

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0123**

State of Minnesota,
Appellant,

vs.

Ihar Daniliuk,
Respondent.

**Filed September 7, 2021
Affirmed
Bryan, Judge**

Dakota County District Court
File No. 19HA-CR-19-2183

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

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

NONPRECEDENTIAL OPINION

BRYAN, Judge

In this sentencing appeal, appellant challenges the district court's decision to grant two downward durational departures. Because we conclude that the district court did not abuse its discretion in determining that respondent's conduct was less serious than that involved in a typical offense, we affirm.

FACTS

In August 2019, appellant State of Minnesota charged respondent Ihar Daniliuk with two counts of criminal vehicular operation after Daniliuk drove his vehicle into a coffee shop while under the influence of alcohol, seriously injuring two people. Daniliuk pleaded guilty to one count of criminal vehicular operation resulting in great bodily harm and one count of criminal vehicular operation resulting in substantial bodily harm. Both offenses were based on operating a motor vehicle while having an alcohol concentration of 0.08 or more and not on negligence, gross negligence, or any other statutory basis. *See* Minn. Stat. § 609.2113, subds. 1, 2 (2018).

During the plea colloquy, Daniliuk admitted to the following facts. After consuming alcohol, Daniliuk drove to a grocery store. While parking the car, Daniliuk's sandal got caught in the gas pedal, causing Daniliuk and the car to jerk forward and crash into a coffee shop. The car struck two people sitting at a table outside the coffee shop. One of the victims sustained great bodily harm, and the other sustained substantial bodily harm. After police arrived at the scene, they took Daniliuk to the hospital and obtained a

blood test, which showed that Daniliuk had an alcohol concentration of 0.12. Based on these admissions, the district court accepted Daniliuk's guilty plea.

At sentencing, Daniliuk moved for downward durational departures, asking the district court to sentence the two offenses as gross misdemeanors instead of felonies.¹ Daniliuk argued that his conduct was less serious than a typical offense because the accident was caused in part by his sandal getting caught in the gas pedal, and because he exhibited remorse at the scene and tried to help the victims. The state opposed the departure requests and asked the district court to sentence the offenses as felonies but to stay execution of the sentences.

The district court granted the downward durational departures and sentenced both offenses as gross misdemeanors. The district court determined that there were substantial and compelling reasons to depart because the conduct involved in the offenses was less serious than the conduct involved in a typical offense. At the sentencing hearing, the district court orally explained its reasons for the departure decisions:

As tragic as this incident was, this is a case where the defendant was going to a grocery store and not a bar. . . . I also find that his wearing sandals in the middle of summer is not unreasonable and that that was a contributing factor in this incident. And as a result I find that this crime was less onerous than what is typical in a DWI crim[inal] vehicle operation type offense.

¹ The imposition of a gross-misdemeanor sentence for a felony conviction is considered a downward durational departure. *See* Minn. Stat. § 609.13, subd. 1 (2018); *State v. Bauerly*, 520 N.W.2d 760, 762 (Minn. App. 1994), *review denied* (Minn. Oct. 27, 1994).

In the sentencing departure report, the district court reiterated its reasons for the departures, including that Daniliuk’s “wearing sand[al]s played a significant role in the accident, which occurred in the parking lot of a grocery store in which [Daniliuk] had intended to purchase groceries.” The sentencing report also stated that Daniliuk “showed remorse immediately after hitting the two victims and approached them to render aid.” The district court stayed execution of the 365-day sentences on each count, but it ordered Daniliuk to serve two separate 30-day periods of jail time, one beginning in August 2021 and the other beginning in August 2022. This appeal follows.

DECISION

The state argues that because Daniliuk’s conduct was not significantly less serious than the conduct involved in a typical offense, the district court erred when it granted the downward durational departures. We conclude that the district court did not abuse its discretion in granting the departures because the uncontested facts² and circumstances of this case support the determination that Daniliuk’s offense conduct was less serious than the conduct involved in a typical offense.

