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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0120**

State of Minnesota,
Respondent,

vs.

Kemaludin Nuredin Mohammed,
Appellant.

**Filed December 16, 2024
Affirmed
Ede, Judge**

Ramsey County District Court
File No. 62-CR-21-1835

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

John Choi, Ramsey County Attorney, Alexandra Meyer, Assistant County Attorney,
St. Paul, Minnesota (for respondent)

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

Considered and decided by Schmidt, Presiding Judge; Ross, Judge; and Ede, Judge.

NONPRECEDENTIAL OPINION

EDE, Judge

In this direct appeal from a first-degree aggravated-robbery conviction, appellant argues that his guilty plea is inaccurate and that he should be permitted to withdraw it because the factual basis is insufficient to establish that he was armed. Appellant alternatively seeks resentencing, contending that the district court abused its discretion

when it declined to grant him a downward dispositional departure. We conclude (1) that there is a sufficient factual basis establishing that appellant was armed with an article that he used in a manner to lead the victim to reasonably believe it to be a dangerous weapon and (2) that the district court's imposition of a presumptive guidelines sentence was not an abuse of discretion. Thus, we affirm.

FACTS

Underlying Charges, Guilty Plea, and Presentence Investigation Report (PSI)

Respondent State of Minnesota charged appellant Kemaludin Nuredin Mohammed with first-degree aggravated robbery, in violation of Minnesota Statutes section 609.245, subdivision 1 (2020).

In August 2023, Mohammed pleaded guilty as part of a global plea agreement concerning several pending cases.¹ In exchange for Mohammed's guilty plea in this case, the state agreed to recommend a downward dispositional departure on the first-degree aggravated-robbery offense—i.e., probation with a stayed sentence at the high end of the presumptive sentencing guidelines range, if Mohammed completed treatment.

During a guilty plea hearing, the state, Mohammed, and the district court engaged in the following colloquy to establish the factual basis for Mohammed's plea:

THE STATE: And at some point did you approach a woman who was seated in her vehicle outside that [grocery store]?

¹ Along with pleading guilty to the underlying first-degree aggravated-robbery offense here, Mohammed agreed to plead guilty to an incident that had occurred in August 2020 and for which Mohammed was charged with two counts of robbery. As to that case, the state agreed to dismiss count 1—second-degree aggravated robbery—if Mohammed pleaded guilty to count 2—simple robbery. The state also agreed to dismiss a separate charge of fifth-degree drug possession dating back to 2022.

MOHAMMED: Yes.

THE STATE: And what did you do when you approached her?

MOHAMMED: Grabbed her purse and sh--.

DISTRICT COURT: I'm sorry, Mr. Mohammed?

MOHAMMED: I said, I grabbed the purse. I told her, like, "you dropped something" and as soon as she turned, I grabbed her purse.

THE STATE: Okay. Did you have a weapon on you at that point or something that appeared to look like a handgun?

MOHAMMED: No, not really but I scared her that I had a gun and sh--.

DISTRICT COURT: I'm sorry. I couldn't hear you.

MOHAMMED: What was the question again?

THE STATE: So the question was: Did you have a weapon on you specifically a handgun or something like that looked like a handgun?

MOHAMMED: Yeah.

THE STATE: All right. Do you believe that this woman . . . would have believed that what you had on you was a gun?

MOHAMMED: Yes.

THE STATE: And what did you tell her when you pointed that gun at her?

MOHAMMED: Just give it out, the purse.

THE STATE: Give up the purse?

MOHAMMED: Yeah.

THE STATE: And did she do that then?

MOHAMMED: Yeah.

THE STATE: And did the act of you pointing this gun at her as well as telling her to give it up, give up your purse. You would agree that's what caused her to let go of her purse at that point; is that correct?

MOHAMMED: Yes.

THE STATE: And that she reasonably believed that you were armed with a weapon at that point, a gun?

MOHAMMED: Yes.

