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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1356**

State of Minnesota,
Respondent,

vs.

William John Earles,
Appellant.

**Filed May 28, 2013
Affirmed
Worke, Judge**

Clay County District Court
File No. 14-CR-11-2972

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Brian J. Melton, Clay County Attorney, Pamela L. Harris, Assistant County Attorney,
Moorhead, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Jennifer L. Lauermann, assistant
public defender, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Worke, Judge; and
Larkin, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant argues that the district court erred by imposing sentences on the same
day for multiple offenses without sentencing the offenses chronologically. Because we

conclude that appellant's testimony supports the order in which his offenses were sentenced, we affirm.

D E C I S I O N

On March 28, 2012, appellant William John Earles pleaded guilty to third-degree criminal sexual conduct (Count 1), possession of a pistol by a felon (Count 3), possession of pornography by a registered predatory offender (Count 4), and use of a minor in a sexual performance (Count 5). The offenses are based on conduct that took place between July 2010 and August 2011. On May 7, 2012, appellant was sentenced in the following order: On Count 3, appellant was sentenced to 60 months in prison; on Count 5, appellant was sentenced to 78 months in prison and 10 years' conditional release; on Count 4, appellant was sentenced to 84 months in prison and 10 years' conditional release; and, on Count 1, appellant was sentenced to life in prison with the possibility of parole after 180 months. Appellant argues that he should have been sentenced first on Counts 5 and 4 because these offenses were ongoing between July 2010 and August 2011, whereas the Count 3 offense occurred at the end of August 2011. Had he been sentenced that way, appellant asserts that he should have received 60 months in prison on Count 5 and 59 months in prison on Count 4 instead of the 78-month sentence he received for Count 5 and the 84-month sentence he received for Count 4.

On appeal, the district court's interpretation of the Minnesota Sentencing Guidelines is reviewed de novo. *State v. Campbell*, 814 N.W.2d 1, 4 (Minn. 2012). But a district court's departure from the sentencing guidelines is reviewed for an abuse of discretion. *Vickla v. State*, 793 N.W.2d 265, 269 (Minn. 2011). The district court's

determination of a defendant's criminal-history score is also reviewed for an abuse of discretion. *State v. Stillday*, 646 N.W.2d 557, 561 (Minn. App. 2002), *review denied* (Minn. Aug. 20, 2002). This court will affirm a sentence if the reasons given in support of the sentence are "legally permissible and factually supported in the record." *Vickla*, 793 N.W.2d at 269 (quotation omitted).

The sentencing guidelines provide that "[m]ultiple offenses are sentenced in the order in which they occurred." Minn. Sent. Guidelines II.B.1 (2010). "[A] district court may not impose multiple sentences in non-chronological order, even if a defendant agrees to that manner of sentencing." *Carey v. State*, 765 N.W.2d 396, 401 (Minn. App. 2009), *review denied* (Minn. Aug. 11, 2009).

At the plea hearing, the district court judge stated that Counts 4 and 5 occurred between July 2010 and August 2011, and that Counts 3 and 1 occurred in late August 2011. However, appellant testified as follows regarding the chronology of offenses:

PROSECUTOR: Did you have a firearm?

APPELLANT: Yes.

PROSECUTOR: When did you get the firerarm?

APPELLANT: Earlier that summer.

PROSECUTOR: Which summer?

APPELLANT: 2011 – or the summer in question.

PROSECUTOR: 2010?

APPELLANT: Yeah.

According to appellant's own testimony, the Count 3 offense, possession of a pistol, occurred in the summer of 2010, which was either at the same time or before the other three offenses occurred. Moreover, at the plea hearing appellant had an opportunity to raise an objection to the sentencing order, but failed to do so. The order of sentencing

was suggested by appellant's attorney and reiterated by the prosecutor at the start of the plea hearing. The district court asked appellant directly whether he agreed with the order of sentencing, and appellant stated that he agreed that this was the correct order. Moreover, appellant's proffered factual basis for his guilty pleas is consistent with the order of sentencing suggested by his attorney and the prosecution. Because appellant's testimony supports the order of sentencing, we conclude that the district court did not abuse its discretion when it sentenced appellant first to Count 3, possession of a pistol, and then to Counts 5, 4, and 1.

Affirmed.