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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1691**

State of Minnesota,
Respondent,

vs.

Warren Leroy John Line,
Appellant.

**Filed July 31, 2017
Affirmed
Toussaint, Judge***

St. Louis County District Court
File No. 69VI-CR-16-424

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

Mark S. Rubin, St. Louis County Attorney, Michelle M. Anderson, Assistant County Attorney, Virginia, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Kathryn J. Lockwood, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Bjorkman, Judge; and
Toussaint, Judge.

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

UNPUBLISHED OPINION

TOUSSAINT, Judge

Appellant argues that the district court abused its discretion by imposing an upward dispositional departure based only on offense-related factors, where the offender-related factors demonstrated appellant's amenability to probation and when the presentence investigation report (PSI) recommended a probationary sentence. We affirm.

DECISION

Appellant Warren Leroy John Line argues that the district court abused its discretion by imposing an upward dispositional departure without properly accounting for mitigating offender-related factors that demonstrated Line's amenability to probation. This argument is without merit.

We review a district court's decision to depart from the presumptive guidelines range for an abuse of discretion. *Dillon v. State*, 781 N.W.2d 588, 594 (Minn. App. 2010), review denied (Minn. July 20, 2010). "If the reasons given for an upward departure are legally permissible and factually supported in the record, the departure will be affirmed." *State v. Edwards*, 774 N.W.2d 596, 601 (Minn. 2009). "Upward dispositional departures under the guidelines may be based on either offender- or offense-related aggravating factors." *State v. Allen*, 706 N.W.2d 40, 46 (Minn. 2005).

The district court based its departure on four offense-related aggravating factors: the victim, J.H., was particularly vulnerable; there were multiple incidents of criminal sexual conduct by Line with J.H.; Line held a position of confidence or trust over J.H.; and the crime was more onerous than the usual offense. Line does not argue that any of these

factors is a not a legally permissible reason for an upward dispositional departure. Each reason is adequately supported by facts in the record.

J.H. was a particularly vulnerable victim because she was a 13-year-old runaway with an outstanding warrant at the time she began staying with Line, who was at that time 53 years old. J.H. and Line began having sex several weeks later, either shortly before or shortly after J.H.'s 14th birthday. Line admitted to police that he knew J.H.'s age and that she had an outstanding warrant.

Line admitted that he had sex over 30 times with J.H. and engaged in multiple forms of sexual penetration.

Line knew that he held a position of trust over J.H., and he admitted that J.H. looked to him as a father figure and that he took advantage of this position of trust.

This crime was more onerous than the typical offense because, although Line and J.H. were generally sober when the sexual conduct occurred, Line also admitted that he provided J.H. with alcohol, marijuana, methamphetamines, and mushrooms during her time staying with him. Further, as part of the plea agreement, the state agreed to forego amending the complaint to add 25 counts of third-degree criminal sexual conduct. Regarding this factor, the district court opined that “[t]his is as clear a case of sex trafficking as I’ve seen in my career as a judge.”

At sentencing, the district court acknowledged the PSI’s recommendation of a stayed sentence and specifically addressed Line’s level of remorse for what he had done. While Line expressed remorse at sentencing, the district court noted that Line’s psychosexual evaluation stated that Line “is in denial” and that he “does not take

responsibility nor demonstrate an understanding of the consequences his actions may have on his victim.” The district court further noted that the report came to the conclusion that Line “does not view his behavior as problematic and shows poor judgment.”

The district court weighed Line’s expression of remorse against four offense-related aggravating factors before deciding to depart. Given that these offense-related aggravating factors are legally permissible reasons for departure and that each is adequately supported in the record, we cannot say that the district court abused its discretion by imposing an upward dispositional departure.

Affirmed.