Minnesota Sentencing Case Law

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This summary of Minnesota appellate case law addresses four topics: the availability of and general standards for appellate review; standards and allowable grounds for departure; constitutional requirements for proof of facts permitting upward departure under *Blakely v. Washington*; and other important appellate sentencing decisions.

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1. Availability of and General Standards for Appellate Review

Minnesota permits the prosecution or the defense to appeal any felony sentence imposed or stayed by the court.[1] The appellate court shall "determine whether the sentence is inconsistent with statutory requirements, unreasonable, inappropriate, excessive, unjustifiably disparate, or not warranted by the findings of fact issued by the district court."[2]

Appellate cases frequently state that sentencing decisions are reviewed under an abuse of discretion standard.[3] But as noted in the next section, a de novo standard is applied in some contexts. On the other hand, a highly deferential standard of review applies to lower court findings of fact supporting the challenged sentence: appellate courts will accept such a finding unless it is clearly erroneous.[4] Findings of fact are not clearly erroneous if there is "reasonable evidence to support them."[5]

2. Standards and Allowable Grounds for Departure

a. Standards of Review

The standard of review applied to departure sentences depends on the issue being raised on appeal. These issues fall into four categories, with two standards being applied (in addition to the clearly-erroneous standard mentioned above):

(1) Whether a particular reason or ground for departure is permissible is a question of law, which is subject to a *de novo* standard of review.[6]

(2) Assuming a permissible reason for departure, supported by not-clearly-erroneous facts, the decision to depart requires a further finding of "identifiable, substantial, and compelling circumstances."[7] Such circumstances exist to support an upward or downward durational departure when "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."[8] An analogous standard applies to departures based on offender characteristics; for example, a downward dispositional departure because of "particular amenability to probation" (discussed below) must be based on a set of facts that sufficiently "distinguishes the defendant from most other [defendants] and truly presents substantial and compelling circumstances."[9] Appellate courts apply an abuse of discretion standard when reviewing the sufficiency of the evidence in the record to meet this standard.[10]

However, even if a finding of substantial and compelling circumstances would be justified, the sentencing court still has discretion not to depart in most cases.[11] A district court's decision to depart or not depart in such a case is reviewed under an abuse of discretion standard[12] and in *State v. Kindem*[13] the Minnesota Supreme Court stated that a non-departure sentence will rarely be reversed. This decision creates a strong presumption in favor of the recommended guidelines sentence, and reflects a preference for the values of uniformity and system efficiency over optimum sentence proportionality and utility.

[1] Minn. R. Crim. P. 28.02, subd. 2(3); Minn. R. Crim. P. 28.04, subd. 1(2); Minn. Stat. § 244.11 (2015).
[2] Minn. Stat. § 244.11 (2014). It should be noted that although subdivision 3(b) of this statute aims to limit appeals of upward durational departures when the court has also ordered a downward dispositional departure, that subdivision was declared unconstitutional in State v. Losh, 721 N.W.2d 886, 890–93 (Minn. 2006).
[3] *See, e.g., State v. Kangbateh*, 868 N.W. 2d 10 (Minn. 2015).
[4] *State v. Colvin*, 645 N.W.2d 449, 453 (Minn. 2002).
[5] *Id.*
[6] *State v. Grampre*, 766 N.W.2d 347, 350 (Minn. Ct. App. 2009) (citing *State v. Jackson*, 749 N.W.2d 353, 357 (Minn. 2008)). *See also State v. Fleming*, 869 N.W. 2d 319 (Minn. Ct. App. 2015) (review granted Nov. 23, 2015).
[7] Minn. Sentencing Guidelines § 2.D.1 (2015).
[8] *State v. Broten*, 343 N.W.2d 38, 41 (Minn. 1984).
[9] *State v. Soto*, 855 N.W.2d 303, 309 (Minn. 2014) (internal quotation marks omitted).
[10] *Id.* at 308.
[11] Minn. Sentencing Guidelines § 2.D.1 (2015) (explaining that departure "is an exercise of judicial discretion constrained by statute or case law"). In some cases, however, the court is required to impose a specified enhanced sentence if aggravating circumstances are found to exist. *See, e.g.*, Minn. Stat. 609.3455, subd. 4(a)(2)(i) (2015).
[12] *See, e.g. State v. Shattuck*, 704 N.W. 2d 131 (Minn. 2005).
[13] 313 N.W.2d 6, 7 (Minn. 1981).

