

*This opinion is nonprecedential except as provided by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
A23-0442**

State of Minnesota,
Appellant,

vs.

Dakoda August Scheldrup,
Respondent.

**Filed August 14, 2023
Affirmed
Wheelock, Judge**

Itasca County District Court
File No. 31-CR-22-685

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

Matti R. Adam, Itasca County Attorney, Todd S. Webb, Chief Assistant County Attorney,
Grand Rapids, Minnesota (for appellant)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Lauermann, Assistant
Public Defender, St. Paul, Minnesota (for respondent)

Considered and decided by Frisch, Presiding Judge; Cochran, Judge; and Wheelock,
Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

The state filed this sentencing appeal after the district court departed from the guidelines sentence for respondent's conviction for failure to register as a predatory offender. The state argues that the district court abused its discretion by imposing (1) a

downward durational departure based on insufficient offense-related factors and (2) a downward dispositional departure based on insufficient offender-related factors. Because we discern no abuse of the district court's broad sentencing discretion, we affirm.

FACTS

Respondent Dakota August Scheldrup was adjudicated delinquent for felony second-degree criminal sexual conduct in March 2019 and thereafter was required to register as a predatory offender. Scheldrup submitted a required address-verification form in April 2021 that listed his primary address as his grandparents' house in Grand Rapids. Law enforcement visited the address in August 2021 and spoke to Scheldrup's grandmother, who reported that Scheldrup occasionally resided there but frequently stayed close to the construction job sites at which he worked. Scheldrup spoke with law enforcement by phone and confirmed that he lived at the registered address but frequently stayed near his job sites.

In November 2021, law enforcement spoke with Scheldrup's grandmother and brother, both of whom reported that Scheldrup was living in Park Rapids. Later that month, Scheldrup went in person to the Grand Rapids Police Department to update his registered address. He reported that he had not lived in the Grand Rapids area for about five months, that he had been working and living in the Park Rapids area, and that he now lived in Menahga.

In March 2022, appellant State of Minnesota charged Scheldrup with one count of failure to register as a predatory offender, a felony offense in violation of Minn. Stat. § 243.166, subd. 5(a)(1) (2020). The complaint alleged that Scheldrup failed to comply

with the requirements of registration between July and November 2021. In October 2022, Scheldrup pleaded guilty to the offense without an agreement as to sentencing.

In December 2022, the Minnesota Department of Corrections filed a presentence-investigation (PSI) report and sentencing worksheet. The state filed a sentencing brief requesting that the district court sentence Scheldrup to one year and one day in prison, a sentence at the bottom of the presumptive range. Scheldrup filed a motion requesting both a downward dispositional departure and a downward durational departure from a one-year-and-one-day executed sentence to a one-year stayed sentence, which by operation of law would convert his felony conviction to a gross misdemeanor.

At Scheldrup's sentencing hearing, the district court granted Scheldrup's motion for both types of downward departure. The district court adjudicated Scheldrup guilty and sentenced him to one year in jail with 11 months stayed, 30 days of jail time, and three years of probation.

The state appeals.

DECISION

On appeal, the state challenges the district court's imposition of both a downward durational sentencing departure and a downward dispositional sentencing departure, arguing that the district court abused its discretion by basing the departures on insufficient evidence. We are not persuaded.

The district court has "great discretion in the imposition of sentences," and appellate courts "cannot simply substitute [their] judgment for that of the [district] court." *State v. Spain*, 590 N.W.2d 85, 88 (Minn. 1999). Therefore, appellate courts review a district

court's imposition of a sentencing departure for an abuse of discretion. *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016).

A district court's discretion is constrained by the Minnesota Sentencing Guidelines, which provide a sentencing range that is "presumed to be appropriate." Minn. Sent'g Guidelines 2.D.1 (2020). A district court "must pronounce a sentence of the applicable disposition and within the applicable range unless there exist identifiable, substantial, and compelling circumstances to support a departure." *Id.* Substantial and compelling circumstances are those that distinguish a case from a typical case. *State v. Peake*, 366 N.W.2d 299, 301 (Minn. 1985).

Thus, a district court may impose a sentencing departure "*only if* aggravating or mitigating circumstances are present and those circumstances provide a substantial and compelling reason not to impose a guidelines sentence." *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014) (quotations omitted). A district court abuses its discretion if its reasons for imposing a departure are "improper or insufficient and there is insufficient evidence of record to justify the departure." *Id.* (quotations omitted).

