

State v. Price, Not Reported in N.W.2d (1999)

1999 WL 993977

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Court of Appeals of Minnesota.

STATE of Minnesota, Appellant,

v.

Roxanne Marie PRICE, Respondent.

No. C6-99-274.

|

Nov. 2, 1999.

Affirmed; motion denied, [Schumacher](#), Judge. Hennepin
County District Court, File No. 97098217.

Attorneys and Law Firms

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Klobuchar](#), Hennepin County Attorney, Gayle C. Hendley,
Assistant County Attorney, Minneapolis, MN, for appellant.

[Richard E. Edinger](#), Moorhead, MN, for respondent.

Considered and decided by [SCHUMACHER](#), Presiding
Judge, and [KALITOWSKI](#) and [MULALLY](#), Judges.*

UNPUBLISHED OPINION

[SCHUMACHER](#).

*1 The state appeals the trial court's decision to depart
downward by staying execution of respondent Roxanne
Marie Price's sentence. We affirm.

FACTS

On October 2, 1997, Price ran a red light, causing an accident
that killed Heather Olson and Olson's unborn child. Price,
driving a truck with a fully-loaded "belly dump" trailer,
had neither a valid commercial driver's license nor a valid

individual driver's license at the time of the accident. A jury
convicted Price of two counts of felony criminal vehicular
operation, one each for the deaths of Heather Olson and her
unborn child. Price pleaded guilty to one misdemeanor count
of driving after suspension, revocation, or cancellation of a
driver's license.

The trial court sentenced Price to 48 months on the first
vehicular homicide count, stayed five years on the condition
that the first year be served in the workhouse on work release;
the same sentence for the second vehicular homicide count,
made consecutive to the sentence for the first count; and 90
days in the workhouse on the misdemeanor count, to be served
concurrently with the vehicular homicide sentences. As
further conditions of Price's probation, the court required that
she pay restitution to the victims' family, perform 500 hours
of community service in drivers' education classes or hospital
pediatric wards, and avoid driver's license-, insurance-, and
alcohol-related offenses.

In pronouncing this sentence, the trial court found that

Roxanne Price, other than for the
one DUI she has had in her life,
has essentially her entire life been a
law-abiding person who has made a
catastrophic lapse in judgment. * * *
But whatever else you are, Ms. Price, it's
clear that you in no way intended to kill
Heather Olson. I do not view you as an
inherent danger to the public or society.

Observing that the sentence was a dispositional departure, the
court further found that Price was

amenable to treatment, and that the
facts of this case indicate no intentional
conduct on your part that would have
led you or any reasonable person to
have foreseen the consequences of the
negligence that has resulted in these
deaths.

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In its Departure Report to the Department of Corrections, the court found that Price's crime was "less onerous than usual," that she was amenable to probation and to "treatment," and that she "show[ed] remorse/accept[ed] responsibility."

DECISION

"The decision to depart from sentencing guidelines rests within the trial court's discretion and will not be reversed absent a clear abuse of that discretion." *State v. VanZee*, 547 N.W.2d 387, 391 (Minn.App.1996), review denied (Minn. July 10, 1996). The trial court must impose the presumptive sentence unless the case involves "substantial and compelling circumstances" to warrant a downward departure. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn.1981). Appellate courts, however, do not generally interfere with a trial court's decision to depart downward. *Id.* at 8.

*2 The state argues that three of the reasons the court cited in sentencing Price—that she had been a law-abiding person, that she was not an inherent danger to society, and that she had no intent to kill Olson—could not be relied upon as grounds for departure. For example, the state argues that Price's lack of criminal history could not be grounds for a departure because that factor had already been considered by assigning her a criminal history score of zero when computing the presumptive sentence under the guidelines. See *State v. Cizl*, 304 N.W.2d 632, 634 (Minn.1981). But although the lack of a prior record cannot itself be a mitigating factor under the guidelines, it is "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) (citing *Cizl*).

The trial court stated on the record that it found Price was "amenable to treatment." Although Price's individual driver's license had been suspended as the result of a DWI conviction, blood tests performed after the accident found no evidence of drugs or alcohol in her system. The state argues that because nothing in the record suggests that Price needs treatment for anything, the trial court abused its discretion when it relied on this ground as support for the downward departure.

But in its Departure Report, the trial court, in addition to finding that Price was amenable to treatment, also found that she was "amenable to probation." See *State v. Larson*, 473 N.W.2d 907, 907 (Minn.App.1991) ("A trial court's departure report which enumerates substantial reasons for departure is sufficient to justify a departure from the sentencing guidelines."). Although the state argues that the need for and availability of treatment is required by the cases interpreting *Trog*, this court has recently held to the contrary. In *State v. Donnay*, 600 N.W.2d 471, ---, 1999 WL 690202, at *1 (Minn.App. Sept. 7, 1999), we held:

The district court is not required to find a defendant amenable to treatment in order to find him or her amenable to probation and depart dispositionally by staying execution of the sentence.¹

See also *State v. Hamacher*, 511 N.W.2d 458, 461 (Minn.App.1994) ("Amenability to treatment (or, more generally, to probation) is by itself a sufficient basis for a downward dispositional departure.") (emphasis added).

The state argues that Price is not amenable to treatment—or, by implication, to probation—because she lacks remorse. But the trial court specifically found that Price exhibited remorse, and the record contains evidence supporting that finding. At her sentencing hearing, Price accepted responsibility for her actions—"I know that I've taken somebody from them that is very precious"—and twice apologized to the family.

*3 As this court has observed, the "presence or absence of remorse can be a very significant factor in determining whether a defendant is particularly amenable to probation." *State v. Sejnoha*, 512 N.W.2d 597, 600 (Minn.App.1994), review denied (Minn. Apr. 22, 1994). After hearing all the evidence at trial and observing Price throughout, the court found that Price exhibited remorse and accepted responsibility for her crime. Because the record contains evidence tending to support the trial court's finding, we must defer to it:

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Because the district court has an opportunity to actually observe the defendant throughout the proceedings, a reviewing court must defer to the district court's assessment of the sincerity and depth of the remorse and what weight it should receive in the sentencing decision.

Sejnoha, 512 N.W.2d at 600. The court further found that Price was not an inherent danger to the public and that she was essentially a law-abiding citizen with no significant criminal history. See *Trog*, 323 N.W.2d at 31 (defendant's prior record and remorse are relevant to whether defendant is amenable to probation). Because there is evidence in the record supporting the findings of remorse, acceptance of responsibility, and lack of prior criminal record, it does not appear that the trial court abused its discretion in finding Price amenable to probation.

Because the record supports the finding that Price is amenable to probation, we need not address the state's other claims of error. See *State v. King*, 337 N.W.2d 674, 675 (Minn.1983) (“we need not decide the point because the record also supports the trial court's implied determination that defendant is particularly amenable to treatment in a probationary setting”); *State v. Sebasky*, 547 N.W.2d 93, 100 (Minn.App.1996) (sentence will be affirmed if justified by record, even if trial court relied partially on improper factors), review denied (Minn. Jun. 19, 1996).

The state moved to stay consideration of the appeal because Price's probation has been revoked. We deny the motion to stay consideration of the appeal.

Affirmed; motion denied.

All Citations

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Footnotes

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

1 The time for the state to appeal the decision in *Donnay* has not yet expired.