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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1490**

State of Minnesota,
Respondent,

vs.

Jonathan Robert Frankenfield, Sr.,
Appellant.

**Filed July 13, 2020
Affirmed
Cochran, Judge**

Dakota County District Court
File No. 19HA-CR-18-1312

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

James C. Backstrom, Dakota County Attorney, Anna Light, Assistant County Attorney,
Hastings, Minnesota (for respondent)

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

Considered and decided by Johnson, Presiding Judge; Cochran, Judge; and
Bryan, Judge.

UNPUBLISHED OPINION

COCHRAN, Judge

Appellant Jonathan Robert Frankenfield Sr. appeals his sentence, arguing that the
district court abused its discretion by imposing an upward durational departure without

making findings sufficient to support the departure and not announcing, at sentencing, that it was imposing an upward departure. Frankenfield also argues that the district court erred in concluding that his offense was more serious than typical. Because the district court sufficiently identified its reasons for imposing the upward departure, and because the district court did not abuse its discretion in concluding that Frankenfield's offense was more serious than typical, we affirm.

FACTS

The state charged Jonathan Robert Frankenfield Sr. with one count of felony child neglect (substantial harm) under Minn. Stat. § 609.378, subd. 1(a)(1) (2016). The complaint alleged that in late November 2017, in response to reports of possible child neglect, police officers accompanied a social worker to Frankenfield's home. Frankenfield and three children were present at the home. Police observed evidence of drug use, including paraphernalia and torches. One child (the victim) was a seven-month-old infant who had a "complicated and severe" medical history. After being released from the hospital in August 2017 to the care of his parents, the victim was placed in hospice care and then was transferred to palliative care two months later. The victim was assigned a home health nurse while he lived at home with his parents.

During the home visit in November 2017, one of the older children told police that the victim had a burn on his foot. The victim was wrapped in blankets and lying on a love seat when the police were told of the burn. Police looked at the victim's foot and saw signs of serious injury. Two toes were completely black and there appeared to be mold growing on the third. The home health nurse reported that she was never made aware of the victim's

injury. Frankenfield later admitted to police that he does not like hospitals and that he purposefully hid the victim's injuries from the home health nurse.

Frankenfield also told police that the injury was a fungal infection and not a burn, but he admitted that neither he nor the victim's mother ever took the victim to a doctor to examine the injury. Frankenfield told paramedics, who arrived later, that the home health nurse told him that the injury was a blister, and that he should put Niacin on the wound. But Frankenfield could not produce the medication. The victim's mother later reported to police that she believed that the injury occurred about a week before the home visit, and that over the course of a few days, she observed that the blister popped and turned dark purple.

The victim was transported to a doctor who determined that the victim was suffering from "septic shock, hypothermia, significant diaper rash, a yeast infection around his neck, and toe wounds on the right foot that were slightly neurotic with blistered skin." The doctor determined that the victim's injuries were "likely the result of a direct thermal injury from a flame." Ultimately, the doctor determined that it was necessary to amputate the victim's three toes, and the surgery was performed in December 2017.

The state gave notice that it intended to seek an upward-durational departure based, in part, on the particular vulnerability of the victim and that Frankenfield treated the victim with particular cruelty. Frankenfield entered an *Alford* guilty plea with no plea agreement.¹

¹ In an *Alford* plea, the defendant maintains his innocence but acknowledges that the state has demonstrated a "strong factual basis for the guilty plea" and the defendant wants to enter into the plea based on his belief that he would be convicted at trial. *See State v. Theis*,

He acknowledged the state's evidence at the plea hearing, and agreed that the state would essentially prove the facts contained in the complaint. Frankenfield also waived his right to a jury determination of aggravating factors to support an upward departure.

A presentence investigation report (PSI) was completed before sentencing. Frankenfield told the PSI writer that he did not take the victim to the doctor because the injury appeared to show improvement over time. The PSI writer recommended that the district court impose the guidelines sentence. With a criminal-history score of 3, the presumptive guidelines sentence for Frankenfield's offense was 33 months, with a range of 29 to 39 months.

At sentencing, Frankenfield argued for a downward dispositional departure to probation based on Frankenfield's particular amenability to probation and treatment. He argued that he did not act with malice, that he loved his children, that he had chemical dependency issues, that he was "set up for failure" given the victim's health issues at birth, and that the circumstances of this case mitigated his culpability. He also argued that the facts of the case did not support a finding that he caused the injury, as other people used drugs in the home.

