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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0716**

State of Minnesota,
Respondent,

vs.

Peter Gribovsky,
Appellant.

**Filed March 11, 2019
Affirmed
Jesson, Judge**

Hennepin County District Court
File No. 27-CR-17-19557

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Linda K. Jenny, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rochelle R. Winn, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

UNPUBLISHED OPINION

JESSON, Judge

While at a restaurant, appellant Peter Gribovsky approached his ex-girlfriend and son, in violation of an active order for protection, and placed a toy water gun in front of his

son. Gribovsky subsequently pleaded guilty to violating an order for protection. At the sentencing hearing, Gribovsky requested a gross-misdemeanor sentence in lieu of the presumptive felony sentence, but the district court denied his motion. On appeal, Gribovsky argues that the district court abused its discretion when denying his durational-departure request. We affirm.

FACTS

An order for protection was issued in April 2017 against appellant Peter Gribovsky prohibiting him from contacting his ex-girlfriend and their minor son. On an evening in June 2017, Gribovsky's ex-girlfriend was at a restaurant having dinner with her children and several friends. During dinner, Gribovsky approached their table, placed a toy water gun in front of his son and left. Shortly thereafter, his ex-girlfriend contacted the police and explained what happened.

Gribovsky was charged with violating an order for protection, in violation of Minnesota Statutes section 518B.01, subdivision 14(a) (2016), and he pleaded guilty to that crime. At the plea hearing, defense counsel informed the district court that Gribovsky would be requesting a gross-misdemeanor sentence at the sentencing hearing. The district court stated that it would strongly consider a gross-misdemeanor sentence, but made no guarantees.

A presentence investigation was completed establishing Gribovsky's criminal history score and the presumptive sentence for his conviction: a stayed 21-month felony sentence. At the sentencing hearing, the state asked the court to impose the presumptive sentence. Gribovsky moved for a downward durational departure, requesting a stayed

gross-misdemeanor sentence, arguing that his crime was less serious than typical because it occurred out of random public contact and stemmed from wanting to give his son a toy.

Initially the district court interpreted Gribovsky's motion as a dispositional departure. But the court denied Gribovsky's motion for a downward durational departure, citing a history of no-contact-order violations, and sentenced him to the presumptive 21-month stayed sentence. Gribovsky appeals.

DECISION

Gribovsky argues that the district court abused its discretion by denying his motion for a downward durational departure. Specifically, he contends that the court misinterpreted his motion as a request for a dispositional departure and erroneously applied the wrong factors when evaluating his motion. This court affords district courts "great discretion in the imposition of sentences and [will] 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 decision to impose the presumptive sentence as long as the record shows the sentencing court carefully evaluated all the testimony and information before making a determination. *State v. Pegel*, 795 N.W.2d 251, 255 (Minn. App. 2011).¹ To examine whether the district court performed that

¹ Presumptive sentences for felony offenses are established by the Minnesota Sentencing Guidelines. Minn. Stat. § 244.09, subd. 5 (2016). The sentencing guidelines strive to "maintain uniformity, proportionality, rationality, and predictability in sentencing" of felony crimes. *Id.* As such, departures from the guidelines are discouraged and are intended to apply to a small number of cases. *State v. Misquadace*, 644 N.W.2d 65, 68 (Minn. 2002); see also Minn. Sent. Guidelines cmt. 2.D.301 (2016). Only when there are "identifiable, substantial, and compelling circumstances to support a departure" may the district court depart from the presumptive sentence. Minn. Sent. Guidelines 2.D.1 (2016).

evaluation here, we first address the differences between dispositional and durational departures. We then review the record in this case.

The Minnesota Sentencing Guidelines define two types of sentencing departures: durational and dispositional. Minn. Sent. Guidelines 1.B.5.a, b (2016). A durational departure is a sentence that departs from the presumptive guideline in length of the sentence. Minn. Sent. Guidelines 1.B.5.b. A durational departure must be based on factors that exhibit the *seriousness of the offense*, not the characteristics of the offender. *State v. Chaklos*, 528 N.W.2d 225, 228 (Minn. 1995). When deciding whether to grant a downward durational departure, the district court considers whether the conduct involved in the offense was significantly less serious than the typical conduct for that offense. *State v. Peter*, 825 N.W.2d 126, 130 (Minn. App. 2012), *review denied* (Minn. Feb. 27, 2013).

By contrast, a dispositional departure occurs when the district court orders a disposition other than that recommended in the sentencing guidelines. Minn. Sent. Guidelines 1.B.5.a. For example, a downward dispositional departure occurs when the sentencing guidelines recommend a prison sentence, but the district court instead stays the sentence. Minn. Sent. Guidelines 1.B.5.a.(2). A dispositional departure focuses on characteristics of the defendant that demonstrate whether the defendant is “particularly amenable to individualized treatment in a probationary setting.” *State v. Wright*, 310 N.W.2d 461, 462 (Minn. 1981); *see also State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982) (citing the “defendant’s age, his prior record, his remorse, his cooperation, his attitude while in court, and the support of his friends and/or family” as relevant factors that may justify a dispositional departure).

Here, Gribovsky requested a sentence within gross misdemeanor limits, which is a durational departure. *See State v. Bauerly*, 520 N.W.2d 760, 762 (Minn. App. 1994) (holding that an imposed sentence one day shorter than the presumptive felony sentence of one year and one day is a durational departure), *review denied* (Minn. Oct. 27, 1994). We examine whether the required evaluation of testimony and information was completed before the district court imposed the presumptive sentence.

Gribovsky asserts that his offense was less serious than a typical order for protection violation because it arose out of random public contact and his desire to give his son a toy. At the beginning of the plea hearing, the district court and counsel for each party discussed Gribovsky's intention to request a gross-misdemeanor sentence at the sentencing hearing. Gribovsky's arguments were then orally asserted by counsel at the sentencing hearing. At sentencing the district court noted that the arguments of counsel were discussed before (during the plea hearing) and explicitly stated that it "would agree that there was no violence . . . either in what was alleged or what was actually admitted to in the plea." Based on this statement, we discern that the district court evaluated Gribovsky's argument about the seriousness of the offense before deciding on the motion to depart. *See Pegel*, 795 N.W.2d at 255.

But Gribovsky contends that the district court erred by relying on his personal characteristics, not the seriousness of the offense. He points out that the court characterized his request for a gross-misdemeanor sentence as a motion for a dispositional departure, rather than a durational departure. The state does not dispute that the district court initially

mischaracterized Gribovsky's request, but argues that the district court considered and rejected Gribovsky's argument for a durational departure. We agree.

Here, the district court examined factors that related to both the seriousness of the offense and Gribovsky's criminal history. But it is not an abuse of discretion for a district court to consider an offender-related factor, such as criminal history, as long as the court evaluates the offense-related factors when considering a durational departure motion. *Williams v. State*, 361 N.W.2d 840, 844 (Minn. 1985). And even when departure factors exist, it is not an abuse of discretion not to depart, and no reasons need to be given. See *State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985). The district court acknowledged that Gribovsky's arguments were heard and stated that Gribovsky's offense contained no violence. Further, when Gribovsky's counsel corrected the district court's mischaracterization of his departure request, the district court explicitly thanked counsel for the correction, without amending her prior findings.

In sum, although the district court initially mischaracterized Gribovsky's request, we conclude that the district court did not err in considering and rejecting Gribovsky's arguments for a durational departure. Because the court completed a careful evaluation of the evidence and did not rely on an impermissible factor in denying Gribovsky's motion, it did not abuse its discretion.

Affirmed.