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(3) Where the law and the facts justify a durational departure and a departure sentence is pronounced, the degree of departure is likewise reviewed under an abuse of discretion standard provided the departure is mitigated or, if aggravated, provided that the resulting sentence is no more than twice the length of the presumptive sentence.[14]

(4) Aggravated durational departures that exceed twice the length of the presumptive sentence are subject to a de novo standard of review.[15]

b. Allowable Grounds for Departure

Almost all of the important appellate cases involving departures were decided in the first two years after the guidelines became effective in 1980 and were controlled entirely by the Minnesota Supreme Court (the intermediate-level Minnesota Court of Appeals did not begin issuing opinions until February 1984). One group of cases identified prohibited grounds for departure in addition to those already stated in the guidelines,[16] while another group recognized additional permissible grounds for departure beyond the guidelines lists of mitigating and aggravating factors.[17]

(1) *Prohibited Departure Grounds*. The Minnesota Supreme Court almost immediately established the principle that sentencing should be based on the conviction offense and that upward departures should not be based on the details of offenses dismissed or never filed (so-called real offense sentencing).[18] The court also established that departures could not be based on assessments of the individual defendant's dangerousness,[19] on special needs for deterrence, on the need for extended in-prison treatment,[20] or on factors that had already been taken into account in drafting the guidelines or the statute defining the conviction offense.[21]

In an early case, the court had stated that plea bargaining is an invalid basis for departure.[22] But in *State v. Givens*[23] the court upheld an upward durational departure to which the defendant had agreed (in return for a stayed prison sentence, which was later revoked). Givens was subsequently limited by legislation and an amendment to the guidelines commentary.[24] In response to these changes, the court overruled Givens in *State v. Misquadace*[25] and held that a plea agreement, standing alone, is not a sufficient basis for an upward dispositional or durational departure.

(2) *Permissible Departure Grounds*. In a series of very important early cases, the court held that dispositional departures—but not durational departures—may be based on individualized assessments of the offender's particular amenability to probation or prison.[26] For example, *State v. Park* upheld an upward dispositional departure (commitment to prison, rather than the presumptive stayed term) based on the defendant's unamenability to probation (including his prior failure on probation and unwillingness to admit his chemical dependency problem). In *State v. Wright*,[28] the court upheld a downward dispositional departure based

[14] *Grampre*, 766 N.W.2d at 353. See also State v. Hicks, 864 N.W. 153 (Minn. 2015) (discussing the general legality of upward durational departures).

[15] *Dillon v. State*, 781 N.W.2d 588, 598 (Minn. Ct. App. 2010). The case that created the doubling rule, *State v. Evans*, is discussed in section 2.b(3).

[16] Minn. Sentencing Guidelines § 2.D.2 (2015).

[17] *Id*. at § 2.D.3.

[18] *See State v. Womack*, 319 N.W.2d 17, 19–20 (Minn. 1982). *See generally*, Minn. Sentencing Guidelines Comm'n, *The Impact of the Minnesota Sentencing Guidelines: Three Year Evaluation*, 111–13 (1984). However, limited real-offense sentencing is permitted under the guidelines. For example, some of the Commission's initial offense severity rankings depended on dollar amounts of loss which were not elements of the conviction offense. *See, e.g.*, Minn. Sentencing Guidelines § V [Theft and Theft Related Offenses] (2003). And several of the commission-approved grounds for upward departure involve aggravating factors which are not elements of the conviction offense and which may not even be part of the same course of conduct charged. For example, a ''major economic offense'' by a defendant involved in other, similar conduct can be evidenced by findings of prior civil, administrative, or disciplinary proceedings. *See* Minn. Sentencing Guidelines § 2.D.3(b)(4)(e) (2014). However, proof of such aggravating facts is subject to the requirements of *Blakely v. Washington*. The most important Minnesota cases interpreting *Blakely* are discussed in section 3.

[19] *State v. Hagen*, 317 N.W.2d 701, 703 (Minn. 1982).

[20] *State v. Schmit*, 329 N.W.2d 56, 58 n. 1 (Minn. 1983); *State v. Barnes*, 313 N.W.2d 1, 2 (Minn. 1981).

[21] Minn. Sentencing Guidelines Comm'n, *The Impact of the Minnesota Sentencing Guidelines: Three Year Evaluation*, 121, 124 (1984); *State v. Cizl*, 304 N.W.2d 632, 634 (Minn. 1981) (absence of criminal history); *Hagen*, 317 N.W.2d at 703 (young age of the victim, which is already an offense element).

[22] *State v. Garcia*, 302 N.W.2d 643, 647 (Minn. 1981).

[23] 544 N.W.2d 774, 777 (Minn. 1996).

[24] 1997 Minn. Laws ch. 96, §§ 1, 2; Minn. Sentencing Guidelines § 2.D. cmt.104.