The state asked the district court to impose an upward durational departure and sentence Frankenfield to 56 months' imprisonment. It argued that the victim was particularly vulnerable because the child was only seven months old, suffered from significant mental and physical disabilities, and required extensive care at home that the

742 N.W.2d 643, 647 (Minn. 2007) (quoting *North Carolina v. Alford*, 400 U.S. 25, 38, 91 S. Ct. 160, 168 (1970)).

parents should have provided. The state also argued that Frankenfield treated the victim with particular cruelty because he failed to care for the child, allowing the child to suffer with the injury, and because the severe burn was one of several ailments that the child was subjected to as a result of Frankenfield's lack of care. In summation, the state argued that this was a "very serious offense" that caused "extreme harm" to an "incredibly young child with severe disabilities," and that an aggravated sentence was appropriate.

The district court made remarks before imposing a sentence. The district court told Frankenfield: "[t]hat child suffered, and because of his age and because of the disabilities he was born with, he had no way of speaking out and letting anybody know that something was wrong. But you knew it was." When discussing Frankenfield's failure to seek medical attention despite knowing about the victim's condition, the district court indicated that Frankenfield's conduct was "above and beyond what we typically see in these kinds of cases." The district court then imposed a 56-month prison sentence. On the same day as sentencing, the district court filed a departure report indicating that it imposed an aggravated durational departure based on the particular vulnerability of the victim and because the crime was more onerous than the usual offense.

Frankenfield appeals the sentence.

D E C I S I O N

Frankenfield challenges the district court's imposition of an aggravated durational departure.² "We review decisions to depart from the sentencing guidelines only for an

² Frankenfield does not challenge the district court's denial of his request for a downward dispositional departure.

abuse of discretion.” *State v. Barthman*, 938 N.W.2d 257, 269 (Minn. 2020) (quotation omitted). “A district court abuses its discretion if its reasons for departure are inadequate or improper.” *Id.* The district court must “articulate substantial and compelling circumstances justifying the departure.” *State v. Edwards*, 774 N.W.2d 596, 601 (Minn. 2009) (quotation omitted). “If the reasons given for an upward departure are legally permissible and factually supported in the record, the departure will be affirmed.” *Id.*

Frankenfield argues that the district court failed to articulate substantial and compelling reasons justifying its decision to depart, and that the departure is not factually supported in the record. We address each argument in turn.

I. The district court sufficiently articulated its reasons for departing.

Frankenfield first argues that the district court abused its discretion by imposing an aggravated departure without stating, orally, the reasons for the departure on the record at the sentencing hearing.

In *Williams v. State*, 361 N.W.2d 840, 844 (Minn. 1985), the supreme court established “general rules” regarding the imposition of a departure:

1. If no reasons for departure 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.

The supreme court expressly reaffirmed the *Williams* rule in *State v. Geller*, where the supreme court again stated that “absent a statement of the reasons for the sentencing departure placed on the record at the time of sentencing, no departure will be allowed.” 665 N.W.2d 514, 517 (Minn. 2003). And the supreme court clarified that if the district court fails to state reasons for a departure on the record at the time of sentencing, the remedy is to remand for the imposition of a guidelines sentence. *Id.*

Frankenfield argues that the district court failed to identify reasons for a departure on the record, and that the first *Williams* rule compels a remand for the imposition of a guidelines sentence. We are not persuaded. The district court identified its reasons for departing when it stated, “[t]hat child suffered, and because of his age and because of the disabilities he was born with, he had no way of speaking out and letting anybody know that something was wrong. But [Frankenfield] knew it was.” The district court’s remarks demonstrated that it considered that (1) the child suffered, (2) because of his age and because of the disabilities he was born with, he had no way of speaking out and letting anybody know that something was wrong, and (3) Frankenfield knew that there was something wrong with the child and did not do anything about it. The district court also noted that Frankenfield’s offense was more serious than a typical case, stating that Frankenfield’s offense was “above and beyond what we typically see in these kinds of cases.” We conclude that the district court’s remarks sufficiently articulated its reasons for

the upward departure—that the victim was particularly vulnerable and that the offense was more serious than typical.

