**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0204**

State of Minnesota,
Respondent,

vs.

Sophia Wang Navas,
Appellant.

**Filed March 23, 2020
Affirmed in part, reversed in part, and remanded
Bryan, Judge**

Washington County District Court
File No. 82-CR-17-1287

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Pete Orput, Washington County Attorney, Nicholas A. Hydukovich, Assistant County Attorney, Stillwater, Minnesota (for respondent)

Cathryn Middebrook, Chief Appellate Public Defender, Charles F. Clippert, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Bratvold, Judge; and Bryan, Judge.

U N P U B L I S H E D   O P I N I O N

BRYAN, Judge

Appellant challenges her sentences for racketeering and sex trafficking on three grounds. First, appellant argues that the district court relied on a legally invalid basis for

departing upward. Second, appellant challenges her sentence as excessive given the conduct and sentences of her codefendants. Third, appellant challenges her sentence for sex trafficking because she believes that it was improperly *Hernandized*.[1] Appellant also filed a pro se supplemental brief challenging her convictions. We affirm the district court's upward departure for appellant's racketeering offense, but we reverse her sentence for sex trafficking because that offense was improperly *Hernandized*, and we remand for resentencing of the sex-trafficking offense.

FACTS

Appellant Sophia Wang Navas pleaded guilty to racketeering and aiding and abetting the sex trafficking of an individual. As part of her plea agreement with respondent State of Minnesota, Wang Navas waived her right to a *Blakely*[2] trial and admitted the facts regarding an aggravating factor: the presence of multiple victims. In exchange for her guilty plea, the state agreed to dismiss the remaining charges and agreed not to seek a sentence above 150 months. Both parties retained the right to file departure motions at sentencing.

At the plea hearing, Wang Navas admitted that, in approximately July 2016, she began a business relationship with Hong Jing and Dongzhou Jiang. Jing's daughter, Fangyao "Michelle" Wu, also played a limited role, concealing the proceeds derived from

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[1] In *State v. Hernandez*, the Minnesota Supreme Court set forth a process for district courts to follow when sentencing a defendant on the same day for multiple convictions. 311 N.W.2d 478, 481 (Minn. 1981).

[2] Individuals have a right to a jury trial to determine whether aggravating factors exist to support an upward sentencing departure, but they can waive their jury trial right. *Blakely v. Washington*, 542 U.S. 296, 304-05 (2004).

the sex-trafficking operation. Ultimately, Jing, Jiang, and Wu all pleaded guilty for their roles in the charged offenses. As part of her business with Jing, Jiang, and Wu, Wang Navas admitted that she posted thousands of advertisements on Backpage.com containing sexually suggestive photos of Asian women for the purpose of engaging in sex trafficking. Wang Navas further admitted that she set up appointments for at least two individuals to perform sex acts in Plymouth, St. Louis Park, St. Paul, and Oakdale, and that she made money for her role in the sex-trafficking scheme. Specifically, Wang Navas admitted that she "communicated with commercial sex customers" and "gave them the location and the price" for sex. Wang Navas also admitted that she knew that some of the women who were being trafficked were also robbed.

Prior to sentencing, Wang Navas moved for "both downward dispositional and durational departures from the presumptive prison sentence." Conversely, the state requested a 150-month sentence, which is an upward departure from the presumptive guidelines sentence for racketeering. The parties also disagreed about the appropriate severity level to be assigned to Wang Navas's racketeering offense; the state argued that the offense should be ranked at level nine, while Wang Navas argued that the offense should be ranked at level eight. The state argued at sentencing that the number of ads posted by Wang Navas were "almost double" the amount posted by Jing. In addition, unlike Jing and Jiang, Wang Navas admitted to aiding in the trafficking of multiple victims. Finally, the state argued that Wang Navas's post-offense conduct contrasted with that of both Jing and Jiang, who agreed to cooperate "very early on in the proceedings." Jiang even agreed to testify on behalf of the state at Wang Navas's trial.

