

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

State of Minnesota,

Vs. Plaintiff,

Mohamed Mohamed Noor,

Defendant

**DEFENDANT’S MEMORANDUM IN
SUPPORT OF MITIGATED
SENTENCING DEPARTURE**

Court File No.: 27-CR-18-6859

Mr. Mohamed M. Noor, has moved this Court for a mitigated dispositional departure. In the alternative, Mr. Noor has moved this Court for a mitigated durational departure. Mr. Noor submits this memorandum and accompanying exhibits 1 thru 44 in support of that motion and the below referenced court exhibits.

1. Overview:

Minnesota Sentencing Guidelines (hereinafter referred to as “Guidelines”) 2.D.1. state “[t]he court may depart from the presumptive disposition or duration provided in the Guidelines, and stay or impose a sentence that is deemed to be more appropriate than the presumptive sentence.” Guidelines 2.D.1.c. states “the court must disclose...the particular substantial and compelling circumstances that make the departure more appropriate than the presumptive sentence.”

Mr. Noor seeks a dispositional departure. A trial court has broad discretion to impose a dispositional departure from the presumptive sentence and place a defendant on probation if the defendant is amenable to probation or if offense-related mitigating circumstances are present. *State v. Dokken*, 487 N.W.2d 914, 916-17 (Minn. App. 1992). Whether a defendant is amenable

to probation depends upon a wide variety of factors, “including the Defendant's age, his prior record, his cooperation, his attitude while in court, and the support of friends and/or family.”

State v. Trog, 323 N.W.2d 28, 31 (Minn. 1982).

“The Minnesota Supreme Court has indicated that when determining whether to grant a dispositional departure, ‘the trial court can focus more on the Defendant as an individual and on whether the presumptive sentence would be best for him and society.’” *State v. Malinski*, 353 N.W.2d 207-10 (Minn. App. 1984) (quoting *State v. Heywood*, 338 N.W.2d 243, 244 (Minn. 1983)). The Court may also consider whether incarceration fits the particular vulnerabilities of an offender, or whether that person might best receive treatment for personal conditions outside of the prison system. *State v. Patton*, 414 N.W.2d 572, 575 (Minn. App. 1987). In *Patton* the district court cited Patton’s immaturity, at nineteen years of age, and exhibited a concern that incarceration was not appropriate for him. The *Patton* decision demonstrates that a dispositional departure may be based not only on defendant's amenability to probation, but also on his un-amenability to incarceration.

Amenability to probation does not require that a defendant have a particular need for treatment or therapeutic interventions. Although treatment has become a frequent component of probation in recent years, this trend does not disqualify defendants without treatment needs from being placed on probation. The appellate courts have utilized the *Trog* standard in several cases without discussing treatment, affirming downward dispositional departures because the defendants were found particularly amenable to probation. See *State v. Donnay*, 600 N.W.2d 471, 474 (Minn. App. 1999) (citing *Patton*, 414 N.W.2d at 575); *State v. Ritt*, 363 N.W.2d 908, 908-09 (Minn. App.1985). In *Ritt*, for example, the defendant was facing his first offense, was in college, had no juvenile record, had a supportive family, and the probation officer found he was

amenable to probation. *Ritt*, 363 N.W.2d at 908. The *Ritt* court did not also discuss amenability to treatment. This focus on a defendant's amenability to probation, even aside from treatment-related needs, is consistent with the authority cited in *Trog* itself. In *Trog*, the Minnesota Supreme Court relied on *State v. Garcia*, 302 N.W.2d 643 (Minn. 1981), *overruled on other grounds by State v. Givens*, 544 N.W.2d 774, 777 n.4 (Minn. 1996). *Garcia* concluded that there were strong reasons for believing that the defendant would be victimized in prison and that both defendant and society would be better off if that defendant were sent to the workhouse for a short time, then given treatment, and then supervised on probation for the remainder of the 20 years. *See State v. Trog*, 323 N.W.2d 28, 31 (Minn., 1982) (citing *Garcia*, 302 N.W.2d at 462-63).

