

*This opinion will be unpublished and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
A19-1852**

State of Minnesota,
Respondent,

vs.

Sue Her,
Appellant.

**Filed August 31, 2020
Reversed and remanded
Florey, Judge**

Ramsey County District Court
File No. 62-CR-15-8573

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

John J. Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney,
St. Paul, Minnesota (for respondent)

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

Considered and decided by Hooten, Presiding Judge; Florey, Judge; and Cochran,
Judge.

UNPUBLISHED OPINION

FLOREY, Judge

Appellant challenges his 75-month sentence as contrary to his plea agreement which promised a consecutive sentence at the low end of the presumptive guidelines range. We reverse and remand for resentencing.

FACTS

Appellant Sue Her pleaded guilty to first-degree burglary (dangerous weapon). As part of the plea agreement, the parties agreed that Her would receive a consecutive sentence at the low end of the presumptive guidelines range.¹

The presentencing investigation (PSI) determined that Her's criminal-history score was four, and based on this score determined that the guidelines-sentence range was 75 to 105 months. Based on the PSI, the district court imposed a permissive consecutive sentence of 75 months, which at the time, the parties believed was at the low end of the presumptive guidelines range. The district court did not make any findings to support an upward departure. Her now appeals, challenging the 75-month sentence as contrary to his plea agreement under the Minnesota Sentencing Guidelines.

DECISION

Her argues that the district court erred in determining that a low-end-permissive consecutive sentence, which was promised in the plea agreement, would be 75 months

¹ While this matter was pending, the district court executed a 21-month sentence in a separate case.

based on a mistake in the PSI. The state concedes that this case should be remanded to the district court for resentencing consistent with the plea agreement.

The interpretation of the Minnesota Sentencing Guidelines presents a question of law, which we review de novo. *State v. Washington*, 908 N.W.2d 601, 606 (Minn. 2018). Under the guidelines, the presumptive duration of a permissive consecutive sentence must be based on a criminal-history score of zero or the mandatory minimum, whichever is longer. Minn. Sent. Guidelines 2.F.2.b (2018). A consecutive sentence at any other duration is considered to be a departure. *Id.*

The presumptive duration of a sentence for first-degree burglary (dangerous weapon) based on a criminal-history score of zero is 48 months, with a guidelines range of 41 to 57 months. Minn. Sent. Guidelines, 4.A (2018). The mandatory minimum for this offense is 36 months. Minn. Stat. § 609.11, subd. 4 (2018). Based on the requisite criminal-history score of zero and the mandatory minimum, Her's 75-month sentence exceeded the maximum guidelines sentence. Accordingly, as both parties request, we reverse and remand for resentencing consistent with the plea agreement.

Reversed and remanded.