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STATE OF MINNESOTA
IN COURT OF APPEALS
A06-2059

State of Minnesota,
Respondent,

vs.

Melissa Danielle Coleman,
Appellant.

Filed March 18, 2008
Affirmed
Klaphake, Judge

Benton County District Court
File No. K4-04-618

Lori Swanson, Attorney General, John B. Galus, Assistant Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Robert Raupp, Benton County Attorney, Courts Facility Building, 615 Highway 23, P.O. Box 189, Foley, MN 56329 (for respondent)

John M. Stuart, State Public Defender, Steven P. Russett, Assistant State Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Klaphake, Presiding Judge; Halbrooks, Judge; and Schellhas, Judge.

UNPUBLISHED OPINION

KLAPHAKE, Judge

Appellant Melissa Danielle Coleman challenges her conviction and sentence for first-degree criminal sexual conduct, arguing that the evidence was insufficient to sustain

the conviction and that the district court abused its discretion by imposing the presumptive sentence, rather than departing downward either in duration or disposition.

Because we conclude that the evidence is sufficient and that the district court did not abuse its discretion, we affirm.

D E C I S I O N

In a challenge to the sufficiency of the evidence, this court reviews the evidence to determine whether the jury could reasonably have found the defendant guilty of the charged offense. *State v. Vick*, 632 N.W.2d 676, 690 (Minn. 2001). "A defendant bears a heavy burden to overturn a jury verdict." *Id.* We view the evidence in a light most favorable to the verdict and resolve all inconsistencies in the evidence in favor of the verdict. *State v. Bergeron*, 452 N.W.2d 918, 924 (Minn. 1990). We assume that the jury believed the state's witnesses and disbelieved evidence to the contrary. *State v. Pierson*, 530 N.W.2d 784, 787 (Minn. 1995). The evidence of a single witness is sufficient to sustain a verdict. *See State v. Lanam*, 459 N.W.2d 656, 662 (Minn. 1990) (sustaining criminal-sexual-conduct conviction largely based on testimony of four-year-old victim).

Appellant was charged with first-degree criminal sexual conduct: sexual contact with a person under the age of 13. Minn. Stat. § 609.342, subd. 1(a) (2002). "Sexual contact with a person under 13" is defined as the intentional touching of the child's bare genitals by the actor's bare genitals with sexual or aggressive intent. Minn. Stat. § 609.341, subd. 11(c) (2002). Appellant contends that the state failed to present sufficient evidence of bare-genital-to-bare-genital contact.

A videotape of the Cornerhouse interview of the eight-year old victim, T.S., made within hours of the incident, was admitted at trial. During that videotape, the interviewer provided T.S. with two clothed anatomically correct dolls. T.S. removed the clothing and the underwear of both dolls and demonstrated genital-to-genital contact between the two dolls. T.S. also made explicit statements to the investigator that confirmed bare-genital-to-bare-genital contact. At trial, T.S. was less sure about whether appellant had removed her underwear; but the trial occurred almost two years later, a long period of time for a child witness.

The jury was also instructed on second-degree criminal sexual conduct, Minn. Stat. § 609.343, subd. 1(a) (2002), which does not require bare-genital-to-bare-genital contact, but convicted appellant of first-degree criminal sexual conduct. Presumably, the jury rejected contrary evidence and accepted the child's statement made shortly after the incident. There is sufficient evidence in this record to sustain the jury's verdict.

Sentencing

The district court has broad discretion in deciding whether to depart, and its decision will not be reversed absent a clear abuse of discretion. *State v. Schmit*, 601 N.W.2d 896, 898 (Minn. 1999).[1] The sentence ranges of the sentencing guidelines are

[1] *Schmit* deals with the question of whether the district court abused its discretion by sentencing the defendant to concurrent sentences, which would be a downward departure, instead of consecutive sentences, which would be the presumptive sentence. The imposition of a consecutive sentence, when the presumptive sentence for the offenses would be concurrent, and vice versa, is a departure requiring written reasons pursuant to Minn. Sent. Guidelines II.D. Thus, although *Schmit* and other cases deal with concurrent instead of consecutive sentencing, rather than departure from the presumptive sentence, the reasoning is similar. *See* Minn. Sent. Guidelines II.F.

presumed to be appropriate for the applicable offenses. Minn. Sent. Guidelines II.D.01. Mitigating factors supporting a downward departure must be substantial and compelling. Minn. Sent. Guidelines II.D.03. Generally, offense-related factors, that is, whether the offense-related behavior seems less serious than that usually found, can be used to justify a durational or a dispositional departure. *State v. Chaklos,* 528 N.W.2d 225, 228 (Minn. 1995). Offender-related factors, including amenability to treatment, can support a downward dispositional departure. *Id.*

The nonexclusive list of mitigating factors includes lack of substantial capacity for judgment because of a mental impairment and serious and persistent mental illness requiring an alternative placement. Minn. Sent. Guidelines II.D.2.a.(3), (6); *State v. Martinson*, 671 N.W.2d 887, 891 (Minn. App. 2003), *review denied* (Minn. Jan. 20, 2004).

To justify a downward departure, a defendant's impairment due to mental illness must be extreme "to the point that it deprives the defendant of control over his actions." *State v. McLaughlin*, 725 N.W.2d 703, 716 (Minn. 2007). The supreme court has found no abuse of discretion when the district court refused to grant a downward departure, despite diagnosed mental illness, suicide attempts, and drug use. *Id.; see Carpenter v. State*, 674 N.W.2d 184, 189-90 (Minn. 2004) (suicide attempts and drug use); *State v. Wilson*, 539 N.W.2d 241, 246-47 (Minn. 1995). But where defendant's paranoid schizophrenia frequently manifested itself in delusions and wholly irrational behavior, this court upheld a downward departure. *Martinson*, 671 N.W.2d at 891-92.

A finding of mental impairment will permit, but does not mandate, a downward departure. *Id.* at 891. Nothing in appellant's diagnoses, which include a learning disability, schizoaffective disorder, borderline intellectual function, dependent personality disorder, depression, and/or possible sexual disorder of an unspecified type, suggests that her mental impairments set her apart to a substantial degree from similar offenders. Nor has appellant shown a particular amenability to treatment; in fact, she has twice been terminated from sex-offender treatment for failing to cooperate or participate in a meaningful fashion. The district court here clearly weighed the fact of appellant's mental illness or impairment against her lack of progress in sex-offender treatment, and continued contact with children, and concluded that a downward departure was not justified, much like the decision in *McLaughlin*, 725 N.W.2d at 715-16. On this record, the district court did not abuse its discretion by sentencing appellant to the presumptive sentence.

Affirmed.