The district court ultimately accepted Mohammed's guilty plea. In addition, the district court ordered Mohammed to cooperate with a PSI, to remain law-abiding, to maintain contact with his attorney, and to appear for sentencing.

The district court later received two PSIs from probation. The first PSI was completed in 2022 and related to a charge of fifth-degree drug possession.² The second PSI was completed in October 2023 and concerned the September 2020 first-degree aggravated-robbery charge in this case and a separate simple-robbery offense from August 2020. Based on a severity level of eight and a criminal-history score of three, the second PSI recommended an executed guidelines sentence of 78 months for the first-degree aggravated-robbery offense.

Sentencing and Appeal

After receiving the PSIs, the district court held a sentencing hearing. The district court had to reschedule the hearing from mid- to late-October 2023 because Mohammed was charged in a new case with unlawful possession of ammunition and because Mohammed requested a continuance to address certain information missing from the second PSI. At the hearing, the state requested that the district court adopt probation's recommendation that the court impose an executed 78-month sentence for the first-degree aggravated-robbery offense. In arguing that Mohammed was not particularly amenable to probation, the state cited Mohammed's criminal history, explaining that he had not succeeded despite prior opportunities on probation, including gross-misdemeanor sentences for auto-theft and criminal-threats offenses. Citing Mohammed's failure to appear for court multiple times, as well as several violations of his conditional-release terms, the state maintained that it would be "a long shot to expect that Mr. Mohammed

² Consistent with the parties' plea agreement, the district court dismissed the fifth-degree drug-possession charge.

would be particularly amenable to probation.” The victim also provided an impact statement at the hearing.

Defense counsel countered that Mohammed had reportedly been “using fentanyl and methamphetamine” at the time of the robbery and that he had taken full responsibility for the offense. Moreover, the defense asserted that Mohammed “knew that he impacted the victims, that they were scared, and he [was] sorry about that.” Defense counsel explained that Mohammed’s drug use was “rooted in a long history of trauma from his childhood,” discussed Mohammed’s struggles with sobriety, and noted that Mohammed had been sober in the fall of 2022, “while he was in treatment and for a few months after treatment.” But the defense acknowledged that, following his treatment efforts, Mohammed “fell back into homelessness again.” Defense counsel also asked the district court to consider the challenges posed by Mohammed’s physical condition:

In the spring, [Mohammed] was civilly committed, not out of this file, but because he OD’d in the snow and got frostbite in his legs and ended up having to go to the hospital and losing both of his legs due to that. He will forever be in a wheelchair having to use prosthetics for the rest of his life because of what happened to him, and I think those are just disastrous consequences.

And the defense contended that a downward dispositional departure was appropriate because Mohammed was “still under a civil commitment that just started” and because the departure would allow him the opportunity to seek treatment.

Following his attorney’s remarks, Mohammed addressed the district court, expressing remorse:

I never meant to rob nobody. All I was trying to do was run off with the purse so I can get more drugs. I was always suffering with the chemical dependency on drugs, and it was always there, which I ended up losing my legs because of the drugs. And I never get help from nobody. I was homeless, you know?

In sentencing Mohammed, the district court acknowledged that it is hard to overcome addiction but ultimately determined that Mohammed had “been given some opportunities along the way” and that “the addiction[,] tied into the violent acts that [Mohammed] committed[,] cause[d] [the court] some real serious concern for public safety.” The district court declined to grant Mohammed a downward dispositional departure and instead imposed an executed sentence of 90 months’ imprisonment for Mohammed’s first-degree aggravated-robbery conviction.

Mohammed appeals.

DECISION

Mohammed asserts that his guilty plea is inaccurate and that he should be permitted to withdraw it because the “plea record fails to establish that he was armed.” In the alternative, Mohammed contends that the district court abused its discretion by denying his motion for a downward dispositional departure and by imposing a presumptive guidelines sentence. We address each of Mohammed’s arguments in turn.