The Minnesota Sentencing Guidelines promote uniformity, proportionality, and predictability in sentencing. *State v. Misquadace*, 644 N.W.2d 65, 68 (Minn. 2002). The Minnesota Sentencing Guidelines prescribe a sentence or a range for the sentence that is “presumed to be appropriate.” Minn. Sent. Guidelines 2.D.1 (Supp. 2019); *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014). The district court must pronounce a sentence within

² The state does not challenge the factual findings of the district court.

the presumptive sentencing range “unless there exist identifiable, substantial, and compelling circumstances to support a departure.” Minn. Sent. Guidelines 2.D.1 (Supp. 2019); *Soto*, 855 N.W.2d at 308. Here, the district court granted two durational departures, imposing shorter sentences than the presumptive sentences under the guidelines. *See State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016) (defining a durational departure). When imposing a durational departure, a district court considers “the course of conduct underlying the charge for which the defendant is being sentenced.” *State v. Weaver*, 796 N.W.2d 561, 573 (Minn. App. 2011) (quotation omitted), *review denied* (Minn. July 19, 2011). For durational departures, a district court must rely on the offense conduct rather than the characteristics of the offender. *Solberg*, 882 N.W.2d at 623. A district court may grant a downward durational departure “only if the defendant’s conduct was significantly less serious than that typically involved in the commission of the offense.” *Id.* at 624 (quotation omitted).

We review the characterization of the defendant’s conduct and the district court’s comparison³ to the conduct involved in a typical offense for an abuse of discretion. *E.g.*, *Dillon v. State*, 781 N.W.2d 588, 595 (Minn. App. 2010), *review denied* (Minn. July 20, 2010) (concluding that if “the district court has identified proper grounds justifying a challenged departure, we review its decision *whether* to depart for an abuse of discretion”); *see also State v. Stempfley*, 900 N.W.2d 412, 419 (Minn. 2017) (concluding that the district

³ We observe that applicable caselaw does not require a district court to describe the conduct involved in a typical offense when making this comparison. Nevertheless, a description of the conduct involved in a typical offense would aid in the parties’ understanding of a departure decision and assist our review of departure decisions.

court did not abuse its discretion when it determined that the defendant's role was less serious than a typical defendant's role); *State v. Behl*, 573 N.W.2d 711, 714 (Minn. App. 1998) (concluding that the district court did not abuse its discretion when it determined that the conduct involved was more serious than that involved in the typical offense), *review denied* (Minn. Mar. 19, 1998).⁴ A district court abuses its discretion when its decision "is against logic and the facts in the record." *State v. Guzman*, 892 N.W.2d 801, 810 (Minn. 2017). We are "extremely deferential" to a district court's decision whether to impose a departure, *Dillon*, 781 N.W.2d at 595-96, and we "cannot simply substitute our judgment for that of the [district] court," *State v. Spain*, 590 N.W.2d 85, 88 (Minn. 1999); *see also State v. Case*, 350 N.W.2d 473, 476 (Minn. App. 1984) (explaining that appellate courts are "loath to interfere" with a district court's sentencing decision). "[A]s long as the record shows the sentencing court carefully evaluated all the testimony and information presented before making a determination," this court will not interfere with the district court's decision. *State v. Pegel*, 795 N.W.2d 251, 255 (Minn. App. 2011) (quotation omitted).

At the sentencing hearing and in the sentencing departure report, the district court relied on the following four facts to determine that the circumstances of this case were significantly less serious than the conduct involved in a typical case: (1) the accident

⁴ Our standard of review on sentencing appeals varies depending on the particular error asserted. We generally review a district court's decision to depart from the sentencing guidelines for an abuse of discretion. *Taylor v. State*, 670 N.W.2d 584, 588 (Minn. 2003). However, we review questions of law de novo, such as whether a particular reason for a departure is permissible. *State v. Jackson*, 749 N.W.2d 353, 357 (Minn. 2008); *Dillon*, 781 N.W.2d at 595. In this case, the state does not argue that the district court identified legally impermissible reasons for the departure. Consistent with the parties' written and oral arguments to this court and based on *Dillon*, we apply abuse-of-discretion review.

occurred when Daniliuk was going to a grocery store rather than a bar; (2) Daniliuk's sandal got stuck on the gas pedal of the vehicle, causing the vehicle to move forward and contributing to the accident; (3) Daniliuk showed remorse immediately after causing the accident; and (4) Daniliuk approached the victims at the scene to render aid. The state argues that these facts do not differ from a typical offense. We conclude that the district court acted within its discretion when it determined that these four facts significantly distinguished Daniliuk's conduct from the conduct involved in a typical criminal vehicular operation offense.