[25] 644 N.W.2d 65, 71 (Minn. 2002).

on findings that the defendant was unusually vulnerable and was therefore particularly unamenable to prison, and that he was particularly amenable to treatment in a probationary setting. *State v. Trog*[29] upheld a downward dispositional departure based solely on the defendant's particular amenability to probation emphasizing the uncharacteristic nature of the defendant's crime rather than any particular treatment needs.

The sentencing guidelines commission has expressed serious reservations about amenability departures because they are not justified on desert grounds.[30] Moreover, such departures often appear to be based, at least indirectly, on prohibited factors such as family circumstances and employment. In 1989, the commission amended the guidelines commentary to provide that no amenability departure is valid unless the court "demonstrate[s] that the departure is not based on any of the excluded [social or economic] factors." But the commission declined either to prohibit such departures or to propose criteria for their use,[31] and data on trial court reasons for departure indicate that amenable-to-probation findings remained quite common, constituting over half of all downward dispositional departures in some years.[32] Such departures may become less frequent in the future, however. In a 2014 decision, *State v. Soto*,[33] the Supreme Court emphasized that the defendant must be found not just amenable to probation but particularly amenable, so as to make him or her sufficiently different from a typical offender to meet the standard of substantial and compelling circumstances justifying departure.

Another important decision relating to dispositional departures, *State v. Randolph*,[34] held that courts must grant a defendant's request for execution of the presumptive stayed prison term when the trial court's proposed conditions of the stay are so onerous that they are, in effect, more severe than the prison term would be. The *Randolph*[35] decision was limited by subsequent legislation specifying that defendants may not request sentence execution if they would serve less than nine months in prison (unless that short term is concurrent or consecutive to another sentence).[36] Nevertheless, such defendant requests have continued to account for a high proportion of upward dispositional departures.[37]

(3) Durational departures: rationale and degree of departure. The amenability cases, discussed above, hold that decisions to depart durationally should be governed by principles of desert,[38] and the same desert principles govern the degree of departure.[39] However, in *State v. Evans*,[40] the Supreme Court decided to provide trial courts with additional guidance and held that upward durational departures should normally not exceed twice the presumptive duration (in cells above the disposition line, this refers to the single [middle] figure, not the upper end of the permissible range). However, in "extremely rare" cases involving "severe" aggravating circumstances, trial courts may depart all the way up to the statutory maximum.[41]

[26] In justifying the distinction between durational and disposition departures, Justice Amdahl noted that the guidelines' lists of per missible mitigating and aggravating factors relate primarily to the defendant's degree of culpability, but he argued that "when justifying only 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 for society." *State v. Heywood*, 338 N.W.2d 243, 244 (Minn. 1983). The amenability cases are discussed at length in Richard S. Frase, Sentencing Reform in Minnesota, Ten Years After: Reflections on Dale G. Parent's Structuring Criminal Sentences: the Evolution of Minnesota's Sentencing Guidelines, 75 Minn. L. Rev. 727, 740–48 (1991). *See also* Richard S. Frase, Defendant Amenability to Treatment or Probation as a Basis for Departure under the Minnesota and Federal Sentencing Guidelines, 3 Fed. Sent'g Rep. 328, 328–33 (1991).

[27] 305 N.W.2d 775, 776 (Minn. 1981).

[28] 310 N.W.2d 461 (Minn. 1981).

[29] 323 N.W.2d 28, 31 (Minn. 1982).

[30] Minn. Sentencing Guidelines Comm'n, The Impact of the Minnesota Sentencing Guidelines: Three Year Evaluation, pp. vi, 117–18 (1984).

[31] *See* Minn. Sentencing Guidelines Comm'n, Report to the Legislature on Three Special Issues, 17–18 (1989).

[32] In 2013, amenability to treatment or amenability to probation were cited as reasons for departure in 60 percent of downward dispositional departures. Minn. Sentencing Guidelines Comm'n, 2013 Sentencing Practices: Annual Summary Statistics for Felony Offenders p. 27 (2014).

[33] 855 N.W.2d 303, 308–9 (Minn. 2014).

[34] 316 N.W.2d 508 (Minn. 1982). See also State v. Rasinski, 472 N.W. 2d 645 (Minn. 1991).

[35] 316 N.W.2d at 508.

[36] Minn. Stat. § 609.135, subd. 7 (2015).

[37] Richard S. Frase, Implementing Commission-Based Sentencing Guidelines: The Lessons of the First Ten Years in Minnesota, 2 Cornell J.L. & Pub. Pol'y 279, 314 (1993); Minn. Sentencing Guidelines Comm'n, 2014 Sentencing Practices: Annual Summary Statistic for Felony Offenders, p. 24 (2015) (showing that about 87% of upward dispositional departures in 2014 were at defendant's request).