I. Mohammed’s guilty plea is accurate.

Mohammed maintains that his guilty plea is inaccurate because he denied an essential element of the charged offense during the plea colloquy and “never withdrew or corrected his statement negating guilt.” And Mohammed claims that “the remainder of the plea record is ambiguous and insufficient to establish that Mohammed was armed when he

committed the robbery.” The state responds that Mohammed’s guilty plea is accurate because the facts Mohammed admitted during the plea colloquy were “consistent with [him] possessing and pointing what looked like a gun at the victim.” We agree with the state.

“[A] defendant is not required to make a motion to withdraw a guilty plea in the district court.” *State v. Jones*, 7 N.W.3d 391, 399 (Minn. 2024). Instead, a defendant may appeal directly from a judgment of conviction. *Brown v. State*, 449 N.W.2d 180, 182 (Minn. 1989). “The validity of a guilty plea is a question of law that [appellate courts] review de novo.” *State v. Schwartz*, 957 N.W.2d 414, 418 (Minn. 2021).

“To be constitutionally valid, a guilty plea must be accurate, voluntary, and intelligent.”³ *Jones*, 7 N.W.3d at 395 (quotation omitted). “For a guilty plea to be accurate, it must be supported by a proper factual basis.” *Id.* at 396. This requirement is met “if the record contains sufficient evidence to support a conclusion that the defendant is guilty of at least as great a crime as that to which he pled guilty.” *Id.* “The district court typically satisfies the factual basis requirement by asking the defendant to express in his own words what happened.” *Id.* (quoting *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010)). And the supreme court has cautioned that “[t]he court should be particularly wary of situations in which the factual basis is established by asking a defendant only leading questions.”⁴

³ Mohammed does not argue that his guilty plea was involuntary or unintelligent.

⁴ The Minnesota Supreme Court has explained that “leading questions” are “questions that suggest the answer to the person being interrogated and often may be answered by a mere yes or no.” *Jones*, 7 N.W.3d at 398 (quotation omitted).

Raleigh, 778 N.W.2d at 94. Yet the supreme court has never held that the use of leading questions automatically invalidates a guilty plea. *Jones*, 7 N.W.3d at 396. “A factual basis is inadequate, though, when the defendant makes statements that negate an essential element of the charged crime, unless the defendant subsequently withdraws or corrects the statement, or the guilty plea is otherwise rehabilitated.” *Id.* (quotation and citation omitted).

The parties dispute whether Mohammed’s statements during the plea colloquy negated an element of the first-degree aggravated-robbery offense. A person is guilty of first-degree aggravated robbery if, “while committing a robbery,” they are “armed with a dangerous weapon *or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a dangerous weapon.*” Minn. Stat. § 609.245, subd. 1 (emphasis added). But a person who merely “implies, by word or act, possession of a dangerous weapon” while committing a robbery is guilty of second-degree aggravated robbery. Minn. Stat. § 609.245, subd. 2 (2020).

Reviewing the accuracy of the guilty plea *de novo*, we conclude that Mohammed did not make statements negating an essential element of first-degree aggravated robbery and that he admitted doing more than just implying that he had a gun. Mohammed confirmed that he used an article in a manner that, at a minimum, led the victim to reasonably believe it to be a dangerous weapon, and that he pointed that article at the victim to coerce her into giving up her purse. The record further reflects that Mohammed agreed that it would have been reasonable for the victim to believe that the item he pointed at her was a firearm.

Citing *State v. Mikulak*, 903 N.W.2d 600, 605 (Minn. 2017), Mohammed insists that he made a statement negating his guilt of at least one essential element of first-degree aggravated robbery and that the accuracy of his plea could be rehabilitated only if he withdrew or corrected his purportedly problematic statement. *Mikulak* involved the factual basis for a defendant’s guilty plea for a violation of a statute requiring predatory-offender registration. 903 N.W.2d at 602. During the plea colloquy, the defendant told the district court that he did not register as a predatory offender because he assumed that he had a week to do so, when he actually had only 24 hours from when he moved to a different county. *Id.* Throughout the plea hearing, the defendant “consistently stated that he did not know that he was required to register within 24 hours.” *Id.* at 605. Because the defendant’s statements “negated the mens rea element of the charged offense” and the statements “were not withdrawn or corrected,” the Minnesota Supreme Court held that there was an inadequate factual basis to “satisfy the accuracy requirement for a valid plea.” *Id.*