The court, on its own motion, may sentence without regard to the mandatory minimum sentence, if the court finds substantial and compelling reasons to do so, even in a case involving Minn. Stat. § 609.11. *See State v. Olson*, 325 N.W.2d 13 (Minn. 1982) (interpreting Minn. Stat. § 609.11, subd. 8, which requires motion of prosecutor before court can impose sentence below statutory minimum, as otherwise causing a separation of powers problem). Minn.Stat. § 609.11, subd. 8(a).

In the alternative, Mr. Noor requests a durational departure. When analyzing durational departure motions, the sentencing court must examine “whether the defendant's conduct was significantly less serious than that typically involved in the commission of the crime in question.” *State v. Cox*, 343 N.W.2d 641, 643 (Minn. 1984). In order to depart durationally, the court must find that the conduct involved was less serious than that typically involved in the commission of the crime. *State v. Behl*, 573 N.W.2d 711, 713 (Minn. App. 1998). Further, remorse combined with other factors that shed light on the seriousness of the conduct in

committing the crime may justify a downward durational departure. *State v. Bauerly*, 520 N.W.2d 760, 762 (Minn. App. 1994)

2. Dispositional Departure:

A prison sentence would not be best for Mr. Noor and society. Mr. Noor is a young man who came to this country in his early childhood years and has worked continuously to be a good citizen and a person that gives back to the community. He chose a calling as a police officer because he wanted to help other people and be of service to the community. This is reflected in the letter to the Court from Ms. Fadumo M. Yahye. *See* Exh. 4. Ms. Yahye, a widow, met Mr. Noor while living in a homeless shelter with her 2 children. Her letter outlines the night when, finding herself with no food or milk for her children, she went to the market with a friend in a snow storm and had a car accident. She explains the care that Officer Noor took to make sure that she and her food got home to her children. Mr. Noor worked with her, showing patience and kindness, staying with her and finding ways to bridge the language barrier so that she was able to get home and feed her children.

Another example of Mr. Noor's history of helping others is found in the letter to the Court from his brother-in-law and past employer, Hassan Nurie. *See* Exhibit 1. Immediately before becoming a police officer, Mr. Noor worked as a real estate rental manager. Mr. Nurie recalls a situation where his company had a very angry resident that was extremely difficult to work with who was eventually evicted and had his belongings set out per State Law. Mr. Nurie recalls that after the eviction, Mr. Noor continued to work with the difficult person to ease the situation and help him find temporary housing. Mr. Nurie points out that this situation shows Mr. Noor's caring ways and how he realized this was a human faced with an unfortunate situation and decided to take further action to improve that person's life in spite of that person's

difficult demeanor. While it would have been easier for Mr. Noor to walk away, he chose to help.

In addition to his history of helping others at work, Mr. Noor has a long history of aiding youth and the community in general through volunteer activities. Ahmed Ismail, Executive Director and Head Coach at West Bank Athletic Club, a youth development organization serving East African youth from the Cedar Riverside area, details Mr. Noor's 10-year history of volunteer youth coaching. This shows Mr. Noor's volunteerism with youth before and after becoming a police officer. Coach Ismail's letter offers insights into Mr. Noor's amenability to probation. He explains that:

He connected so well with our youth and was an inspirational role model. He extremely stressed the importance of creating a team service learning projects, he encourage youth to learn skills in collaboration, communication, creativity, and critical thinking. It is not always easy working with active young children. It takes both patience and an ability to lead with kindness. Seeing Mohamed in this role was rewarding for me and the children he worked with. He is a quite person, but connects so well with youth and parents. He makes kids want to be better just by being himself and creating an atmosphere support and kindness.

See Exhibit 6.

Ahmed (Coach) Ismail's letter portrays a quiet, patient person who cares for children, connecting with parents and youth to positively influence the lives around him. Mr. Noor's care and kindness with youth ripples well beyond the soccer field.

