

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0622**

Peter Devonn Crosby, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed November 22, 2021
Affirmed
Florey, Judge**

Ramsey County District Court
File No. 62-CR-17-7670

Cathryn Middlebrook, Chief Appellate Public Defender, Gina D. Schulz, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

John J. Choi, Ramsey County Attorney, Jeffrey A. Wald, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Florey, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

FLOREY, Judge

In this appeal from an order denying postconviction relief in which appellant challenged his sentence for second-degree intentional murder, appellant argues that the district court abused its discretion by denying his motion for a downward durational

departure based on his argument that his intellectual disability mitigated his culpability. We affirm.

FACTS

In October 2018, appellant Peter Devonn Crosby pleaded guilty to second-degree intentional murder. The state agreed to limit its sentencing recommendation to 261 months' imprisonment, the low end of the presumptive range, and Crosby reserved his right to argue for a downward durational departure.

As part of the factual basis for his plea, Crosby testified that on September 29, 2017, he and two of his cousins were drinking alcohol at a bar. While in the parking lot, Crosby and one of his cousins began talking to the victim. Crosby testified that the victim "said some things" about his cousin's father who had recently passed that "were not pleasant things." Angered by the victim's comments, Crosby shot him in the back of the head, knowing that it would kill him. Crosby stated that he shot the victim "because he was being real rude about my uncle's death." Crosby also agreed that he knew he was killing the victim and that he intentionally caused the victim's death. Crosby then spent the night at his cousin's house. The next day, he traveled to his sister's house in Wisconsin by taxi and then returned to his home in Illinois. At some point, he threw the murder weapon into Lake Michigan.

In December 2018, Crosby moved for a downward durational departure based on the following grounds: (1) he lacked the capacity for judgment when he committed the murder because of his mental impairment; (2) he was voluntarily intoxicated at the time of the offense which mitigated his culpability; (3) his guilty plea saved time and expense; and

(4) he demonstrated remorse and accepted responsibility. The state opposed the motion, arguing for the low-end-of-the-presumptive-range prison sentence of 261 months.

In support of his motion, Crosby referenced his presentence psychological evaluation in which the evaluator determined that he had an IQ of 64. The evaluator noted that Crosby's cognitive testing suggested that he had impairments related to intellectual functioning. However, the evaluator questioned the veracity of the results based on his opinion that Crosby may be over-endorsing his impairments. The evaluator gave a rule-out diagnosis for borderline intellectual functioning and concluded that while Crosby exhibited functioning generally consistent with an intellectual disability, the veracity of the results was questionable.

At the sentencing hearing, the district court denied Crosby's motion for a downward durational departure and sentenced him to 261 months in prison. The district court noted that the defense failed to "cite anything about the nature and seriousness of what [Crosby] did that justify[d] a departure." Regarding Crosby's request for a departure based on mental impairment, the district court found that there was "no suggestion in the record . . . or in [the psychological evaluator's report] that [Crosby's] intellectual functioning was so impaired that it interfered with [his] capacity for judgment at the time of the offense." The district court noted that Crosby's history of "gainful employment including operating large machinery" suggests "some level of judgment and skill." The district court also found that the record was "devoid of any evidence that [Crosby] had an impairment in [his] ability to understand and appreciate that [his] actions were wrong." After considering the psychological evaluator's "concern about the veracity of [Crosby's]

interview and the testing results,” the district court concluded that Crosby did not have “an extreme mental illness or mental impairment.”

In December 2020, Crosby filed a petition for postconviction relief, arguing that the district court abused its discretion by (1) denying his departure motion because his intellectual disability “clearly mitigated his culpability” and (2) imposing an unauthorized fine of \$50.00. Without holding an evidentiary hearing, the postconviction court vacated the fine as unlawfully applied and denied Crosby’s motion for a downward durational departure. This appeal follows.

DECISION

The postconviction court did not abuse its discretion when it denied Crosby’s petition for postconviction relief.

Crosby argues that the postconviction court abused its discretion by concluding that he did not have a mental impairment; by evaluating his departure motion based on his intellectual disability using standards developed for departure motions based on mental illnesses; and by concluding that he did not demonstrate a nexus between his impairment and the offense.

“We review the denial of a petition for postconviction relief for an abuse of discretion. A postconviction court abuses its discretion when it has exercised its discretion in an arbitrary or capricious manner, based its ruling on an erroneous view of the law, or made clearly erroneous factual findings. Legal issues are reviewed de novo, but . . . we do not reverse the postconviction court’s findings unless they are clearly erroneous.” *Pearson v. State*, 891 N.W.2d 590, 596 (Minn. 2017) (citation, quotations, and alterations omitted).