The district court ranked the racketeering offense at a severity-level nine based on many factors, including that Wang Navas's conduct "occurred in multiple counties," "involved multiple acts," "consumed the better part of a year," constituted a "sustained level of activity," and took advantage of vulnerable adults. The district court also considered that it would be illogical to rank the racketeering offense at the same level as the underlying offense of sex trafficking because the legislature views the offense of racketeering to be "a very serious crime punishable by up to . . . 30 years." The district court also denied Wang Navas's motion for a downward departure and granted the state's motion for an upward departure. The district court cited the "heinousness of the offense as measured in the number of victims who were involved" as the "substantial and compelling reasons" warranting the departure. The district court imposed an executed sentence of 150 months in prison for the racketeering offense, and, after *Hernandizing* Wang Navas's sex-trafficking offense, imposed a concurrent 76-month sentence for that offense. Jing received a 102-month, executed sentence for racketeering and a concurrent sentence for aiding and abetting sex trafficking of an individual. Jiang received a 53-month, executed sentence for racketeering and a concurrent sentence for aiding and abetting sex trafficking of an individual. Wu received a stayed sentence for racketeering and was ordered to complete twenty years of probation for racketeering.[3]

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[3] The record does not contain information regarding the length of the sentences imposed for Jing's sex-trafficking conviction, Jiang's sex-trafficking conviction, or Wu's racketeering conviction.

D E C I S I O N

I.   Validity of the Upward Departure for Multiple Victims

Wang Navas first challenges the validity[4] of the stated ground for departure: multiple victims. Wang Navas argues that the district court could not base an upward departure on the existence of multiple victims because the elements of both racketeering and sex trafficking require multiple victims and because the district court already considered the number of victims when it ranked the racketeering offense as a severity-level nine. We disagree and conclude that in departing from the presumptive sentence, the district court properly considered the presence of multiple victims.

The "district court may depart from the presumptive guidelines sentencing range only if there exist identifiable, substantial, and compelling circumstances to support a sentence outside the range on the grids." *Tucker v. State*, 799 N.W.2d 583, 586 (Minn. 2011) (quotation omitted). The sentencing guidelines provide "a nonexclusive list of factors that may be used as reasons for departure." *State v. Hicks*, 864 N.W.2d 153, 157 (Minn. 2015) (quotation omitted). "Substantial and compelling circumstances are those circumstances that make the facts of a particular case different from a typical case." *State v. Peake*, 366 N.W.2d 299, 301 (Minn. 1985).

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[4] Wang Navas does not challenge the factual support for the district court's departure decision or argue that the presence of multiple victims was an insufficient reason to depart. Nor does Wang Navas challenge the extent of the departure (as it relates to multiple victims). Instead, Wang Navas challenges only the legal validity of the stated reason for departure. As discussed below, Wang Navas also challenges the reasonableness of her ultimate sentence and argues that it is unjustifiably disparate from the others involved.

The standard of review on appeal depends on the particular error asserted. We apply a de novo standard of review to questions of law, such as the validity of the stated reason for departure. *State v. Jackson*, 749 N.W.2d 353, 357 (Minn. 2008); *see also Dillon v. State*, 781 N.W.2d 588, 596 (Minn. App. 2010) *review denied* (Minn. May 11, 2010) (observing that a de novo standard of review applies "when reviewing whether a particular reason for an upward departure is permissible").[5] Wang Navas raises two challenges to the validity of the district court's stated reason for departure.

First, Wang Navas argues that the district court improperly granted an upward departure because the elements of both racketeering and sex trafficking require multiple victims. Evidence relied on to prove an element of the criminal offense cannot also be relied on to justify an upward departure. *State v. Williams*, 608 N.W.2d 837, 840 (Minn. 2000). Wang Navas is mistaken, however, in her belief that the elements of either racketeering or the charged sex-trafficking crimes necessarily require multiple victims.

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[5] We apply an abuse-of-discretion standard of review to other aspects of a district court's sentencing decisions. For example, we review the factual support for the stated (and valid) departure grounds for an abuse of discretion. *State v. Hicks*, 864 N.W.2d 153, 163 (Minn. 2015) (applying abuse of discretion to whether the valid reason was factually supported by the record). Abuse-of-discretion review also applies to the district court's decision whether to depart once it has identified proper grounds. *Dillon v. State*, 781 N.W.2d 588, 595 (Minn. App. 2010) ("Once we determine as a matter of law that the district court has identified proper grounds justifying a challenged departure, we review its decision *whether* to depart for an abuse of discretion.") (emphasis in original) *review denied* (Minn. May 11, 2010). We also review the extent of the departure for an abuse of discretion. *Dillon*, 781 N.W.2d at 596 ("We have generally deferred entirely to the district court's judgment on the proper length of departures that result in sentences of up to double the presumptive term.") (citation omitted).

A person commits the crime of racketeering if, in association with an enterprise, she participates in a pattern of criminal activity, which constitutes at least three criminal acts. Minn. Stat. §§ 609.903, subd. 1(1), .902, subd. 5 (2016). While the statute requires three separate predicate crimes, it does not require separate victims for the contemplated predicate acts. A person can commit a racketeering offense by engaging in three separate predicate acts against a single victim. In addition, a person can also commit a racketeering offense by engaging in three separate "victimless" crimes, such as illegal drug transactions. The elements of racketeering do not preclude a district court from considering the number of victims as a basis to depart from the presumptive sentence.