Lt. Danny May's letter provides insight into Mr. Noor's work as a police officer and the depth of his remorse for causing the death of Mr. Rusczyk. *See Exhibit 5.* As a police officer Mr. Noor was "always professional, polite, and courteous to everyone he contacted on duty, and was genuinely concerned with helping those in need." Lt. May's letter documents Mr. Noor's struggles with the death he caused over the last 2 years. Lt. May's letter outlines discussion about the anguish Mr. Noor feels for causing the Rusczyk and Damond families, among others,

so much pain. Lt. May's letter also highlights facts that are appropriately considered as grounds for a durational departure.

Further, Mr. Noor has cooperated with the investigation from the beginning. SA Henning testified that, when asked for a DNA sample, Mr. Noor showed up at the BCA within an hour to voluntarily provide a cheek swab. When pre-charge rumors began that Mr. Noor had fled to Africa, he voluntarily went to see Ms. Dunlop to confirm his presence in the United States. In fact, he appeared within an hour to satisfy Ms. Dunlop's curiosity. When charged by warrant Mr. Noor turned himself in at the Hennepin County Jail within hours of being notified of the complaint. He has timely appeared to all court appearances and conducted himself in a professional manner throughout the entire proceeding. These facts support a downward dispositional departure.

The numerous letters of support that Mr. Noor received from people he has aided in the community (greater in number than from police officers he has worked with) are telling of Mr. Noor's particular amenability to probation, and the benefit to society that could flow from such a sentence. The common theme in the many letters is that Mr. Noor is quiet, kind, and peaceful, and strives to connect people and community. Mr. Noor works to connect the Somali community to the greater community and to develop an understanding of Somali culture in the community at-large. The letters show that Mr. Noor has endeavored to be a bridge that goes in both directions. This shows the depth of his desire to help real people in the city where he grew-up. It shows a conscious effort to connect with and improve the urban environment in Minneapolis by working directly with people to grow mutual appreciation for differing cultures. It shows a commitment to service and to the community that goes beyond Mr. Noor's former job

and is the very fabric of his person. It shows that he is amenable to probation in the context of *Trog* and *Trog's* progeny.

There is no benefit to Mr. Noor or the community that will come from a lengthy prison sentence. There is no programming in prison that can improve how Mr. Noor conducts himself in society. In fact, it is the opposite. Lengthy incarceration will not allow Mr. Noor to continue to make amends for causing Ms. Rusczyk's death by doing good work in the community. Mr. Noor has a life history of trying to help others and improve the conditions of life in the City where he lives and the community in general. The death of Ms. Rusczyk is a tragedy to the people who knew and loved her. It is also a tragedy for people who will never get to experience her great personal warmth. Sending Mr. Noor to prison will not decrease the level of tragedy in this case. It will only increase the tragedy by causing more loss to the community.

Given these circumstances, Mr. Noor requests that the Court fashion a sentence that has some hope of acknowledging the loss of Ms. Rusczyk and causing continued reflection about the many factors that brought this tragedy to the community. Mr. Noor proposes imposition of a stayed sentence that directs that Mr. Noor turn himself in at the workhouse for a week on the date of Ms. Rusczyk's death and the date of Ms. Rusczyk's birth for the duration of the probation. This sentence honors the memory of Ms. Rusczyk and allows Mr. Noor to continue to serve the city. Just as importantly, it mandates that Mr. Noor will continue to consider his action and the great loss they caused. Further, Mr. Noor proposes that the Court direct an annually reoccurring period of community service in addition to the two-weeks of annual time in the workhouse. This sentence will cause Mr. Noor to make amends for the death of Ms. Rusczyk through action in the community. This sentence allows him to continue to help youth

and elderly and bridge the gap between the immigrant and non-immigrant communities in Minneapolis. This sentence assures that he will continue to consider the loss of Ms. Ruszczyk.

3. Durational Departure

Mr. Noor asks this Court to consider a durational departure as an alternative to a dispositional departure, since Mr. Noor's conduct was significantly less serious than that typically involved in the commission of the crimes in question.

