rare" case. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). When exercising sentencing discretion, the district court "must consider circumstances supporting a downward durational departure from the presumptive sentence," and the court errs when it fails to consider "[l]egitimate" and "significant" reasons for a departure. *State v. Curtiss*, 353 N.W.2d 262, 262-64 (Minn. App. 1984). Nevertheless, the district court is not required to depart even when there are grounds to do so. *State v. Olson*, 459 N.W.2d 711, 716 (Minn. App. 1990), *review denied* (Minn. Oct. 25, 1990).

Offender Versus Offense Characteristics

There are two types of sentencing departures: dispositional (i.e., whether the offender is placed on probation or sent to prison) and durational (i.e., the length of the pronounced term of incarceration). *Solberg*, 882 N.W.2d at 623. A dispositional departure typically focuses on the characteristics of the offender. *Id.* Conversely, a durational departure "must be based on factors that reflect the seriousness of the *offense*, [and] not the characteristics of the offender." *Id.* A downward durational departure is justified if "the Source PDF page 12 defendant's conduct is significantly less serious than that typically involved in the commission of the offense." *State v. Mattson*, 376 N.W.2d 413, 415 (Minn. 1985).

Leonida requested a gross-misdemeanor sentence for a felony conviction, which constitutes a downward durational departure. *State v. Dentz*, 919 N.W.2d 97, 101 (Minn. App. 2018). On appeal, he argues that the district court abused its discretion by denying a durational departure based on his Dakota County OFP violation, because that circumstance regards his characteristics as an offender and not the seriousness of the Washington County offense.

The record demonstrates that the district court applied the correct standard when it denied Leonida's request for a downward durational departure. At both the plea and sentencing hearings, the district court acknowledged that its decision would be based on whether the offense was less serious than other similar offenses. It specifically contemplated that violating an OFP through a text message could be less serious than violating an OFP through in-person contact. However, the district court ultimately denied the departure because Leonida committed a new offense before the sentencing hearing.

We are not persuaded that the district court's consideration of Leonida's additional OFP violation is a basis to reverse Leonida's sentence. Although the *grant* of a durational departure must be based on the seriousness of the offense, we are not aware of any precedent suggesting that a district court's reasons for the *denial* of a durational departure are subject to appellate review. Indeed, although the district court must give reasons for granting a sentencing departure, it is not required to provide reasons for denying a Source PDF page 13 departure.[2] *See State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985) ("Although the [district] court is required to give reasons for departure, an explanation is not required when the court considers reasons for departure but elects to impose the presumptive sentence."). The district court must simply demonstrate that it exercised its discretion by considering the reasons for and against departure. *Id.* at 80-81. Moreover, even if there are grounds to support a departure, the district court is not required to depart. *Olson*, 459 N.W.2d at 716.

In sum, the district court applied the correct standard when denying Leonida's request for a downward durational departure.

Seriousness of the Underlying Offense

Leonida argues that his offense was less serious than a typical OFP violation because the unlawful contact occurred through a text message, and not through in-person contact. He also argues that there is no evidence that the messages were threatening in nature. Leonida does not cite caselaw indicating that a violation of an OFP through electronic means is less serious than a violation through in-person contact. In fact, the Minnesota Supreme Court has declined to adopt a categorical rule that threats made on social media are less serious than threats made through other mediums of communication. *State v. Rund*, 896 N.W.2d 527, 535 (Minn. 2017) (rejecting proposed rule and reversing a downward durational departure in a terroristic-threats case). The supreme court instead concluded that courts must conduct an "analysis of the totality of the circumstances Source PDF page 14 surrounding the specific offense." *Id.* Thus, we consider the totality of the circumstances here.

The record does not describe the content of the impermissible text messages in this case; it merely states that the messages exceeded the type of contact that was permissible under the OFP. Thus, we have no basis to conclude that Leonida's offense was significantly less serious than a typical OFP violation based on a text message. *See id.* at 535-36 (examining the content of the underlying communication). Moreover, even if the offense was significantly less serious than a typical offense, the district court was not required to depart from the presumptive sentence. *Olson*, 459 N.W.2d at 716.

In sum, the district court did not abuse its discretion in denying Leonida's request for a downward durational departure.

Affirmed.

Court's footnotes

1 The offense was a felony because Leonida had two previous qualified domestic violence-related offense convictions in the prior ten years. *See* Minn. Stat. § 518B.01, subd. 14(d)(1) (2018).

2 Nonetheless, we observe that a defendant's commission of another felony offense while pending sentencing on a nearly identical felony offense is a logical reason to deny a more lenient sentence than the one presumed to be appropriate under the Minnesota Sentencing Guidelines.