“We ‘afford the [district] court great discretion in the imposition of sentences’ and reverse sentencing decisions only for an abuse of that discretion.” *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014) (quoting *State v. Spain*, 590 N.W.2d 85, 88 (Minn. 1999)). “[A] sentencing court can exercise its discretion to depart from the guidelines only if aggravating or mitigating circumstances are present, and those circumstances provide a substantial and compelling reason not to impose a guidelines sentence.” *Id.* at 308 (quotations and citations omitted). Only in a “rare” case will an appellate court reverse a sentencing court’s refusal to depart. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

“The Minnesota Sentencing Guidelines establish presumptive sentences for felony offenses.” *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016) (citing Minn. Stat. § 224.09, subd. 5 (2014)). “The sentencing guidelines seek to ‘maintain uniformity, proportionality, rationality, and predictability in sentencing’ of felony crimes.” *Id.* (quoting Minn. Stat. § 224.09, subd. 5 (2014)). Accordingly, “departures from the guidelines are discouraged and are intended to apply to a small number of cases.” *Id.* (citing *State v. Misquadace*, 644 N.W.2d 65, 68 (Minn. 2002)). The district court “may depart from the presumptive sentence only when there are ‘identifiable, substantial, and compelling circumstances to support a departure.’” *Id.* (quoting Minn. Sent. Guidelines 2.D.1.). Durational departures “must be based on factors that reflect the seriousness of the offense, not the characteristics of the offender.” *Id.* at 623-24 (citing *State v. Chaklos*, 528 N.W.2d 225, 228 (Minn. 1995)).

Crosby argues that the sentencing guidelines include two mitigating factors relevant to this appeal; first, when “the offender, because of physical or mental impairment, lacked

substantial capacity for judgment when the offense was committed,” Minn. Sent. Guidelines 2.D.2(a)(3); and second, where “other substantial grounds exist that tend to excuse or mitigate the offender’s culpability, although not amounting to a defense. *Id.* at 2.D.2(a)(5).

To establish a mitigating factor based on a physical or mental impairment, a defendant must establish the existence of a physical or mental impairment and demonstrate that because of the impairment, the defendant “lacked substantial capacity for judgment when the offense was committed.” Minn. Sent. Guidelines 2.D.3.a.(3). Crosby cites to several cases in which courts have granted a downward durational departure based on this mitigating factor. *State v. Martinson*, 671 N.W.2d 887, 892 (Minn. App. 2003) (granting a downward durational departure where defendant suffered from “the psychosis of paranoid schizophrenia”); *State v. Barsness*, 473 N.W.2d 325, 326 (Minn. App. 1991) (affirming downward durational departure where defendant was suffering from major depression at the time of the offense); *State v. Wall*, 343 N.W.2d 22, 25 (Minn. 1984) (reversing district court’s imposition of upward durational departure where defendant had a nearly 20-year documented history of mental illness that included hospitalization and civil commitment); *State v. Hennum*, 441 N.W.2d 793, 797 (Minn. 1989) (affirming downward durational departure where defendant suffered from alcohol dependence, psychoneurotic depression, and an antisocial-personality disorder). However, unlike the defendants in these cases who suffered from a mental illness, Crosby suffered from a low IQ and nonspecific learning disability. Thus, these cases are not dispositive here.

Crosby next cites to *Atkins v. Virginia*, 536 U.S. 304 (2002) in support of his argument that that a downward durational departure is appropriate because his “intellectual disability constituted a substantial and compelling circumstance” supporting a downward durational departure. In *Atkins*, the United States Supreme Court determined that the death penalty is not appropriate for “mentally retarded” defendants because such a punishment would be excessive in violation of the Eighth Amendment. *Id.* at 321. In that case, the Supreme Court explained that “subaverage intellectual functioning” alone is not enough to reduce criminal culpability and that “significant limitations in adaptive skills such as communication, self-care, and self-direction” that manifested before age 18 must also be present. *Id.* at 318.

Crosby then cites to secondary authority, which proposed a three-prong test for determining whether a defendant who has an intellectual disability should be subject to the death penalty based on the holding in *Atkins*: “(1) significantly subaverage intellectual functioning, (2) deficits in adaptive functioning, and (3) onset during the developmental period.” See John H. Blume et. al., *A Tale of Two (and Possibly Three) Atkins: Intellectual Disability and Capital Punishment Twelve Years After the Supreme Court’s Creation of a Categorical Bar*, 23 Wm. & Mary Bill Rts. J. 393, 400 (2014). Crosby explains that full-scale IQ is the primary critical measure to the first prong. Crosby contends that his psychological evaluation contains evidence related to all three prongs of the test because it stated that he had a subaverage IQ and a nonspecific learning disability and that he started receiving special-education services and social-security-disability payments in elementary school. Thus, he argues that he demonstrated that he has an intellectual disability.

