

NOT DESIGNATED FOR PUBLICATION

No. 125,383

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

SABIAN FYRE ADAMS,
Appellant.

MEMORANDUM OPINION

Appeal from Riley District Court; GRANT D. BANNISTER, judge. Opinion filed July 28, 2023.
Affirmed.

David Lowden, deputy county attorney, *Barry R. Wilkerson*, county attorney, *Derek Schmidt*, former attorney general, and *Kris W. Kobach*, attorney general, for appellant.

Patrick H. Dunn, of Kansas Appellate Defender Office, for appellee.

Before HILL, P.J., HURST, J., and TIMOTHY G. LAHEY, S.J.

PER CURIAM: This is a State appeal of a district court order placing Sabian Fyre Adams on probation rather than sending him to prison. It argues there were no substantial and compelling reasons for the court to depart from the sentencing guidelines and that this departure sentence was unreasonable.

Adams agreed to plead guilty to possession of marijuana with intent to distribute, a drug severity level 3 felony. In exchange, the State agreed to dismiss a second charge and agreed that Adams could argue for probation at sentencing. Adams had no prior criminal

convictions. His presumptive guidelines sentence was 46 to 51 months in prison. He was 19 years old when he committed the crime.

The sentencing court heard opposing views from the parties. Adams asked the court to depart from the guidelines and place him on probation rather than sending him to prison, arguing that treatment and supervision were more likely to promote his rehabilitation and reduce the risk of recidivism. He also argued his age and lack of criminal history were reasons to depart. The State argued that none of those reasons were substantial or compelling. The State noted that the police found evidence of an extensive distribution operation, including over 25 grams of marijuana; ledgers; hundreds of unused small Ziplock bags; and social media conversations containing information on potential buyers, quantities, and monetary amounts.

Adams spoke to the sentencing court directly about his acceptance of responsibility, turning his life around, getting a job, getting engaged, living with his mom, abstaining from drug use, and getting counseling for anxiety and depression.

The sentencing court made several observations before passing sentence. It found the availability of drug treatment was not a reason to depart because, from Adams' comments, he was not addicted to marijuana and did not need treatment. The court also found supervision was not a legal basis to depart. The court stated that accounting for Adams' criminal history was already built into the sentencing grid, but it could be considered along with Adams' age. The court commented, "In terms of adult, about as young as you can be. Undoubtedly old enough, as you stated, to realize what you were doing was wrong, not only now but then, as well."

The sentencing court decided to impose a departure sentence. Citing Adams' age along with his lack of criminal history, it noted that "this was definitely on the fence and there wasn't an overabundance to find substantial and compelling, which is the required

legal standard." The court sentenced Adams to a suspended 49-month prison sentence and released Adams on 36 months' probation. Adams had to serve 21 days in jail as a condition of probation.

On appeal, the State maintains its prior position. It contends the sentencing court's departure decision was not supported by the evidence, the reasons for departure did not constitute substantial and compelling reasons to depart, and the departure decision was unreasonable.

Some sentencing fundamentals provide a context for our decision.

Sentencing courts must impose "the presumptive sentence provided by the sentencing guidelines unless the judge finds substantial and compelling reasons to impose a departure sentence." K.S.A. 2022 Supp. 21-6815(a). The State or the defendant may appeal a departure sentence. K.S.A. 2022 Supp. 21-6820(a).

The law, K.S.A. 2022 Supp. 21-6815(c)(1), lists mitigating factors a sentencing court may consider in determining whether substantial and compelling reasons for a departure exist. But the statutory list is nonexclusive, and courts can consider nonstatutory factors. In turn, appellate courts will review nonstatutory factors for an abuse of discretion. *State v. Morley*, 312 Kan. 702, 711, 479 P.3d 928 (2021). The sentencing court here relied on nonstatutory factors.

The court focused on Adams' age and lack of criminal record.

A defendant's young age, without more, may justify a departure only when the court articulates that it considered the defendant's age in the context of the defendant's relative immaturity. In *State v. Favela*, 259 Kan. 215, 237-38, 911 P.2d 792 (1996), our Supreme Court held that age qualified as a substantial and compelling reason to depart

where the trial court found the defendant's judgment in how to respond to the stabbing of his brother was impaired due to his age and immaturity. The court explained that where the fact of the defendant's young age at the time of the offense does not constitute a substantial and compelling reason justifying a departure as a matter of law, "it may be considered as part of the entire package." 259 Kan. at 235.

Other courts have expanded this reasoning. In *State v. Crotinger*, No. 83,305, 2000 WL 36746154, at *2 (Kan. App. 2000) (unpublished opinion), another panel of our court held that a sentencing court properly used age as a factor when basing the departure on defendant's young age, immaturity, and that the defendant "was growing up and was entitled to an opportunity to show that he was changing his life."

In other words, "a sentencing court may properly consider a defendant's young age—without any further elaboration—as a mitigating factor so long as it is combined with other proper mitigating factors." *State v. Reed*, No. 118,664, 2019 WL 166564, at *5 (Kan. App. 2019) (unpublished opinion). The *Reed* court found the defendant's age could be considered together with fact that defendant's criminal history was less significant than most other defendants with a similar criminal history score. 2019 WL 166564, at *5.

Mitigating factors may be considered collectively sufficient to constitute a substantial and compelling reason to depart even where one standing alone would not suffice. The question is whether the sentencing court acted reasonably when it concluded there was a substantial and compelling reason to depart based on the two factors cited by the sentencing court collectively. See *State v. Montgomery*, 314 Kan. 33, 36-37, 494 P.3d 147 (2021).

In *State v. Cato-Perry*, 50 Kan. App. 2d 623, 632-33, 332 P.3d 191 (2014), another panel of this court found neither mitigating factor the sentencing court relied on, standing alone, constituted a substantial or compelling reason to depart. But the sentencing court's

decision to depart based on the factors considered collectively was not unreasonable. We follow that line of reasoning here.

Here, the sentencing court reviewed the departure motion. The court recognized there was not "an overabundance [of factors] to find substantial and compelling" reasons to grant the motion and clearly stated that it was only relying on Adams' age and lack of criminal history. A reasonable person could find these circumstances not "compelling enough to *force* a court to abandon the status quo and reject the presumptive sentence the court would ordinarily impose." *Morley*, 312 Kan. at 714. We hold that a reasonable person could find Adams' age and lack of criminal history as reasons to depart from the statute.

Affirmed.