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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-877**

State of Minnesota,
Respondent,

vs.

Deanna Marie Stanius,
Appellant.

**Filed March 12, 2012
Affirmed
Ross, Judge**

Scott County District Court
File No. 70-CR-10-13145

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Patrick J. Ciliberto, Scott County Attorney, Todd P. Zettler, Assistant County Attorney,
Shakopee, Minnesota (for respondent)

Joseph P. Tamburino, Caplan & Tamburino Law Firm, P.A., Minneapolis, Minnesota (for
appellant)

Considered and decided by Ross, Presiding Judge; Minge, Judge; and Crippen,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

ROSS, Judge

Deanna Stanius was a public high school secretary who embezzled \$168,510 from the school by forging checks to herself on the school's account and by making unauthorized cash advances with the school's credit card. Stanius pleaded guilty to six counts of theft by swindle and the district court sentenced her to 51 months in prison. She now argues on appeal that the district court abused its discretion by refusing to depart downward from the presumptive guidelines sentence and assign her only to probation. The argument fails and we affirm.

FACTS

Deanna Stanius worked for ten years as the administrative assistant to Shakopee High School Principal James Murphy. In 2010 police investigators discovered that she had been pilfering from the school, mostly taking fundraising money that students and parents had collected. Over a three-year period, Stanius used a school checkbook to forge \$160,413 in fraudulent checks to herself. She also had a school-issued credit card to purchase supplies, which she used to advance herself \$8,097 in cash at Mystic Lake Casino.

The state charged Stanius with six separate counts of theft by swindle by segmenting her criminal activity into six, six-month periods, resulting in two counts of theft exceeding \$35,000 and four counts of theft exceeding \$5,000. *See* Minn. Stat. § 609.52, subds. 2(4), 3(1)–(2) (2010). Stanius pleaded guilty to all six counts. She moved the district court to depart downward from the presumptive prison sentence,

claiming that she had been driven to steal to satisfy a compulsive gambling addiction. She also argued that the state's segmenting of the theft into six separate charges and "*Hernandizing*" the sentence to increase her criminal history score resulted in a sentence that unfairly exaggerated the criminality of her theft. *See State v. Hernandez*, 311 N.W.2d 478, 481 (Minn. 1981) (allowing sentencing court to apply increased criminal history score for the last of several serial convictions).

The district court found that any relevant mitigating factors were offset by aggravating factors, observing that the aggravating factors were "just as compelling . . . as the circumstances that are cited by the defendant looking for a downward departure." It denied Stanius's motion for a downward departure and for probation and instead imposed separate prison sentences on all six counts, each to be served concurrently with the others. It applied *Hernandez*, causing the final count to draw a 51-month presumptive sentence because of a resulting criminal history score of five. It also ordered Stanius to pay \$184,492 in restitution.

Stanius appeals her sentence.

DECISION

Stanius argues that the district court abused its discretion by sentencing her to prison rather than to probation. We will vacate a sentence when it is unreasonable, inappropriate, or excessive. Minn. Stat. § 244.11, subd. 2(b) (2010). The sentences set forth in the Minnesota Sentencing Guidelines are presumed appropriate. Minn. Sent. Guidelines II.D. (2011). A district court must impose the presumptive sentence unless "identifiable, substantial, and compelling" aggravating or mitigating circumstances

warrant a different sentence. *Id.* Even if reasons for a downward departure exist, only in a rare case will we reverse the district court's imposition of the presumptive sentence. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). This is not such a case.

Stanius contends that the district court should have disregarded the presumptive sentence and ordered her only to probation. When deciding whether to depart dispositionally from a presumptive sentence, the district court should weigh reasons for and against departure. *State v. Mendoza*, 638 N.W.2d 480, 484 (Minn. App. 2002), *review denied* (Minn. Apr. 16, 2002). But if it considers reasons for departure and chooses not to depart, it need not explain itself further. *State v. Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985).

Stanius argues that her compulsive gambling disorder requires a downward departure. We rejected that argument in a similar circumstance. *See State v. O'Brien*. 429 N.W.2d 293, 295–96 (Minn. App. 1988) (holding that district court did not abuse its discretion by sentencing swindler to 82 months in prison despite claim that he was led to steal by his compulsive gambling disorder), *review denied* (Minn. Nov. 16, 1988).