[38] State v. Heywood, 338 N.W.2d 243, 244 (Minn. 1983).

[39] Minn. Sentencing Guidelines § 2.D.1.b (2015).

[40] 311 N.W.2d 481, 483 (Minn. 1981).

[41] *State v. Spain*, 590 N.W.2d 85, 89 (Minn. 1999); *State v. Mortland*, 399 N.W.2d 92, 94 n. 1 (Minn. 1987).

3. Constitutional Requirements for Proof of Facts Permitting Upward Departure under *Blakely v. Washington*

In *State v. Shattuck* [*Shattuck I*],[42] a decision entered six months after Blakely and one month before Booker v. United States, the Minnesota Supreme Court held that facts supporting an upward durational departure under the Minnesota sentencing guidelines are subject to Blakely requirements of jury trial and proof beyond reasonable doubt. The Court also asked the parties to brief several additional issues, and rendered a further opinion arising out of the same case in *State v. Shattuck* [*Shattuck II*].[43] In the latter opinion, the Court declined to strike down the entire guidelines system, concluding that the invalid upward departure procedures were severable from other, constitutionally-valid aspects of the guidelines. The Court also found that it had inherent authority to devise and implement upward departure procedures that would comply with *Blakely* requirements, but since the Legislature had recently enacted a set of such procedures, the Court declined to exercise its own authority, although it did refer the matter to its advisory committee for rules of criminal procedure, which in due course recommended rules changes that the Court adopted.[44]

Minnesota appellate courts have issued a number of other important decisions interpreting the scope of *Blakely* rights. In *State v. Houston*[45] the Supreme Court held that *Blakely* was not a "watershed" new rule of procedure, and therefore need only be given the minimum constitutionally-required degree of retroactivity; thus, *Blakely* only applies to defendants whose cases were pending trial or direct appeal on the day the U.S. Supreme Court issued its *Blakely* opinion, and has no application to defendants whose convictions had already become final by that date. Another important limit on the scope of *Blakely* rights was recognized in *State v. Brooks*[46] – facts supporting the addition of a custody status point to the offender's criminal history score were held to fall within the *Blakely* exception for "the fact of prior conviction." The Court of Appeals reasoned that, as with prior convictions, custody-status facts (that the current offense was committed while the defendant was in custody or on supervision for a prior crime) can be readily established from court records, and are largely based on prior convictions.

In other cases, however, Minnesota courts have adopted more defendant-friendly readings of *Blakely*'s substantive and procedural scope. In *State v. Allen*[47] the Supreme Court held that upward dispositional departures are subject to *Blakely* – when a defendant pleads or is found guilty of an offense subject to a presumptive probation sentence under the guidelines, that is the "maximum" (most severe) sentence the defendant can receive without a finding of additional facts justifying dispositional departure and imposition of an executed prison sentence; proof of such additional facts (in *Allen*, that the defendant was unamenable to probation) is therefore subject to *Blakely* requirements of jury trial and proof beyond reasonable doubt.[48]

In another series of cases, Minnesota appellate courts allowed defendants to raise *Blakely* claims despite prosecution arguments that the claim had been waived or that the contested facts had been admitted by the defendant. In *State v. Osbourne*[49] the Supreme Court allowed a defendant, whose conviction was not yet final when *Blakely* was decided, to assert a *Blakely* claim that he had not raised at his trial. Although claims are normally deemed to be forfeited if not raised in a timely mater, the Court felt that to apply that rule in this context would be unfair and wasteful (given that prior to *Blakely* Minnesota courts had

[42] 689 NW.2d 785 (Minn. 2004).
[43] 704 NW.2d 131 (Minn. 2005).
[44] The statutory provisions, which were based in part on recommendations of the Minnesota Sentencing Guidelines Commission, can be found in 2005 Minnesota Laws, chap. 136, art. 16. *Blakely*-compliant amendments to the Minnesota Rules of Criminal Procedure were adopted by the Supreme Court in 2006. For a comparison of the statutory and rules procedures, and a summary of the respective roles of the courts, the sentencing guidelines commission, and the legislature in responding to *Blakely*, see Richard S. Frase, *Blakely in Minnesota, Two Years Out: Guidelines Sentencing Is Alive And Well*, 4 Ohio State J. Crim. Law 73 (2006).
[45] 702 N.W.2d 268 (Minn. 2005).
[46] 690 N.W.2d 160 (Minn. Ct. App. 2004).
[47] 706 N.W.2d 40 (Minn. 2005).
[48] *Id.* at 44–47. *See also State v. Her*, 862 N.W. 2d 692 (Minn. 2015). Compare *State v. Carr*, 53 P.3d 843 (Kan. 2002), in which the Kansas Supreme Court reached the opposite conclusion on very similar facts.
[49] 715 N.W.2d 436 (Minn. 2006).