Likewise, the predicate act (sex trafficking) charged in this case could involve multiple victims or it could involve a single individual victim, depending on the particular statutory provisions at issue. The state charged Wang Navas with sex trafficking in the second degree, a violation of subdivision 1a(4), without pleading the existence of the aggravating factors listed for a first-degree violation in subdivision 1(b). Minn. Stat. § 609.322, subds. 1a(4), 1(b) (2016). Second-degree sex trafficking in subdivision 1a(4) prohibits the "sex trafficking of *an individual*," and carries a maximum sentence of 15 years' imprisonment. *Id.* (emphasis added). A first-degree violation under subdivision 1(b)(4) of the statute provides for a sentencing enhancement of up to 25 years' imprisonment if "the offense involved more than one sex trafficking victim." Minn. Stat. § 609.322, subd. 1(b)(4) (2016). The complaint not only refers to subdivision 1a(4), it also uses the following language to label the charge: "Aiding and Abetting Engages in the sex

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trafficking of an individual."[6] Because the state did not allege a first-degree sex trafficking offense under subdivision 1(b), or allege the presence of multiple victims under subdivision 1(b)(4), the district court was not precluded from considering the number of victims as a basis to depart from the presumptive sentence.

Second, Wang Navas argues that particular circumstances may not be used to assign a severity level and also to support an upward departure.[7] *See State v. Kenard*, 606 N.W.2d 440, 443 n.3 (Minn. 2000). Wang Navas contends that the "facts cited by the [court] show that the district court concluded that there were multiple victims when it considered the rank of the racketeering offense." Assuming without deciding that *Kenard* prohibits district courts from relying on particular conduct to both rank an offense and to depart from the presumptive guidelines, we conclude that Wang Navas misstates the basis for the district court's ranking decision.

The record reflects that the district court focused on several factors to rank the racketeering offense, including that Wang Navas's conduct "occurred in multiple counties," "involved multiple acts," "consumed the better part of a year," constituted a "sustained level of activity," and took advantage of vulnerable adults. The district court also considered that it would be illogical to rank the racketeering offense at the same level as the underlying offense of sex trafficking because the legislature views the offense of

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[6] Wang Navas does not argue that the state was required to charge a first-degree offense under subdivision 1(b). Instead, Wang Navas argues that, as a matter of law, the elements of racketeering necessarily involve multiple victims and that the elements of subdivision 1a(4) necessarily involve multiple victims.

[7] We note that Wang Navas does not challenge the district court's decision to rank the racketeering charges at a level nine.

racketeering to be "a very serious crime punishable by up to . . . 30 years." Although the district court used the plural "victims," in explaining its reasoning for ranking the offense as a level nine, the district court's focus was not on the number of victims but on the nature of the victims, such as their vulnerability. The stated reasoning for its ranking decision did not preclude the district court from considering the number of victims when it enhanced Wang Navas's sentence.

II. Reasonableness of the Ultimate Sentence

Wang Navas argues that her sentence was "excessive and must be reversed because it was not warranted when compared to the conduct and sentences of [her] codefendants." We disagree and conclude that the district court did not abuse its discretion in determining the length of the sentence imposed.

We review the extent of a departure and an ultimate sentence for an abuse of discretion. *Dillon*, 781 N.W.2d at 596; *State v. Spain*, 590 N.W.2d 85, 88 (Minn. 1999) ("We afford the trial court great discretion in the imposition of sentences and we cannot simply substitute our judgment for that of the trial court."). Nevertheless, appellate courts have express statutory authority to "review the sentence imposed or stayed to determine whether the sentence is inconsistent with statutory requirements, unreasonable, inappropriate, excessive, unjustifiably disparate, or not warranted by the findings of fact issued by the district court." Minn. Stat. § 244.11, subd. 2(b) (2018). In doing so, we may consider the defendant's sentence in relation to the sentence an accomplice received. *State v. Vazquez*, 330 N.W.2d 110, 111-12 (Minn. 1983). We may also compare the sentence to those imposed on other defendants convicted of the same or similar offenses. *Id*. at 112.

This court may "reduce a defendant's sentence in order to make it more equitable with the sentence that a similarly situated codefendant received." *State v. Back*, 341 N.W.2d 273, 277 (Minn. 1983).

