FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D22-261

STATE OF FLORIDA,

Appellant,

v.

ROGER MCLANEY,

Appellee.

On appeal from the Circuit Court for Walton County.
Kelvin C. Wells, Judge.

December 6, 2022

PER CURIAM.

The State seeks review of the sentence imposed on Roger McLaney, who was the treasurer of the Friendship Baptist Church of DeFuniak Springs from September 2015 to September 2020. He was charged with defrauding the church in an amount over $50,000 via systematic and ongoing diversions of funds for his personal use for nearly four of those years. McLaney entered a nolo contendere plea. At sentencing, the trial court noted that McLaney did not have a prior criminal record and determined that McLaney satisfied the conditions for a downward departure because: (1) he had shown remorse by apologizing and (2) the event was isolated. The trial court also noted that although the diversion of funds occurred over a number of years, McLaney was charged with only one count of fraud. The trial court ordered that McLaney be subject

to five years of probation with a three-year suspended state prison sentence. He was required to pay $23,264.23 as restitution for the $188,264.23 taken, and his mother paid the remainder. This appeal follows.*

Whether there is a valid legal ground for a departure from the recommended sentencing and adequate factual support for that ground "is a mixed question of law and fact and will be sustained on review if the court applied the right rule of law and if competent substantial evidence supports its ruling." *Banks v. State*, 732 So. 2d 1065, 1067 (Fla. 1999). Once it is found that a valid legal ground for a departure exists and that it is supported by competent substantial evidence, the trial court's decision to depart from the recommended sentencing range is reviewed for abuse of discretion. *Id.* at 1068. "A trial court must not impose a downward departure sentence unless mitigating circumstances or factors are present which reasonably justify such a departure." *Jackson v. State*, 64 So. 3d 90, 92 (Fla. 2011).

By statute, "[m]itigating circumstances under which a departure from the lowest permissible sentence is reasonably justified include . . . [t]he offense was committed in an unsophisticated manner and was an isolated incident for which the defendant has shown remorse." § 921.0026(2)(j), Fla. Stat. (2016). When a trial court relies on this mitigator, all three elements must be shown. *See State v. Perlman*, 118 So. 3d 994, 996 (Fla. 1st DCA 2013) ("The ultimate inquiry before this court is whether *all* three of these elements were properly established in this case by competent, substantial evidence."); *State v. Cooper*, 889 So. 2d 119, 119 (Fla. 4th DCA 2004) ("To justify departure on this basis, all three elements must be articulated by the trial judge and supported by the record.").

The trial court's conclusion that McLaney is remorseful is not at issue; competent substantial evidence supports the trial court's

* Counsel for McLaney was notified that a timely answer brief had not been filed and given ten days to do so; because none was filed, the case was submitted for consideration with only the State's initial brief.

conclusion that McLaney has shown remorse. The State argues, however, that competent substantial evidence does not support the trial court's conclusion that the offense was unsophisticated and an isolated incident. McLaney claims his actions were unsophisticated because the fraud "was readily ascertainable as soon as anybody other than Mr. McLaney put their hands on the books." He further claims that it was an isolated incident because he has no prior record.

Our review of the record, in conjunction with applicable caselaw, shows a lack of competent substantial evidence that McLaney's crime was unsophisticated. The Fifth District's decision in *State v. Hollinger*, 253 So. 3d 1207 (Fla. 5th DCA 2018), is instructive on analogous facts. In *Hollinger*, the defendant was a business office manager who wrote petty checks from the victim's trust account, obtained signatures for the checks, and then deposited the checks to her own bank account. *Id.* at 1209. The defendant repeated this process over several months and stole more than $50,000 from the victim. *Id.* The trial court determined that the crimes were unsophisticated because the defendant took no measures to hide her actions or identity. *Id.* The Fifth District concluded to the contrary, noting that for several months the defendant used her position of trust with the company and repeatedly obtained signatures on the fraudulent checks. *Id.* at 1210. The Fifth District viewed that defendant's actions as involving "several distinctive and deliberate steps that she repeated on numerous occasions" such that—even though she may not have taken elaborate steps to hide her actions—the offenses were not committed in an unsophisticated manner. *Id.*

In this case, McLaney was the treasurer of the church for five years. For almost four of those years, he used his position of trust with the church and embezzled money repeatedly. He transferred money from the church's account to his personal account and removed the charges from records to avoid detection. His actions involved several distinct and deliberate steps that he repeated on numerous occasions. Even if, as McLaney claims, the fraud was readily ascertainable—that he had not taken elaborate steps to hide his actions—the offenses were committed in a manner that required a significant degree of financial and logistical sophistication. As such, competent substantial evidence does not

support that the crime was committed in an unsophisticated manner.

Nor were McLaney's actions an isolated incident. It is true that McLaney has no criminal record; had he acted once to defraud his church of funds, such a one-time action would be supportable as isolated in nature given his lack of a criminal past. *See Clark v. State*, 315 So. 3d 776, 781 (Fla. 1st DCA 2021). The fact that only one charge was levied against McLaney does not mean, however, that the series of underlying fraudulent acts for almost four years can be deemed a single isolated incident. Rather, the offenses took place for nearly four years and involved multiple acts. Therefore, competent substantial evidence does not support the finding that the crime was an isolated incident. *See, e.g.*, *Hollinger*, 253 So. 3d at 1209–10 (finding that the offenses could not be isolated when it took place over several months and involved multiple incidents even if there were a single scheme); *State v. Crossley-Robinson*, 275 So. 3d 662, 665 (Fla. 4th DCA 2019) (finding that multiple bank robberies taking place over a six-month period were not isolated incidents); *State v. Strawser*, 921 So. 2d 705, 707 (Fla. 4th DCA 2006) (finding that the offense could not be an isolated incident when there were multiple incidents involving one victim over a period of several months).

Because competent substantial evidence does not support a finding that the crime was committed in an unsophisticated manner and was an isolated incident, the downward departure cannot be sustained. Accordingly, we REVERSE the downward departure sentence and REMAND for resentencing.

ROWE, C.J., and RAY and MAKAR, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Ashley Moody, Attorney General, Trisha Meggs Pate, Bureau Chief, and Heather Flanagan Ross, Assistant Attorney General, Tallahassee, for Appellant.

Clayton J. M. Adkinson, Adkinson Law Firm, LLC, DeFuniak Springs, for Appellee.