The supreme court recently reaffirmed *Mikulak* in *Jones*, in which the defendant (Jones) “pleaded guilty to third-degree criminal sexual conduct using force,” “[b]ut moments after telling the district court judge that he was pleading guilty . . . clearly stated that he did not commit ‘rape.’” 7 N.W.3d at 397. Because Jones “stat[ed] at the plea hearing that he did not commit ‘rape,’” the supreme court concluded that “Jones [had] denied committing at least one element of the offense to which he was pleading guilty, effectively asserting his innocence of the crime.” *Id.* (footnote omitted). And because “neither counsel nor the district court stopped proceedings to clarify Jones’s assertion of innocence through any type of questioning, and Jones himself made no admission of any element of the crime

except in responses to defense counsel’s leading questions,” the supreme court held that “the factual basis for the plea was not sufficiently established by other means.” *Id.* at 398–99.

Mikulak and *Jones* are distinguishable. Here, unlike *Mikulak* and *Jones*, Mohammed did *not* deny committing at least one element of first-degree aggravated robbery by effectively asserting his innocence of the crime. Instead, when asked a non-leading⁵ and compound question—“Did you have a weapon on you at that point or something that appeared to look like a handgun?”—Mohammed responded: “No, not really but I scared her that I had a gun and sh--.” This was not a clear denial of an essential element of first-degree aggravated robbery, nor was it an assertion of innocence. Mohammed’s first statement—“No, not really”—can be read as a denial that he had an actual weapon in his possession, but not as an explicit denial that he possessed an article that he used in a manner to lead the victim to reasonably believe it to be a dangerous weapon. *See* Minn. Stat. § 609.245, subd. 1. And although his second statement—“but I scared her that I had a gun and sh--”—might have also been consistent with the elements of second-degree aggravated robbery as an admission that Mohammed “implied, by word or act, possession of a dangerous weapon” while committing a robbery, *id.*, subd. 2, the second statement is

⁵ Although several of the state’s questions to Mohammed could be answered by a mere yes or no, many questions did not strictly qualify as leading because they did not necessarily suggest the answer to Mohammed (e.g., “Did you have . . .”; “Do you believe . . .”; “[W]hat did you tell her . . .”; and “[D]id she do that . . .”). That Mohammed’s “affirmative responses” were not “to *exclusively* leading questions” further distinguishes this case from *Jones*, 7 N.W.3d at 398.

likewise not an outright denial that Mohammed possessed an article that he used in a manner to lead the victim to reasonably believe it to be a dangerous weapon, *id.*, subd. 1.

Indeed, after the district court said that it could not hear Mohammed's response and Mohammed asked the state to repeat the question, the state posed a nearly identical query a second time: "Did you have a weapon on you specifically a handgun or something like that looked like a handgun?" To this, Mohammed chose to simply answer: "Yeah." This was unlike *Mikulak*, in which the defendant consistently stated throughout the plea hearing that he did not know he had to register as a predatory offender within 24 hours of moving to a different county. 903 N.W.2d at 605. And it was unlike Jones's clear statement at the plea hearing that he did not commit rape. *Jones*, 7 N.W.3d at 397.

In short, Mohammed did not unequivocally deny an essential element of first-degree aggravated robbery. We conclude that Mohammed's responses to the state's questions establish a sufficient factual basis that, while committing a robbery, he was armed with an article used in a manner to lead the victim to reasonably believe it to be a dangerous weapon. *See* Minn. Stat. § 609.245, subd. 1. Thus, we conclude that Mohammed's guilty plea to first-degree aggravated robbery was accurate and therefore constitutionally valid.