Here, the postconviction court found that while Crosby established his low IQ, he failed to establish a “deficit in adaptive functioning that impacted culpability or the seriousness of the offense.” The court concluded that even under the test he proposed, Crosby “is not a person with an intellectual/mental disability.” We agree with the postconviction court and note that Crosby’s contention that his mental impairment supports a downward durational departure is further undermined by the psychological evaluator’s conclusion that Crosby may have exaggerated his symptoms, making him question the veracity of the evaluation results.

Crosby next argues that the postconviction court erred by evaluating his case using standards that were developed for departure motions based on mental illnesses. Specifically, he argues that the court erred in concluding that his intellectual disability was not extreme enough to be considered a mitigating factor under the sentencing guidelines because it incorrectly applied the standard articulated in *State v. McLaughlin*, 725 N.W.2d 703, 716 (Minn. 2007). In that case, the court stated that “[a]s to mental illness, we have held that in order to constitute a mitigating factor in sentencing, a defendant’s impairment must be ‘extreme’ to the point that it deprives the defendant of control over his actions.” *Id.* Crosby contends that this “standard” should not have been applied to his case because it “expressly addresses mental illness and says nothing about intellectual disabilities.” Thus, he contends that we should apply the three-prong test for intellectual disabilities stated above rather than the *McLaughlin* standard.

However, the three-prong test for intellectual disabilities has not been adopted by the Minnesota Legislature or Supreme Court, and “the task of extending existing law” does

not fall on this court. *Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987), *rev. denied* (Minn. Dec. 18, 1987); *see In re Welfare of J.P.-S.*, 880 N.W.2d 868, 873 (Minn. App. 2016) (quoting this aspect of *Tereault*) (“[T]he task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court.”). Furthermore, the test proposed by Crosby is meant to address intellectual disabilities in the context of death-penalty cases. Because that is not the issue here and because Minnesota does not have the death penalty, we fail to see how Crosby’s proposed test is applicable to the facts at hand. Therefore, we decline to apply Crosby’s proposed test here.

Furthermore, the record does not support Crosby’s contention that the district court abused its discretion by applying the *McLaughlin* standard to this case. Rather, our review is consistent with the district court’s finding that the record is “devoid of any evidence that [Crosby] had an impairment in [his] ability to understand and appreciate that [his] actions were wrong.” Crosby stated both that he knew the gunshots would kill the victim and that he intended to kill him, undercutting his assertion that his intellectual disability impaired his ability to understand or control his actions at the time of the offense.

Finally, the state argues that the district court did not abuse its discretion in denying Crosby’s request for a downward durational departure based on his intellectual disability because an intellectual disability is an offender-specific characteristic. The state cites to *State v. Rund* in support of this argument. 896 N.W.2d 527 (Minn. 2017). In *Rund*, the defendant argued that his mental-health issues, among other reasons, justified the district court’s downward durational sentencing departure. *Id.* at 534-35. The supreme court disagreed, stating in a footnote that “mental impairment is an offender-related

characteristic that cannot justify a downward durational departure.” *Id.* at 534 n.11. The supreme court reversed the downward durational sentencing departure and remanded for imposition of a presumptive sentence. *Id.* at 529.

Here, like the defendant’s mental-health issues in *Rund*, Crosby’s “intellectual disability” is “an offender-related characteristic.” *Id.* at 534 n. 11. Therefore, Crosby’s intellectual disability did not require the district court to impose a downward durational departure.

Crosby argues that *Rund* does not apply to this case because “it is well-established that substantially impaired judgment at the time of the offense is an offense-related characteristic” and because the footnote in *Rund* is not sufficient to overturn that precedent. Crosby acknowledges that his intellectual disability might factor into an offender-specific dispositional departure analysis but argues that “it also relate[s] back to his offense because it affected his capacity for judgment and accordingly, his culpability.”

The postconviction court considered this argument, finding that Crosby “offered nothing but surmise and assumptions” regarding the impact of his diagnosis on his capacity for judgment at the time of the offense. The postconviction court also stated that

A requirement that the impairment be “extreme” serves to ensure a nexus between the condition and its impact on the conduct leading to the offense. For purposes of the sentencing guidelines and downward departure jurisprudence, the key is not the impairing condition but how that condition manifested itself at the time of the offense.

Our review of the record supports the postconviction court’s findings and conclusion. Because Crosby has not established that this is the “rare case” in which this

court should reverse the district court's refusal to grant a sentencing departure, we determine that the postconviction court did not abuse its discretion by denying Crosby's petition for a downward durational departure. *Kindem*, 313 N.W.2d at 7.

Affirmed.