The Murder in the Third Degree statute looks at acts that cause the death of another by perpetrating an act eminently dangerous to others and evincing a depraved mind, without regard for human life. In *State v. Weltz*, 193 N.W. 42 (Minn. 1923) the Minnesota Supreme Court considered the question of what constitutes a depraved mind. The *Weltz* Court found that a person who become voluntarily intoxicated, sped off in disregard of those trying to stop him from driving, and then traveled on city streets at high speed and in a dangerous fashion, hitting and killing a woman—followed by an extensive police pursuit where the defendant used a car to push officers on motorcycles into the curbs, and where an officer actually boarded the running board of the car to stop the dangerous conduct, wrestling with the defendant from inside the moving car — had engaged in conduct sufficient to constitute a depraved mind. The *Weltz* case is important because it looks at conduct before and after the death to evaluate the depraved nature of the conduct. See also *State v. Carlson*, 328 N.W.2d 690, 694 (Minn. 1982) (suggesting a random shooting spree would constitute evidence of a depraved mind); *State v. Montermini*, 819 N.W.2d 447, 461 (Minn. 2012) (holding that driving at high speeds the wrong way down a one-way street and disregarding passenger pleas to stop was sufficient evidence to establish a depraved mind); *State v. Wahlberg*, 296 N.W.2d 408, 417 (Minn. 1980) (stating that “a mind which has become inflamed by emotions, disappointments, and hurt to such a degree that it

ceases to care for human life and safety is a depraved mind”). The theme in Minnesota cases is that in general Murder in the Third Degree is not a spontaneous act in response to a specific set of perceptions by the actor. This sets the facts in Mr. Noor’s case apart from the garden variety Murder-in-the-Third Degree cases and supports a mitigated durational departure.

Further, Mr. Noor’s actions after the fact show that he did not have the same level of malevolence present in other Murder-in-the-Third-Degree cases. Mr. Noor’s actions as caught on video show a person deeply moved by their conduct, which lead to a tragic death (a death that video shows Mr. Noor pleaded not to happen, encouraging Ms. Ruszczuk to “keep fighting”).

The facts in Mr. Noor’s case are also unique from the garden variety Manslaughter-in-the-Second-Degree case. Mr. Noor’s conduct is best distinguished based on the element of conscious disregard found in both statute and case law. The rapidly unfolding nature of Mr. Noor’s case show a lesser degree of culpability than is found in the ordinary case of Manslaughter in the Second Degree. Further, Mr. Noor’s negligence was part of and in response to what the jury determined to be a misperception of a threat; not a careless act that continued over a period of time.

If the Court is inclined to impose a prison sentence, Mr. Noor asks that the Court impose a sentence that is considerably less than the anticipated guideline range.

4. Pre-Sentence Investigation (PSI)

Mr. Noor respectfully disagrees with the evaluative summary and recommendation in the PSI. Mr. Noor asks that the PSI be amended to remove any reference to his pre-hire Minnesota Multiphasic Personality Inventory 2 RF (MMPI). This is necessary because the MMPI is biased based on race and ethnicity and the test is result is outdated. *See Court Exhibits: Dr. Guller’s January 2, 2019 Report; transcript of Dr. Gratzner’s interview; and transcript of Dr. Logel’s*

Interview all found in court exhibits. The reference to the MMPI inserts racial and ethnic bias into Mr. Noor's sentence. It cannot be known to what degree the MMPI was factored in to the recommendation.

5. Conclusion

Mr. Noor is amendable to probation. He is a young person with no criminal history, has been cooperative, has displayed a good attitude while in court, has the support of friends, family, and the community, and is remorseful. Further, he has a history of being a positive influence on youth, elderly persons, and the community in general. The Defense respectfully asks this Court to sentence without regard for the minimum sentences and impose a stayed sentence with some period of incarceration in the workhouse and other appropriate conditions. In the alternative, Mr. Noor asks this Court to grant a durational departure and impose a sentence of 1 year and 1 day.

Dated: June 5, 2019

Respectfully submitted,

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