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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0375**

State of Minnesota,
Respondent,

vs.

Brett Steven Lewis,
Appellant.

**Filed September 25, 2017
Affirmed
Reilly, Judge**

Sherburne County District Court
File No. 71-CR-16-1038

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

Kathleen A. Heaney, Sherburne County Attorney, Kevin C. Lin, Assistant County Attorney, Elk River, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rochelle R. Winn, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Reilly, Judge; and Jesson, Judge.

UNPUBLISHED OPINION

REILLY, Judge

Appellant Brett Steven Lewis challenges the district court's sentencing decision arising from his conviction of violation of a domestic abuse no contact order. The district

court declined to grant a downward durational departure and sentenced appellant to the presumptive sentence under the Minnesota Sentencing Guidelines. Because the district court did not abuse its discretion in sentencing, we affirm.

D E C I S I O N

Appellant Brett Steven Lewis contends that the district court abused its discretion by denying his motion for a downward durational departure. We review a district court's refusal to grant a departure from the sentencing guidelines for an abuse of discretion, *State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006), and we will affirm the imposition of a presumptive sentence "when the record shows that the sentencing court carefully evaluated all the testimony and information presented before making a determination." *State v. Johnson*, 831 N.W.2d 917, 925 (Minn. App. 2013) (quotation omitted), *review denied* (Minn. Sept. 17, 2013).

The Minnesota Sentencing Guidelines prescribe a sentence or a range for the sentence that is "presumed to be appropriate." *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014). The sentencing court "must pronounce a sentence within the applicable range unless there exist identifiable, substantial, and compelling circumstances" distinguishing the case and overcoming the presumption in favor of the presumptive disposition. *Id.* The sentencing court first calculates the defendant's presumptive sentencing range for the underlying offense. *State v. Kangbateh*, 868 N.W.2d 10, 17-18 (Minn. 2015). Only a "rare case" merits reversal based on a court's refusal to depart from the sentencing guidelines. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

Here, a domestic abuse no contact order (DANCO) prohibited appellant from contacting A.J.W. While in prison, appellant wrote letters to A.J.W., urged her to visit him in prison, which she did, and encouraged her to drop domestic assault charges pending against him. The state charged appellant with violating the DANCO. Appellant entered a plea of guilty to violating a DANCO under the terms of a plea agreement. The presentence investigation report revealed appellant had a criminal history score of 11. For an offender with this criminal history score, the presumptive sentence for a DANCO violation is commitment to prison for 26 to 36 months, with a presumptive duration of 30 months. Minn. Sent. Guidelines 4.A. The district court sentenced appellant to 26 months in prison, which is within the presumptive range articulated by the sentencing guidelines for an individual with appellant's criminal history score. The record supports the court's decision that the presumptive sentence was appropriate in this case. *See Soto*, 855 N.W.2d at 314 (looking to the record for evidence to support the district court's finding).

Appellant argues that the presumptive sentence constitutes an abuse of discretion because his offense was "significantly less serious than the typical [DANCO] violation." We disagree. A district court may grant a downward durational departure if it finds the defendant's conduct was significantly "less serious than that typically involved in the commission of the crime in question." *State v. Cox*, 343 N.W.2d 641, 643 (Minn. 1984). A "district court is not required to explain its reasons for imposing a presumptive sentence." *Johnson*, 831 N.W.2d at 925.

Here, the sentencing court considered and rejected appellant's arguments in favor of a downward departure, determining that appellant contacted A.J.W. by both telephone

and by letter, and “agitated for the contact through a third party.” The court reasoned that “this is not an atypical case that would justify a departure for being less serious than the typical case.” The sentencing court considered appellant’s arguments in favor of a downward durational departure, along with the record as a whole, and concluded that such a departure was unwarranted. *See Bertsch*, 707 N.W.2d at 668 (noting that sentencing court is not required to depart from presumptive sentence even upon showing that mitigating factors are present). Because we discern no abuse of discretion in the sentencing court’s determination, we affirm. *See State v. Delk*, 781 N.W.2d 426, 428 (Minn. App. 2010) (limiting reversal of sentencing court’s imposition of presumptive sentence to rare cases), *review denied* (Minn. July 20, 2010).

Affirmed.