

Filed in District Court
State of Minnesota
JUN 27 2023

DEPARTURE REPORT

Defendant Name (Last, First, Middle) May, Rashad Jamal		Sentence Date 06/27/2023	County Hennepin
Judge Name William H. Koch	Report Date 06/27/2023	District Court Case No. 27-CR-22-15593	Count No. 2
Report Completed By (Name/Title): William H. Koch, Judge		Contact Email/Phone 612-348-6432	

Instructions

In making decisions about departing from the Guidelines, and in writing reasons for departures, judges should consult section 2.D of the *Minn. Sentencing Guidelines and Commentary*. This report should be completed by the Court when:

- (a) The pronounced disposition (prison/probation) differs from the presumptive disposition under the Guidelines;
- (b) The length of the sentence pronounced by the Court differs from the presumptive sentence length;
- (c) A consecutive sentence is given in a circumstance other than described in section 2.F of the Guidelines;
- (d) A consecutive sentence is not pronounced when consecutive sentencing is presumed under the Guidelines;
- (e) A non-felony sentence is pronounced for an offender convicted of a felony-level offense; or
- (f) The pronounced length of stay exceeds five years or the length of the statutory maximum punishment, whichever is less, in a circumstance other than described in section 3.A.2.d of the Guidelines.

Type of Departure (Check all that apply)

<p>Dispositional:</p> <p><input type="checkbox"/> Mitigated/Downward (Stay – Guidelines presume prison)</p> <p><input type="checkbox"/> Aggravated/Upward (Prison – Guidelines presume stay)</p> <p><input type="checkbox"/> NOT an aggravated/upward dispositional departure: Sentence was executed pursuant to offender's right to demand execution, offense date after 7/31/2015 (Guidelines section 2.D.1.f).</p>	<p>Durational:</p> <p><input type="checkbox"/> Mitigated/Downward Prison Duration (Less than Guidelines time)</p> <p><input type="checkbox"/> Aggravated/Upward Prison Duration (Greater than Guidelines time)</p> <p><input checked="" type="checkbox"/> Mitigated/Downward Non-Felony Sentence (Misdemeanor or Gross Misd. sentence pronounced for felony-level conviction)</p> <p><input type="checkbox"/> Aggravated/Upward Length of Stay (Exceeds 5 yrs. or stat. max., whichever is less; Guidelines section 3.A.2.)</p>	<p><input type="checkbox"/> Consecutive (Departure from Guidelines policy on consecutive sentencing)</p>
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Please indicate how the sentence was imposed if the sentence was an **aggravated departure**.

Jury determination of aggravating factors Defendant waived right to jury determination of aggravating factors

Reason(s) for Departure

Please do one or more of the following: 1) Check the appropriate reason(s) for departure on the checklist of frequently cited departure reasons on page 2; 2) Write the reasons in the space below; or 3) Attach the relevant pages from the sentencing order or sentencing transcript.

This matter arose from Mr. May first being attacked while shopping at the Mall of America. Video showed he was standing in line with a friend to pay for an item when someone came from the back of the line and punched him in the back of the head. That person was one of a group of five, who then proceeded to scuffle with Mr. May and his friend. The two were able to quickly escape out of the store to the main walkway of the mall. The group was starting to chase after the two when Mr. May's friend fired a gun into the store. This all happened rather quickly. Because of an earlier altercation with some of these same people a year earlier (also on his birthday), Mr. May feared for his safety. They fled. Mr. May called to arrange a third-party to pick them up at the mall to escape. (Within about a day or two, he was attempting to coordinate with his attorney to voluntarily turn himself in.)



Frequently Cited Reasons and Additional Information

Section 1, below, contains frequently cited reasons for departure provided to the Court for convenience. Check all reasons that apply. An asterisk (*) denotes a reason listed in Guidelines section 2.D.3, which is a nonexclusive list. Reasons with no asterisk are not enumerated in the Guidelines, but may be sanctioned elsewhere in law. Items listed in section 2 are requested as additional information.

The Court may also record reasons for departure in the space provided on page 1.

Section 1. Frequently Cited Reasons for Departure

Related to Nature of Current Offense

Reasons Frequently Used as Mitigating Factors:

- Offender played minor or passive role*
Victim was aggressor in incident*
Crime less onerous than usual

Reasons Frequently Used as Aggravating Factors:

- Victim treated with particular cruelty*
Victim was particularly vulnerable*
Victim injury/psychological impact on victim
Current conviction is offense w/ victim injury (including Crim. Sex. Conduct) and there is a similar prior*
Major economic offense--involves 2 or more of following:
Committed, for hire, a crime against the person*
Committed crime as part of a group of three or more persons who all actively participated in the crime*

- Major controlled substance crime involving 2 or more of the following:
3 or more separate transactions
offender or accomplice possessed equipment, paraphernalia, or monies evidencing wholesale trafficking
involved manufacture for use by others
offender or accomplice possessed firearm or other dangerous weapon during offense
high position in drug distribution hierarchy
high degree of sophistication/lengthy period of time
use of position/status
separate acts in 3 or more counties
prior conv. under Minn. Stat. § 609.1095, s. 1(d), except prior under chap. 152, including attempt or conspiracy
sale to a minor or vulnerable adult
occurred in a zone or correctional/treat. facility
Multiple victims or multiple incidents per victim
Crime committed in victim's home or zone of privacy
Position of authority, superiority, confidence or trust
Crime more onerous than usual offense

Related to Individual Offender

Reasons Frequently Used as Mitigating Factors:

- Lacked substantial capacity for judgment (not drug/alc.)*
Particularly amenable to probation*
Particularly amenable to treatment:
Chem. dependency
Sex offender
Other
Convicted of controlled substance offense, is particularly amenable to probation based on adequate evidence that offender is chemically dependent and has been accepted by, and can respond to, a treatment program in accordance with Minn. Stat. § 152.152*

- Impose restitution/ensure financial penalties paid
Ensure compliance w/ probation or allow longer supervision
Shows remorse/accepts responsibility
Current Severity Level 1-4 offense and priors resulted from crime spree*

Reasons Frequently Used as Aggravating Factors:

- Has failed on probation/unamenable to probation
Career Offender under Minn. Stat. § 609.1095, s. 4
Dangerous Offender under Minn. Stat. § 609.1095, s. 2
Engrained Offender under Minn. Stat. § 609.3455, s. 3a

Related to Requests for Executed Sentence

- Request prison to avoid probation and/or jail
Request prison as part of a plea agreement
Request prison--revocation/prison on another offense
Request prison--other reasons

Related to Recommendations Regarding Sentence

- Recommended by court services
Recommended by treatment professional

Section 2. Additional Information Requested (if applicable)

Regarding Victim/Witness

- Recommendation or agreement of victim/victim's family
Witness is unlikely, unable, or unwilling to testify
Prevent trauma to witness from testifying

Regarding Plea Agreements and Prosecutorial Recommendations

- Prosecutor objects to the departure
Departure recommended by prosecutor
Prosecutor does not object to the departure
Plea agreement on sentence
Prosecutor motion to sentence without regard to Minn. Stat. § 609.11

* Indicates reasons specified in the nonexclusive list in section 2.D.3 of the Minn. Sentencing Guidelines and Commentary.