Even if a compulsive gambling disorder might under some circumstances constitute a substantial and compelling reason to depart downward, Stanius proved neither the existence of the disorder nor its relevance here. Stanius introduced no evidence establishing that she actually suffers from a compulsive gambling disorder, offering only the fact of her self-enrollment in treatment after she was caught stealing from the school. She also presented no evidence indicating how the alleged disorder influences an individual's behavior generally or her behavior specifically. Equally fatal to

her argument, the record indicates that she used the stolen funds in part not to gamble but to vacation in Hungary, Germany, Austria, Mexico, and the Cayman Islands, and to buy clothes and jewelry. So Stanius has failed to establish as a matter of either law or psychology that a gambling addiction generally is a mitigating factor for swindling, and she has failed to establish that she actually suffers from the affliction or that she was driven by it, rather than by common temptations, when she raided the school's activity fund.

Stanuis also argues that the district court should have granted a departure because her 51-month prison sentence unfairly exaggerates the criminality of her conduct. Stanius's sentence results from aggregation and *Hernandizing*. The state may aggregate the value of property stolen in a series of thefts by separating extended criminal activity into six-month increments. Minn. Stat. § 609.52, subd. 3(5) (2010). And the *Hernandez* method for calculating a criminal history score is expressly allowed. Minn. Sent. Guidelines cmt. II.B.107 (2011); *State v. Williams*, 771 N.W.2d 514, 521 (Minn. 2009). Stanuis faced charging and sentencing for the six counts under this established law, resulting in a criminal history score of five for the final count of conviction even though she had no prior criminal record. We see no error in this.

Stanuis accurately argues that we may look to the sentences imposed in similar cases to determine whether a defendant's conduct is unfairly exaggerated in sentencing. *See State v. Cole*, 542 N.W.2d 43, 53 (Minn. 1996). But this does not better her position. In *State v. Lundberg*, we held that the concurrent sentences that resulted in the defendant's serving approximately six months in jail for stealing \$2,000 in cash and

checks from a steakhouse, causing \$1,300 in property damage, and stealing \$5,300 from a pulltab operation that leased space in the steakhouse, did not unfairly exaggerate the criminality of his conduct. 575 N.W.2d 589, 592–93 (Minn. App. 1998), *review denied* (Minn. May 20, 1998). And in *State v. O'Brien*, we affirmed the district court's use of the *Hernandez* method and imposition of an 82-month prison term for a defendant who stole \$136,000 to support his gambling habit and who was charged with six separate counts of theft by swindle. 429 N.W.2d at 294, 295, 296-97. Stanius's sentence does not appear to be out of step.

Stanis provides us with data from a report by the Minnesota Sentencing Guidelines Commission for offenders sentenced between 2005 and 2009 for thefts exceeding \$35,000. According to the report, 123 offenders were sentenced only to 24 months or less in prison. But Stanis overlooks that the report only lists the sentences of offenders with a criminal history score of zero, not those, like her, who are properly assessed a higher criminal history score. The cited report does not advance Stanis's argument unless her challenge is to the *Hernandez* method generally, which was resolved in *Hernandez* and later cases. *See, e.g., State v. Pittel*, 518 N.W.2d 606, 608 (Minn. 1994).

Stanis's argument minimizes the gravity of her crimes. She repeatedly stole money in increasing amounts from a public high school's activity account created by the sacrifices and generosity of students, parents, staff, and community members. Her \$168,510 theft spree spanned at least three years. As the district court explained, it had "a far reaching impact beyond just the students, staff, and faculty of the Shakopee High

School. The community of Shakopee as a whole [was] impacted by this offense.” Because of her theft, her supervisor, Principal Murphy, a “long time respected educator in [the] community,” also lost his job. We hold that the 51-month sentence does not unfairly exaggerate the criminality of Stanius’s conduct.

Stanis finally argues that she should have been assigned only to probation because she is remorseful and amenable to rehabilitation. She is correct that a sentencing court may consider remorse when deciding the sentence for felony theft. *See State v. Bauerly*, 520 N.W.2d 760, 762 (Minn. App. 1994), *review denied* (Minn. Oct. 27, 1994). We have no reason to doubt the intensity of her feelings of remorse, and it does appear from the record that she has a strong support network of family and friends. But the district court already considered the mitigating factors, including that: Stanis received inpatient treatment, individual counseling, and treatment through Gamblers Anonymous; she followed the recommended aftercare and remained involved in Gamblers Anonymous; she showed significant remorse; and she was willing to make restitution. But the district court also noted counter-balancing aggravating factors: Stanis had committed a major economic offense involving multiple incidents per victim over a long period of time; she used her position of trust to facilitate her crime; and she co-opted her supervisor’s identity.

We are satisfied that the district court carefully weighed the relevant mitigating and aggravating factors and acted within its discretion by sentencing Stanis to prison, refusing to depart downward.

Affirmed.