The record reflects that, in addition to Wang Navas, there were three other individuals convicted for their roles in the offense: Jing, Jiang, and Michelle Wu. Jing received a 102-month, executed sentence for racketeering and a concurrent sentence[8] for aiding and abetting sex trafficking of an individual. Jiang received a 53-month, executed sentence for racketeering and a concurrent sentence[9] for aiding and abetting sex trafficking of an individual. Wu received a stayed sentence[10] and was ordered to complete twenty years of probation for racketeering. Wang Navas admitted that she posted "thousands" of ads on Backpage.com, gave interested persons location and price information, communicated with the victims, and profited from her participation in the sex-trafficking offense. The state argued at sentencing that the number of ads posted by Wang Navas were "almost double" the amount posted by Jing. In addition, unlike Jing and Jiang, Wang Navas admitted to trafficking multiple victims. Also, Wang Navas admitted that she knew that some of the women who were being trafficked were also robbed. Finally, Wang Navas's post-offense conduct also contrasts with that of both Jing and Jiang, who agreed to cooperate "very early on in the proceedings." Jing even agreed to testify on behalf of

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[8] The record does not contain information regarding the length of the sentence imposed for this offense.

[9] The record does not contain information regarding the length of the sentence imposed for this offense.

[10] The record does not contain information regarding the length of the sentence imposed for this offense.

the state at Wang Navas's trial. Wu's stay of execution reflected that she played a limited role, concealing the proceeds derived from the sex-trafficking operation, but not engaging in additional criminal conduct.[11] The district court did not abuse its discretion in imposing a longer sentence for Wang Navas than those received by the other persons involved.

Wang Navas next contends that her sentence was "disproportionately long when compared to other sentences imposed for racketeering." But as the state points out, the data from the Minnesota Sentencing Guidelines Commission offered by Wang Navas cannot establish any relevant point of reference. For instance, the data fail to reveal if a sentence or severity level was agreed upon by the parties or whether the sentencing court considered or granted upward or downward departure motions. Most importantly, predicate crimes for racketeering offenses can vary greatly (as demonstrated by the facts and relative culpability of the others involved in this case). Because the data offered cannot reveal the nature of the predicate offenses, we cannot compare the sentence at issue to any other racketeering sentences and cannot conclude that the district court imposed a disproportionately long sentence.

III.   Accuracy of the Criminal History Score

Finally, Wang Navas argues that the district court erred by using the *Hernandez* method to increase her criminal history score used in relation to the sex-trafficking conviction. Generally, under *State v. Hernandez*, a district court sentencing a defendant on the same day for multiple convictions can increase the defendant's criminal-history

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[11] Wang Navas does not argue that she was less culpable or involved than Wu.

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score incrementally as each successive sentence is imposed. 311 N.W.2d 478, 479-81 (Minn. 1981). Racketeering cases, however, do not follow this general rule, and district courts cannot apply the *Hernadez* method when sentencing for both racketeering and its predicate offenses. *State v. Longo*, 909 N.W.2d 599, 612 (Minn. App. 2018).[12]

Here, the district court used the *Hernandez* method to sentence Wang Navas for the sex-trafficking offense. The state agrees that under *Longo*, Wang Navas's "sentence for sex trafficking should have been based on a criminal history score of zero, like the racketeering charge." Accordingly, we reverse Wang Navas's sentence for sex trafficking and we remand for resentencing on the sex-trafficking charge.

IV.   Waiver of Remaining Arguments

Wang Navas filed a pro se supplemental brief challenging her convictions and sentence, but her brief contained no citation to any legal authority. We consider such arguments waived. *See State v. Taylor*, 869 N.W.2d 1, 22 (Minn. 2015) ("We deem arguments waived on appeal if a pro se supplemental brief contains no argument or citation to legal authority in support of the allegations" (quotation omitted)); *see also State v. Yang*, 774 N.W.2d 539, 552 (Minn. 2009) ("An assignment of error based on mere assertion and not supported by any argument or authorities in appellant's brief is waived and will not be

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[12] As discussed in *Longo*, the racketeering statute allows district courts to impose multiple sentences for both racketeering and predicate offenses. 909 N.W.2d at 612 (citing Minn. Stat. § 609.910, subd. 1 (2014)). However, the *Hernandez* method cannot be applied unless multiple sentences are contemplated by the statute addressing multiple sentences generally. *Id*. (discussing Minn. Stat. § 609.035 (2014)). The court in *Longo* made this clear: "We conclude that because sentencing Longo for both racketeering and controlled-substance offenses was permissible under section 609.910, rather than under section 609.035, the district court should not have used the *Hernandez* method." *Id*.

considered on appeal unless prejudicial error is obvious on mere inspection") (quotation

omitted). Without reference to legal authority, we do not consider these arguments.

Affirmed in part, reversed in part, and remanded.