uniformly rejected such claims); the Court also reasoned that forfeiture is essentially a waiver by silence, and that waiver of the important trial rights granted in *Blakely* requires an affirmative act by the defendant, after advice of those rights.[50]

The Supreme Court used similar reasoning to impose strict standards on the *Blakely* exception for facts admitted by the defendant. In *State v. Dettman*[51] the Court held that statements defendant made to the police and at his guilty plea hearing could not be used as admissions to support an aggravated sentence. Although the defendant waived his right to a jury trial on the issue of guilt, he did not make a separate express, knowing, intelligent, and voluntary waiver of his rights to a jury trial and proof beyond reasonable doubt on the issue of aggravating sentencing factors.[52]

4. Other Important Sentencing Decisions

The original guidelines did not specify whether multiple current offenses enter into the offender's criminal history score when these offenses are sentenced in a single hearing and receive concurrent sentences.[53] In *State v. Hernandez*,[54] the court held that such an offender's criminal history score increases as each additional offense is sentenced. For example, a defendant with no previous convictions who received concurrent sentences on four one-point (level-5) residential burglary counts would have a criminal history of three (moving him across the disposition line) by the time he was sentenced on the fourth count. Prior to *Hernandez*, prosecutors could achieve the same result through serialized prosecutions with separate sentencing hearings for each offense. And, of course, additional counts sentenced in a single hearing will in any case increase the defendant's future criminal history score if he commits further offenses. But the *Hernandez* rule increases the immediate sentencing impact (and plea bargaining leverage) of multiple counts. *Hernandez* also helps prosecutors target high-rate offenders and, thus, further emphasizes the utilitarian (incapacitative) effect of the criminal history score under the guidelines. But utilitarian goals were clearly already present. Even under the original guidelines, "prior" felony and misdemeanor convictions were counted as of the date of sentencing rather than as of the date of the current offense, which would be required under a purely retributive model.[55]

Drug penalties became increasingly severe in the 1980s, particularly for crack cocaine offenses. In *State v. Russell*[56] the Minnesota Supreme Court held that state statutes and guidelines rules imposing much heavier penalties for crack than for powdered cocaine offenses violated the state Constitution. The court noted that these penalty differences had a strongly disparate impact on blacks, who constituted the vast majority of crack offenders, and it concluded that the state had not shown sufficient grounds for punishing crack offenses so much more harshly.[57] However, shortly after the *Russell* decision, the legislature raised powder penalties to equal crack penalties.[58]

[50] *Id.* at 442–44. *See also State v. Fairbanks*, 688 N.W. 2d 333, 336–37 (Minn. Ct. App. 2004) (holding that a defendant's waiver of *Blakely* rights must be knowing, intelligent and voluntary; when the defendant agreed to a trial on stipulated facts he did not waive his right to have findings necessary to support an upward sentencing departure decided by a jury).

[51] 719 N.W.2d 644 (Minn. 2006).

[52] *Id.* at 650–55. *See also State v. Senske*, 692 N.W.2d 743 (Minn. Ct. App. 2005) (holding that defendant's admissions at his plea hearing were not valid waivers of his *Blakely* rights because he was not advised that the admitted facts could be used to support an upward sentencing departure). *But see State v. Leake*, 699 N.W.2d 312, 324–25 (Minn. 2005), *cert. denied* 546 U.S. 1039 (2005) (holding that facts admitted by defendant at his plea hearing for an earlier crime fell within *Blakely*'s prior-conviction exception and could be found by the court and used to enhance defendant's sentence for his current offense).

[53] The guidelines have always expressly provided for limited inclusion of multiple current offenses in current criminal history when such offenses receive consecutive sentences. The current versions of the consecutive sentencing criminal history rules are in Minn. Sentencing Guidelines §§ 2.F.1(b) and 2.F.2(a) (2015).

[54] 311 N.W.2d 478 (Minn. 1981). *See also* Minn. Sentencing Guidelines § 2.B.1(e) (2015).

[55] Dale G. Parent, *Structuring Criminal Sentences: The Evolution of Minnesota's Sentencing Guidelines* 163 (Butterworth 1988).

[56] 477 N.W.2d 886 (Minn. 1991).

[57] *Id.*

[58] 1992 Minn. Laws ch. 359.