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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0967**

State of Minnesota,
Respondent,

vs.

Brad Jules Krekelberg,
Appellant.

**Filed April 17, 2017
Affirmed
Peterson, Judge**

Polk County District Court
File No. 60-CR-15-546

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

Gregory A. Widseth, Polk County Attorney, Scott A. Buhler, Assistant County Attorney,
Crookston, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, John C. Donovan, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Peterson, Presiding Judge; Johnson, Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal challenging his sentence for felony issuance of dishonored checks, appellant argues that the district court abused its discretion by denying his request for a downward durational departure. We affirm.

FACTS

In August 2014, appellant Brad Jules Krekelberg purchased goods from an automotive-parts store by issuing two checks with a total value of \$626.17. The checks were returned to the store unpaid. Respondent State of Minnesota charged Krekelberg with one count of issuance of dishonored checks. The offense was charged as a felony because the total value of the two dishonored checks exceeded the statutory threshold for felony-level issuance of dishonored checks. *See* Minn. Stat. § 609.535, subd. 2a(a)(1), (b) (2014) (providing for felony punishment of issuance of dishonored checks if total value of dishonored checks issued within six-month period exceeds \$500).

Krekelberg pleaded guilty. The presentence investigation (PSI) showed that Krekelberg has an extensive criminal history, including other pending charges and recent convictions related to his repeated use of forged and dishonored checks in Minnesota and North Dakota. With Krekelberg's criminal-history score of 13, the Minnesota Sentencing Guidelines prescribed an executed sentence of 24 months' imprisonment, with a presumptive sentencing range from 21 to 28 months. Minn. Sent. Guidelines 2.B.2.c(2), 4.A (Supp. 2015). The PSI report recommended sentencing Krekelberg to the upper range of the sentencing guidelines.

Krekelberg moved for a downward durational departure, arguing that \$626.17 is “just kind of small potatoes” and asking the district court to impose a sentence of one year and one day. The state opposed departure. The court denied Krekelberg’s departure motion and imposed the presumptive guidelines sentence of 24 months’ imprisonment. Krekelberg appeals.

D E C I S I O N

The sentencing guidelines “prescrib[e] a sentence or range of sentences that is ‘presumed to be appropriate.’” *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014) (quoting Minn. Sent. Guidelines 2.D.1). “A sentencing court ‘must pronounce a sentence within the applicable range unless there exist identifiable, substantial, and compelling circumstances’ that distinguish a case and overcome the presumption in favor of the guidelines sentence.” *Id.* (quoting Minn. Sent. Guidelines 2.D.1); *see also State v. Meyers*, 853 N.W.2d 819, 822 (Minn. App. 2014) (“A sentencing court has no discretion to depart from the sentencing guidelines unless aggravating or mitigating factors are present.” (quotation omitted)), *aff’d*, 869 N.W.2d 893 (Minn. 2015). Even in the presence of aggravating or mitigating factors, “the court may exercise discretion to depart but is not required to depart,” *State v. Jackson*, 749 N.W.2d 353, 360 (Minn. 2008), because “departures are justified only in exceptional cases.” *State v. Solberg*, 882 N.W.2d 618, 625 (Minn. 2016).

Consequently, “[r]eversal based on the district court’s refusal to depart from the presumptive sentence is rarely warranted.” *State v. Heiges*, 779 N.W.2d 904, 915 (Minn. App. 2010) (citing *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981)), *aff’d*, 806 N.W.2d 1 (Minn. 2011). Krekelberg nevertheless asks us to conclude that the district court abused

its discretion by denying his request for a downward durational departure, arguing that his criminal conduct was significantly less serious than that typically involved in the commission of felony issuance of dishonored checks. According to Krekelberg, “[h]is offense is inherently less serious than the typical offense because it was only \$126.17 more than the floor of the felony amount provision.”

Krekelberg is correct that “a downward durational departure is justified only if the defendant’s conduct was significantly less serious than that typically involved in the commission of the offense.” *Solberg*, 882 N.W.2d at 624 (quotation omitted). He also is correct that the value of dishonored checks may be relevant to the seriousness of the offense of issuance of dishonored checks. *See State v. Myers*, 416 N.W.2d 736, 738 (Minn. 1987) (stating that, in considering the relative seriousness of a defendant’s offense, “the sentencing court is not confined to looking at the means by which the defendant committed the offense but may also look to the resulting damage or loss”); *State v. Bauerly*, 520 N.W.2d 760, 762-63 (Minn. App. 1994) (stating that “[t]he value of the property [defendant] stole is a relevant factor to consider in a durational departure” from guidelines sentence for Severity Level III theft (citing *Myers*, 416 N.W.2d at 738)), *review denied* (Minn. Oct. 27, 1994).

But the district court did not conclude that Krekelberg’s criminal conduct was significantly less serious than that typically involved in the commission of felony issuance of dishonored checks. Instead, the court made clear that it was not persuaded that the relatively low value of the dishonored checks provided a substantial and compelling reason to depart from a guidelines sentence on Krekelberg’s current conviction.

Review of a district court’s “decision *whether* to depart” from a guidelines sentence “has been extremely deferential.” *Dillon v. State*, 781 N.W.2d 588, 595-96 (Minn. App. 2010), *review denied* (Minn. July 20, 2010). “We will affirm the imposition of a presumptive guidelines sentence when the record shows that the sentencing court carefully evaluated all the testimony and information presented before making a determination.” *State v. Johnson*, 831 N.W.2d 917, 925 (Minn. App. 2013) (quotation omitted), *review denied* (Minn. Sept. 17, 2013). The district court expressly considered and rejected Krekelberg’s argument for a downward durational departure and imposed the presumptive guidelines sentence. The district court did not abuse its discretion in doing so.

Affirmed.