

STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0951



State of Minnesota,

Respondent,

vs.

Joseph Mark Halicki,

Appellant.

ORDER OPINION

Hennepin County District Court
File No. 27-CR-21-22905
File No. 27-CR-22-8989

Considered and decided by Bratvold, Presiding Judge; Connolly, Judge; and Smith, Tracy M., Judge.

BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND BECAUSE:

1. Appellant Joseph Halicki, while on probation after pleading guilty to felony violation of a domestic-abuse no-contact order (DANCO) committed on December 10, 2021, was charged with another felony DANCO violation committed on May 9, 2022.

2. At a global plea-agreement hearing in August 2022, appellant pleaded guilty to the two DANCO violations in exchange for a sentence of 36 months in prison, stayed for four years, in the May 2022 file, a downward dispositional departure.

3. Conditions of the global plea agreement included not using chemicals, finishing treatment, and having no contact with the victim. Appellant was informed that, if he failed to comply with these conditions, the 36-month prison sentence would be executed.

4. Appellant did not appear for a scheduled sentencing hearing on November 10, 2022.

5. In March 2023, the district court was informed that appellant had been “arrested at the protected person’s home in violation of the [DANCO] after assaulting her again.”

6. The pre-sentencing worksheet stated that, with the offenses’ severity level of four, the range for the December 2021 offense, when appellant’s criminal history score was four was 21 to 28 months in prison with a presumptive sentence of 24 months, and the range for the May 2022 offense, when appellant’s criminal history was six, was 26 to 36 months in prison with a presumptive sentence of 30 months.

7. The district court denied appellant’s request for a dispositional departure and imposed and executed concurrent terms of 24 months in prison for the December 2021 offense and 36 months in prison for the May 2022 offense.

8. An appellate court will generally not exercise its authority to modify sentences within the presumptive range “absent compelling circumstances.” *State v. Freyer*, 328 N.W.2d 140, 142 (Minn. 1982).

9. Appellant argues for the first time on appeal that his guilty plea, his acceptance of responsibility for his conduct, and his health problems are compelling circumstances for a lesser sentence.

10. “[W]hen an issue has not been raised before the district court, we consider the issue forfeited.” *Steward v. State*, 950 N.W.2d 750, 756 (Minn. 2020). However, we address appellant’s argument in the interests of completeness. *See In re Welfare of*

Children of M.L.S., 964 N.W.2d 441, 454 (Minn. App. 2021) (addressing question in interests of completeness).

11. The district court told appellant that, if he violated any of the conditions of release, he would “have the prison sentence executed for 36 months”; therefore, the district court did not abuse its discretion in imposing that sentence when appellant was found to have violated a condition of release.


12. Appellant relies on *State v. Hickman*, 666 N.W.2d 729, 732 (Minn. App. 2003) (recognizing acceptance of responsibility for a crime as a mitigating factor), to argue for a lesser sentence, but his reliance is misplaced. *Hickman* concerned the state’s appeal from a dispositional departure. 666 N.W.2d 332-32. A dispositional departure is based on the characteristics of the offender . *See State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016). In contrast, appellant seeks a durational departure, which is based on factors that reflect the seriousness of his offense. *See id.* Because appellant’s “compelling circumstances” do not relate to the seriousness of his offenses, they cannot mitigate the duration of his sentence.

IT IS HEREBY ORDERED:

1. The district court’s order is affirmed.
2. Pursuant to Minn. R. Civ. App. P. 136.01, subd. 1(c), this order opinion is nonprecedential, except as law of the case, res judicata, or collateral estoppel.

Dated: 4/22/24

BY THE COURT



Judge Francis J. Connolly