We recognize that the district court could have been clearer when it orally identified the basis for the departure. But because the district court’s remarks demonstrate its reasons for departing, we review the departure under the second “general rule” set forth in *Williams*. Under this rule, we examine the record to determine whether the reasons identified by the district court justify the departure. *Williams*, 361 N.W.2d at 844; *see also State v. Simmons*, 646 N.W.2d 564, 658 (Minn. 2002) (recognizing that the district court “did not state detailed findings explaining its upward departure,” but acknowledging that the district court’s remarks demonstrated three aggravating factors).³

II. The reasons that the district court identified at sentencing support the departure.

“A district court may depart from the presumptive guidelines sentence only when substantial and compelling circumstances are present in the record.” *Barthman*, 938 N.W.2d at 270 (quotation omitted). “Substantial and compelling circumstances are

³ Frankenfield also argues that the district court abused its discretion by failing to expressly announce that it was imposing a departure at sentencing. He cites no authority to support his argument that the failure to expressly announce a departure at the sentencing hearing is an abuse of discretion requiring a remand. And we find no error in that regard on mere inspection. *Cf. State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997) (indicating that an assignment of error not supported by argument or authorities will not be considered on appeal unless prejudicial error is obvious on mere inspection). The record reflects that the district court and Frankenfield understood that the state was asking for an upward durational departure to 56 months in prison, and that the district court imposed a 56-month sentence after identifying reasons for doing so. The district court also filed a written departure report identifying its reasons for imposing an upward-durational departure. Accordingly, we conclude that Frankenfield has forfeited this argument.

those demonstrating that the defendant's conduct in the offense of conviction was significantly more or less serious than that typically involved in the commission of the crime in question." *State v. Hicks*, 864 N.W.2d 153, 157 (Minn. 2015) (quotation omitted). The sentencing guidelines provide a nonexhaustive list of aggravating factors that may support a departure. See Minn. Sent. Guidelines 2.D.3.b (2017). One aggravating factor that may support an upward departure is that "[t]he victim was particularly vulnerable due to age, infirmity, or reduced physical or mental capacity, and the offender knew or should have known of this vulnerability." *Id.*, 2.D.3.b.1. "The presence of a single aggravating factor is sufficient to uphold an upward departure." *State v. Weaver*, 796 N.W.2d 561, 571 (Minn. App. 2011) (citation omitted), *review denied* (Minn. July 19, 2011); see also *Hicks*, 864 N.W.2d at 159-60 (affirming upward durational departure based on single aggravating factor). "If the reasons given for an upward departure are legally permissible and factually supported in the record, the departure will be affirmed." *Edwards*, 774 N.W.2d at 601.

As noted above, the district court imposed an aggravated sentence based on its determination that the victim was particularly vulnerable and that the crime was more serious than the usual offense. On appeal, Frankenfield does not dispute that the victim was particularly vulnerable. Instead, he argues that the district court erred in concluding that his offense was more serious than the typical offense.

In support of his argument, he cites *State v. Tice*, 686 N.W.2d 351 (Minn. App. 2004), *review denied* (Minn. Nov. 16, 2004). In *Tice*, we discussed the minimum level of negligence contemplated by the child-neglect statute and held that the negligence contemplated by the child-neglect statute is higher than ordinary civil negligence.

Id. at 355. We further held that the child-neglect statute requires that the parent’s “conduct was more likely than not to result in substantial harm to” the child or children. *Id.* On that basis, we affirmed the district court’s dismissal of child-neglect charges against a couple who left three children in a car with the heater on while the parents went into a store on a cold winter day. *Id.* at 352, 355. The police who found the children “noted that the three children were appropriately dressed for the weather and did not appear to be upset.” *Id.* at 352. Frankenfield’s conduct is undoubtedly more serious than the conduct at issue in *Tice*. The record here shows that, at best, Frankenfield willfully ignored and concealed the victim’s severe burn, despite knowing that the victim was particularly vulnerable, resulting in the amputation of three of the victim’s toes. Accordingly, we are not persuaded that *Tice* suggests that Frankenfield’s conduct was not more serious than the typical felony child-neglect offense.

Frankenfield next argues, based on several unpublished opinions, that his offense was not more serious than the typical offense. We have reviewed the unpublished opinions—the majority of which do not address the sentence imposed—and conclude that they are factually distinguishable from this case.⁴ None of the cases that Frankenfield cites contain the combination of factors present here—namely, the extreme youth, severe physical disability, and the particularly significant level of harm suffered by the victim. We conclude that, given the particular vulnerability of the victim due to his age and disability, and considering the significant level of harm that resulted from Frankenfield’s

⁴ Unpublished opinions may not be cited as precedent, except as law of the case, *res judicata*, or collateral estoppel. Minn. Stat. § 480A.08, subd. 3(b) (2018).

conduct, the district court did not abuse its discretion when it concluded that Frankenfield's offense was more serious than a typical child-neglect offense.

In sum, we affirm the district court's sentencing decision because the reasons that the district court gave for departing were "legally permissible and factually supported in the record." *Edwards*, 774 N.W.2d at 601.

Affirmed.