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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1929**

State of Minnesota,
Respondent,

vs.

Katherine Marie Kurimay,
Appellant.

**Filed August 28, 2017
Affirmed
Rodenberg, Judge**

Dakota County District Court
File No. 19HA-CR-15-3579

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

James C. Backstrom, Dakota County Attorney, Jackie Warner, Assistant County Attorney,
Hastings, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Veronica M. Surges, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Rodenberg, Judge; and
Jesson, Judge.

UNPUBLISHED OPINION

RODENBERG, Judge

Appellant Katherine Marie Kurimay argues that the district court abused its discretion by not dispositionally departing from the presumptive prison sentence of 60 months under the Minnesota Sentencing Guidelines. We affirm.

FACTS

Appellant was charged with felony theft by false representation after she used a check in the amount of \$41,670.62 from an invalid account to acquire a car from a dealership. She pleaded guilty to the charge in exchange for the state dismissing charges in a different court file. There was no agreement concerning sentencing.

Dakota County Community Corrections conducted a presentence investigation (PSI) and recommended a downward dispositional departure from the Minnesota Sentencing Guidelines. The presumptive guidelines sentence was an executed sentence of 52 to 71 months. The PSI recommended a 20-year probation on specified conditions. Appellant asked the district court to follow the PSI recommendation, arguing that she committed the crime because of mental-health issues. The state requested a guidelines sentence.

The district court sentenced appellant to 52 months in prison (the “bottom of the box”) and ordered appellant to pay restitution. The district court found insufficient correlation between appellant’s mental-health issues and her crimes and observed that her past history of continuing to commit similar crimes while on probation shows that community-based treatment and supervision have been unsuccessful. The district court

also noted that appellant had been charged with other similar crimes while this case was pending.

This appeal followed.

D E C I S I O N

Appellant argues that the district court abused its discretion by ignoring “substantial and compelling reasons” to dispositionally depart and stay the execution of her sentence. Specifically, she argues the district court abused its discretion by not considering evidence showing that her crimes were the result of a treatable mental illness, she showed remorse for the crimes of which she was convicted, and she has a good support network.

Appellate courts afford a district court “great discretion in the imposition of sentences and reverse sentencing decisions only for an abuse of that discretion.” *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014) (quotation omitted). We will not interfere with a district court’s decision to impose the presumptive guidelines sentence “as long as the record shows the sentencing court carefully evaluated all the testimony and information presented before making a determination.” *State v. Pegel*, 795 N.W.2d 251, 255 (Minn. App. 2011) (quotation omitted). When considering whether to depart from the guidelines, a district court may consider a defendant’s age, prior record, remorse, cooperation, attitude while in court, and the support of friends and/or family. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). Mental impairment is one mitigating factor that may be used to depart from the guidelines. Minn. Sent. Guidelines 2.D.3.a(3) (2014). The existence of a mitigating factor does not mandate a departure; such a factor only permits departure if, in the exercise

of its discretion, the district court determines that substantial and compelling reasons warrant departure. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

Here, the district court based its decision not to depart from the guidelines on permissible considerations. The district court found that appellant committed a number of similar crimes in a short period of time and that she had been charged with similar crimes while this case was pending. It also considered a psychological evaluation, which described appellant's criminal activity as "part of a repertoire of unhealthy and maladaptive ways of coping" and which concluded that appellant's "personality traits . . . tend to be somewhat inflexible." The district court was unconvinced that appellant's criminal behavior was directly related to her mental-health issues. The district court considered appellant's earlier failures while on probation. These findings are supported by the record and are factors proper for consideration in sentencing. The district court carefully considered appellant's sentencing arguments and acted within its discretion in denying her motion for a downward dispositional departure.

Affirmed.