II. The district court's imposition of a presumptive guidelines sentence was not an abuse of discretion.

Mohammed alternatively asks this court to reverse and remand for imposition of a probationary sentence. In particular, Mohammed argues that the district court's presumptive guidelines sentence was an abuse of discretion and that a downward dispositional departure was warranted because he "demonstrated appropriate remorse,

accountability for his conduct, and a motivation to reform by availing himself of therapeutic and treatment sources.” The state counters that the district court “considered the relevant factors and exercised [its] discretion in imposing a guidelines sentence.” Mohammed’s arguments do not persuade us to reverse.

Appellate courts “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) (quotation and footnote omitted). This discretion is limited by the Minnesota Sentencing Guidelines, which prescribe “a sentence or range of sentences that is ‘presumed to be appropriate.’” *Id.* at 308 (quoting Minn. Sent’g Guidelines 2.D.1). A presumptive sentence is a sentence “provided on the Sentencing Guidelines Grids and in section 3.A.2.” Minn. Sent’g Guidelines 1.B.13 (2020). A presumptive sentence is “presumed to be appropriate for all typical cases sharing criminal history and offense severity characteristics.” *Id.* The district court “must pronounce a sentence of the applicable disposition, within the applicable prison range, and within the applicable length of stay, unless there exist identifiable, substantial, and compelling circumstances to support a departure.” Minn. Sent’g Guidelines 2.D.1 (2020). But “[o]nly in a rare case will a reviewing court reverse the imposition of a presumptive sentence.” *State v. Pegel*, 795 N.W.2d 251, 253 (Minn. App. 2011). “A reviewing court may not interfere with the sentencing court’s exercise of discretion, as long as the record shows the sentencing court carefully evaluated all the testimony and information presented before making a determination.” *Id.* at 255 (quotation omitted).

“A ‘dispositional departure’ occurs when the [district] court orders a disposition other than recommended in the Guidelines.” Minn. Sent’g Guidelines 1.B.5.a (2020). “A dispositional departure typically focuses on characteristics of the defendant that show whether the defendant is particularly suitable for individualized treatment in a probationary setting.” *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016) (quotation omitted). “Numerous factors, including the defendant’s age, his prior record, his remorse, his cooperation, his attitude while in court, and the support of friends and/or family, are relevant to a determination whether a defendant is particularly suitable to individualized treatment in a probationary setting.” *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982).

Because the record reflects that the district court carefully evaluated all the testimony and information before deciding not to grant a downward dispositional departure, we decline to reverse the court’s imposition of a presumptive guidelines sentence. “[A]ny sentence within the presumptive range for the convicted offense constitutes a presumptive sentence.” *State v. Delk*, 781 N.W.2d 426, 428 (Minn. App. 2010), *rev. denied* (Minn. July 20, 2010). In the second PSI, probation assigned Mohammed a criminal-history score of three, and his first-degree aggravated-robbery offense carried a severity level of eight. Consequently, the presumptive range under the Minnesota Sentencing Guidelines is 67 to 93 months. *See* Minn. Sent’g Guidelines 4.A (2020). The district court imposed an executed sentence of 90 months. Thus, the 90-month executed sentence was within the guidelines range for the first-degree aggravated-robbery conviction and constituted a presumptive sentence.

Before the sentencing hearing, the district court received two PSIs. And at the sentencing hearing, the district court heard from the state, the victim, the defense, and Mohammed himself. The district court acknowledged that Mohammed had “been given some opportunities along the way” and that it is difficult to overcome addiction. But the district court determined that Mohammed’s drug use and violent acts raised “some real serious concern for public safety.” The district court also stated that it did not believe that Mohammed was amenable to probation and noted that Mohammed failed to abide by the conditions of his release, the plea agreement, and the conditions of his civil commitment.

Based on this record, we discern no abuse of discretion and conclude that “the sentencing court carefully evaluated all the testimony and information presented before making a determination.” *Pegel*, 795 N.W.2d at 255. We therefore decline to reverse and remand for resentencing.

Affirmed.