STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2059

State of Minnesota,
Respondent,

vs.

David John Kangas, Jr.,
Appellant.

Filed September 9, 2013
Affirmed
Stauber, Judge

Sherburne County District Court
File No. 71CR11748

Lori Swanson, Minnesota Attorney General, Matthew Frank, Assistant Attorney General, St. Paul, Minnesota; and

Kathleen A. Heaney, Sherburne County Attorney, Leah G. Emmans, Assistant County Attorney, Elk River, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Cathryn Young Middlebrook, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Stauber, Judge; and Hooten, Judge.

U N P U B L I S H E D O P I N I O N

STAUBER, Judge

On appeal from his sentence for fourth-degree criminal sexual conduct, appellant argues that the district court abused its discretion by denying his request for imposition of

a 77-month sentence, which is a middle-of-the-box guidelines sentence, and instead sentencing him to 90 months, which is close to a top-of-the-box guidelines sentence. We affirm.

FACTS

Appellant David Kangas Jr. pleaded guilty to an amended charge of fourth-degree criminal sexual conduct. Under the terms of the plea agreement, appellant would receive a guidelines sentence, concurrent with his sentence from Mille Lacs County, and the defense could argue for a downward departure. At sentencing, the state requested a 92-month sentence, which "is the top of the box" in the sentencing guidelines grid box for an individual with a criminal-history score of five. Conversely, appellant requested a sentence of 77 months, which is the "mid-point of the box." The district court denied appellant's request for a middle-of-the-box sentence, and sentenced him to 90 months in prison, along with ten years of conditional release. This appeal followed.

D E C I S I O N

The district court enjoys broad discretion in sentencing matters. *State v. Ford*, 539 N.W.2d 214, 229 (Minn. 1995). Appellate courts "will not generally review a district court's exercise of its discretion to sentence a defendant when the sentence imposed is within the presumptive guidelines range," and "[p]resumptive sentences are seldom overturned." *State v. Delk*, 781 N.W.2d 426, 428 (Minn. App. 2010) (quotation omitted), *review denied* (Minn. July 20, 2010). Only in the "rare" case will this court reverse a district court's imposition of a presumptive sentence. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

Appellant argues that the district court's election to impose a sentence close to the top-of-the-box rather than a middle-of-the-box guidelines sentence "implies that. . . appellant's offense was worse than the typical fourth-degree" criminal sexual conduct offense. Appellant contends that because his case "is a typical fourth-degree criminal sexual conduct offense," the district court's sentence "unfairly exaggerated the criminality of [his] conduct." Thus, appellant contends that the district court abused its discretion by imposing a 90-month sentence.

We disagree. Appellant was convicted of fourth-degree criminal sexual conduct in violation of Minn. Stat. § 609.345, subd. 1(b) (2010). He also has a criminal-history score of five. Under the sentencing guidelines, the presumptive sentence for appellant's offense with his criminal-history score falls within a range of 65 to 92 months. Minn. Sent. Guidelines IV (2010) (sex-offender grid). Any sentence within this range constitutes a presumptive sentence. *See* Minn. Sent. Guidelines II, IV (2010) (noting that the presumptive sentence is determined by locating the appropriate cell of the sentencing guidelines grid containing the ranges of months, "within which a judge may sentence without the sentence being deemed a departure"); *State v. Jackson*, 749 N.W.2d 353, 359 n.2 (Minn. 2008) ("All three numbers in any given cell constitute an acceptable sentence. . . ."). And, a sentence within the range provided in the appropriate box on the sentencing guidelines grid is not a departure from the presumptive sentence, and is therefore not an abuse of discretion. *Delk*, 781 N.W.2d at 428-29. Therefore, the district

court did not abuse its discretion when it imposed a presumptive guidelines sentence of 90 months' imprisonment.

Affirmed.