First, the district court relied on the fact that Daniliuk was going to a grocery store and not a bar when he caused the accident. The state maintains that the location of the accident does not sufficiently distinguish this offense from the typical offense. We disagree. The location of the offense and the fact that Daniliuk was running an errand, rather than going to or from a bar where he had been drinking, fall within "the course of conduct underlying the charge for which the defendant is being sentenced" that the district court considers when characterizing the offense conduct. *Weaver*, 796 N.W.2d at 573 (quotation omitted). While the location and purpose of the driving conduct involved may not be determinative by themselves, it is not against logic to consider these aspects of Daniliuk's course of conduct. We find no abuse of discretion in the district court's determination that the location and purpose for the driving conduct here make the conduct less serious than the typical alcohol-related criminal vehicular operation offense.

Second, the district court relied on its findings that Daniliuk's sandal played a role in causing the accident. The state argues that the district court abused its discretion because

the accident was primarily caused by Daniliuk's intoxication, not his sandal. Again, we are not convinced. To be clear, although portions of the state's written argument appear to challenge the causation finding of the district court, the state conceded at oral argument that it was not challenging this factual finding. In addition, the state is not arguing that the statute precludes consideration of what caused the accident.⁵ Given the state's clarification at oral argument, and given the deference afforded to the district court's weighing of conflicting inferences regarding causation, we accept all of the district court's factual findings as uncontested on appeal. Construing this argument in the proper context, we next conclude that the district court did not act against logic. The district court characterized the harm in this case as the result of Daniliuk's intoxication and the sandal getting stuck on the accelerator. The district court did not abuse its sentencing discretion when it distinguished those two causes or when it determined that Daniliuk's conduct is less serious than the typical offense in which the driver's intoxication alone causes harm.

Third, the district court relied on its factual finding that Daniliuk showed remorse immediately after causing the accident. Remorse may justify a durational departure if it "is directly related to the criminal conduct at issue and made that conduct significantly less

⁵ Portions of the state's brief allude to the distinction between the element of negligence present in other section 609.2113 offenses and the absence of any negligence element in the particular offenses of conviction under subdivisions 1(3) and 2(3). However, the state does not argue that the consideration of potential causes of the accident is an improper legal basis for departure. We observe that all offenses under these subdivisions require proof that the defendant's driving conduct caused great or substantial bodily harm. Minn. Stat. § 609.2113, subs. 1, 2. Given the language of the statute and the state's failure to assign legal error, we assume that, for convictions under section 609.2113, subdivisions 1(3) and 2(3), the statutory causation element permits consideration of the circumstances that caused the accident when deciding whether to grant a departure motion.

serious than the typical conduct underlying the offense of conviction.” *Solberg*, 882 N.W.2d at 626. Here, the district court’s finding on remorse related to Daniliuk’s conduct at the time of the accident. After causing the accident, Daniliuk got out of the car and expressed remorse through an apology to one of the victims at the scene of the accident. The immediate showing of remorse and acceptance of responsibility is directly related to the offense conduct in this case. The district court did not abuse its discretion when it considered how these actions differed from the typical offense conduct.

Finally, the district court also relied on the fact that Daniliuk approached the two victims at the scene to render aid. *See State v. McGee*, 347 N.W.2d 802, 806 (Minn. 1984) (determining that defendant’s conduct was more culpable than a typical offense when he struck victim with vehicle and failed to stop or render aid, even after witnesses directed him to stop). It was not against logic for the district court to conclude that this aspect of Daniliuk’s conduct supported the departures.

In sum, we discern no abuse of discretion here. The district court relied on four facts that are uncontested on appeal. While reasonable district court judges may differ on the extent to which these facts mitigated the seriousness of the two offenses, it was not an abuse of discretion for the district court to conclude that these facts, when taken together, significantly distinguish Daniliuk’s conduct from the conduct involved in the typical offense.

Affirmed.