I. The district court did not abuse its discretion by imposing a downward durational sentencing departure.

"A 'durational departure' occurs when the court orders a sentence with a duration other than the presumptive fixed duration or range" identified in the applicable grid of the sentencing guidelines. Minn. Sent'g Guidelines 1.B.5.b (2020). Imposing a gross-misdemeanor sentence of one year for a felony offense with a presumptive sentence

of one year and one day constitutes a durational sentencing departure. *State v. Bauerly*, 520 N.W.2d 760, 762 (Minn. App. 1994), *rev. denied* (Minn. Oct. 27, 1994).

A district court’s decision to impose a durational departure “must be based on factors that reflect the seriousness of the *offense*” rather than “the characteristics of the offender.” *Solberg*, 882 N.W.2d at 623. “[A] downward durational departure is justified if the defendant’s conduct is significantly less serious than that typically involved in the commission of the offense.” *State v. Mattson*, 376 N.W.2d 413, 415 (Minn. 1985).

Here, the district court based its decision to impose a downward durational sentencing departure on appropriate offense-related factors supported by the record. The district court stated the following grounds for its durational departure on the record:

For purposes of this offense, I do see some highlights here, which is that at some point you proactively went into the Grand Rapids Police Department to make the change. I don’t think you were trying to manipulate the situation. I don’t think you were trying to engage in unhealthy or scary behaviors, but you need to register regardless. And then you went in at some point and proactively went in to report. They were already investigating, you know, you were probably doing it to save your own skin, but you went in to report. You did something proactively and then when you got there you were honest, and so I do find that those are the specific offense-related grounds and characteristics that support a durational departure. And those are the types of behaviors that you are going to continue to be rewarded for in the criminal-justice system and in your life, being proactive, following the rules, and so I want to note that.

The district court later stated, “I do find that the crime was less onerous as a grounds for departure both dispositionally and durationally”

The state argues that the district court's findings were insufficient to support a durational departure because the district court found that Scheldrup's crime was "less onerous" than the typical failure-to-register offense rather than finding it was "significantly less serious" than the typical offense. It further argues that the record does not support a conclusion that Scheldrup's offense was "significantly less serious" than the typical offense. The state contends that Scheldrup was not proactive in registering, contrary to the district court's finding. The state points to evidence in the criminal complaint that law enforcement reached out multiple times and spoke with Scheldrup's grandmother, his brother, and Scheldrup himself before Scheldrup reported to the Grand Rapids Police Department to update his address. We disagree; the district court relied on appropriate offense-related factors in granting the downward durational departure, and the record supports the district court's findings on these factors.

The record supports the district court's finding that Scheldrup took proactive steps to comply with the registration requirement, making the commission of this offense significantly less serious than the typical offense. Scheldrup spoke to law enforcement by phone after his grandmother told him that an officer had visited her house in August 2021 and voluntarily reported to the Grand Rapids Police Department in November 2021 to update his registered address. Furthermore, the record reflects that he was honest with law enforcement about the circumstances and duration of his noncompliance.

The state also notes that Scheldrup's failure to register continued for a period of five months, which it contends is more serious than the typical commission of this offense. It is unclear from the record whether five months of noncompliance is significantly more or

less serious than the typical failure-to-register offense, and the state does not cite caselaw that supports its assertion that failure to register for five months is more serious than the typical offense. Caselaw does establish, however, that a single mitigating factor may justify a downward durational departure. *Solberg*, 882 N.W.2d at 624-25. The district court’s finding that Scheldrup proactively reported to the Grand Rapids Police Department to update his registration is a mitigating factor upon which the downward durational departure was properly based. Thus, we discern no abuse of discretion in the district court’s imposition of a downward durational departure.

II. The district court did not abuse its discretion by imposing a downward dispositional sentencing departure.

The legislature created the Minnesota Sentencing Guidelines “to establish rational and consistent sentencing standards . . . for felony convictions.” Minn. Sent’g Guidelines 1.A (2020). As such, the guidelines apply exclusively to felony convictions and sentencing; they do not establish a presumptive sentencing duration or disposition for gross-misdemeanor and misdemeanor convictions.

Here, the district court’s decision to impose a downward durational sentencing departure converted Scheldrup’s conviction from a felony to a gross misdemeanor by operation of law. This departure removed Scheldrup’s conviction from the purview of the guidelines. *See id.* Because there is no longer an applicable guidelines disposition from which to depart, the district court’s decision to impose a stay of sentence cannot be characterized as a dispositional departure. We therefore conclude that we need not address

the state's argument that the district court abused its discretion by imposing a downward dispositional sentencing departure.

Even if we were to address the state's dispositional-departure argument on the merits, however, we would conclude that the district court considered appropriate offender-based factors in deciding to impose a downward dispositional departure and that the record supports the district court's finding that Scheldrup is particularly amenable to probation. The district court's sentencing decision was not an abuse of discretion.

Affirmed.