

*This opinion will be unpublished and  
may not be cited except as provided by  
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A19-1185  
A19-1186**

State of Minnesota,  
Respondent,

vs.

Charles Thomas Elverum,  
Appellant.

**Filed July 6, 2020  
Reversed and remanded  
Slieter, Judge**

Hennepin County District Court  
File No. 27-CR-18-7019, 27-CR-19-100

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

Michael O. Freeman, Hennepin County Attorney, Nicole Cornale, Assistant County  
Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Adam Lozeau, Assistant Public  
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Bratvold, Judge; and Slieter,  
Judge.

**UNPUBLISHED OPINION**

**SLIETER**, Judge

In this direct consolidated appeal from judgments of conviction in two separate  
criminal matters, appellant Charles Thomas Elverum argues that the district court erred by

imposing an upward durational departure without identifying the sentences as departures nor stating reasons to support the departures on the record. Because *Williams* and *Geller* require the district court to provide reasons during the sentencing hearing for imposition of a sentencing departure, and the district court failed to do so, we reverse and remand for imposition of sentences consistent with this opinion.

## FACTS

The state charged Elverum with receiving stolen property, in violation of Minn. Stat. § 609.53, subd. 1 (2016) and third-degree burglary, in violation of Minn. Stat. § 609.582, subd. 3 (2016). The state provided notice in both files of its intent to seek an upward durational sentencing departure based on Elverum's career-offender status pursuant to Minn. Stat. § 609.1095, subd. 4 (2016).

Elverum reached an agreement with the state to plead guilty to both charges in exchange for presumptive guidelines sentences of an executed 26-month prison term in the burglary case and a concurrent 21-month prison term in the receiving-stolen-property case. Based on Elverum's guilty plea and his agreement that he is a career-offender, the district court accepted his waiver of trial rights and "waiver of the career offender rights." The plea agreement provided that if he "fail[ed] to appear for sentencing or if he fail[ed] to remain law abiding during that two-week period that he will be out of custody, Mr. Elverum . . . agree[ed] that he does, in fact, qualify as a career offender and he would be sentenced to 40 months in prison."

During the plea hearing and after providing a factual basis in support of his guilty plea, Elverum acknowledged that he qualified as a career offender and that if he did not

appear for sentencing as scheduled, he would receive an upward durational departure of a 40-month prison term. The state provided a record identifying Elverum's five felony convictions as additional support of Elverum's career-offender status. The district court released Elverum from custody before sentencing. Elverum failed to appear for his sentencing hearing.

Elverum was subsequently arrested and appeared for sentencing when he requested, despite the agreement to do otherwise, that the district court impose a 26-month prison sentence. The state opposed Elverum's request based on the plea agreement. The district court, stating that it was following the plea agreement, imposed a durational departure of a 40-month prison sentence for each conviction to be served concurrently. The district court, during the sentencing hearing, did not make any findings that Elverum was a career offender or otherwise state a reason for the departures. The district court noted on each sentencing order that, despite the sentence departures, the sentences imposed were not departures from the sentencing guidelines. Elverum appeals.<sup>1</sup>

## D E C I S I O N

**The district court abused its discretion by imposing an upward sentencing departure without stating its reason.**

“[A] sentencing court can exercise its discretion to depart from the guidelines *only if* aggravating or mitigating circumstances are present, and those circumstances provide a

---

<sup>1</sup> Elverum filed his notice of appeal on July 30, 2019. On October 16, 2019, the district court filed departure reports with the Minnesota Sentencing Guidelines Commission identifying the basis for the departure as Elverum's career-offender status. The district court did not amend the sentencing orders.

substantial[] and compelling reason not to impose a guidelines sentence.” *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014) (second alteration in original) (quotations and citations omitted). A district court may impose a departure as a component of judicial discretion as limited by statute or caselaw. Minn. Sent. Guidelines 2.D.1. (Supp. 2017). “The reasons must be stated in the sentencing order or recorded in the departure report and filed with the Commission.” Minn. Sent. Guidelines 2.D.1.c. Appellate courts “review a district court’s decision to depart from the presumptive guidelines sentence for an abuse of discretion.” *See State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016). “A district court abuses its discretion when its reasons for departure are legally impermissible and insufficient evidence in the record justifies the departure.” *Id.*

In *State v. Williams*, the supreme court enunciated general rules to ensure compliance with the sentencing guidelines. 361 N.W.2d 840, 844 (Minn. 1985). Specifically,

1. If no reasons for departures are stated on the record at the time of sentencing, no departure will be allowed.
2. If reasons supporting the departure are stated, this court will examine the record to determine if the reasons given justify the departure.
3. If the reasons given justify the departure, the departure will be allowed.
4. If the reasons given are improper or inadequate, but there is sufficient evidence in the record to justify departure, the departure will be affirmed.
5. If the reasons given are improper or inadequate and there is insufficient evidence of record to justify the departure, the departure will be reversed.

*Id.* Since *Williams*, the supreme court has reiterated “that the first rule [it] set out in *Williams* is clear: absent a statement of the reasons for the sentencing departure placed on the record at the time of sentencing, no departure will be allowed.” *State v. Geller*, 665 N.W.2d 514, 517 (Minn. 2003) (emphasis added).

Elverum argues that the district court did not meet the first rule in *Williams* because the district court failed to explain its reason for the departure on the record. Specifically, the court failed to identify the career-offender statute’s application and that Elverum committed the current crime as part of a pattern of criminal conduct. We agree with appellant that the district court, by failing to state its reason for a departure on the record during sentencing, violated the *Williams* rule.

The relevant component of the career-offender statute requires that the factfinder determine “that the offender has five or more prior felony convictions and that the present offense is a felony that was committed as part of a pattern of criminal conduct.” Minn. Stat. § 609.1095, subd. 4. Upon careful review of the sentencing hearing record, the district court did not state that Elverum met the career-offender statute and that his current crime was committed as part of a pattern of criminal conduct as support to impose an upward departure. No other reason was stated by the judge during the sentencing hearing as to the basis for the sentencing departure.<sup>2</sup> Only after Elverum filed this appeal did the district

---

<sup>2</sup> The district court did state, during the sentencing hearing, that it would sentence Elverum in accordance with the plea agreement. This is not a proper basis to impose a departure. See *State v. Misquadace*, 644 N.W.2d 65, 66 (Minn. 2002) (“The sentencing court erred by basing its departures from the presumptive sentences under the Minnesota Sentencing Guidelines solely on a plea agreement without additional substantial and compelling

court issue departure reports identifying the career-offender statute as the basis for its departure. This process, however, also does not comply with the *Williams* rule, which requires the district court to state the reason on the record during the sentencing hearing.

The state, in arguing that the district court properly sentenced Elverum, relies on Elverum's prior plea agreement and that he provided a sufficient factual basis that he qualified as a career offender. As noted, during the plea hearing the district court obtained a factual basis from Elverum that he had five prior felony convictions and that his current offense would be his sixth. Elverum also agreed that his new conviction would establish a pattern of criminal conduct.

The state relies on *State v. Vickla*, 793 N.W.2d 265, 266 (Minn. 2011), for the premise that, because Elverum agreed during entry of his guilty plea to the factual findings necessary to implicate the career-offender statute, such a sentence is appropriate. The state argues that it does not matter that the district court did not formally conclude that Elverum is a career-offender and his current offense was committed as part of a pattern of criminal conduct. The state's reliance upon *Vickla* is misplaced because, unlike here, the district court during the *Vickla* sentencing specifically found on the record that Vickla was a career offender and, based on this finding, found it appropriate to impose a durational departure from the sentencing guidelines. 793 N.W.2d at 268. Moreover, the supreme court noted in *Vickla* that the career-offender statute "provide[s] that a defendant's status as a 'career offender' under section 609.1095, subdivision 4, is a sufficient reason to depart from the

---

justification for departure."). We do not address whether this reasoning meets the first rule of *Williams* because no party argues that it does.

presumptive sentence. . . . [But] a court departing under the repeat-felony-offender statute must provide written reasons that specify that the requirements of the statute have been met.” *Id.* (quotation and citation omitted). Unlike in *Vickla* and contrary to the clear directive of *Williams* and *Geller*, the district court failed to state on the record during the sentencing hearing that Elverum met the career-offender statute as a basis to impose a departure.

Because *Williams* and *Geller* clearly requires that the reason for a departure be stated during the sentencing hearing and that if no reason is provided, the court on remand must impose a guidelines sentence, we are compelled to reverse and remand for the imposition of a presumptive guidelines sentence. *See Williams*, 361 N.W.2d at 844 (“If no reasons for departure are stated on the record at the time of sentencing, no departure will be allowed.”); *see also Geller*, 665 N.W.2d at 517 (“[T]he first rule [the supreme court] set out in *Williams* is clear: absent a statement of the reasons for the sentencing departure placed on the record at the time of sentencing, no departure will be allowed.”).

**Reversed and remanded.**