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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1166**

State of Minnesota,
Respondent,

vs.

Melanie Ann Quick,
Appellant.

**Filed April 1, 2019
Affirmed
Larkin, Judge**

Stearns County District Court
File No. 73-CR-17-6589

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

Janelle P. Kendall, Stearns County Attorney, Kyle R. Triggs, Assistant County Attorney,
St. Cloud, Minnesota (for respondent)

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

Considered and decided by Larkin, Presiding Judge; Smith, Tracy M., Judge; and
Randall, Judge.*

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

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges her sentence for first-degree controlled-substance sale, arguing that the district court abused its discretion by denying her motion for a downward-durational departure. We affirm.

FACTS

Respondent State of Minnesota charged appellant Melanie Ann Quick with one count of first-degree sale of a controlled substance. The complaint alleged that on July 26, 2017, Quick sold a police informant a substance that weighed 28.33 grams and tested positive for methamphetamine.

Quick pleaded guilty to the charged offense. In exchange for Quick's guilty plea, the state agreed to dismiss a similar charge in another case and to limit its sentencing request to a 107-month prison term. The state assumed that the 107-month cap was the low end of the presumptive sentencing range under the Minnesota Sentencing Guidelines. The district court ordered a presentence investigation (PSI) after accepting Quick's guilty plea.

Quick moved for a downward-durational departure and asked the district court to impose a 75-month prison sentence. Before hearing the parties' arguments at the sentencing hearing, the district court noted that the PSI did not address the possibility of a downward-durational departure. Nonetheless, Quick agreed to proceed with sentencing that day.

Quick's attorney argued that the following circumstances supported a downward-durational departure: Quick showed remorse and accepted responsibility, Quick had a family support system, Quick's offense was less serious than the typical first-degree controlled-substance sale, and Quick sold drugs to support her own drug habit. Quick spoke on her own behalf and emphasized her remorse, her compliance with programming while in prison, and her pursuit of a college degree. The state argued for a sentence of 107 months as it had agreed to do. But the state noted that 107 months was already a departure because it was lower than the presumptive sentencing range for Quick's offense.¹ The state also argued that Quick's offense was not less serious than the typical offense because it involved an amount of methamphetamine "well over" the statutory amount for first-degree sales and that it was "not a victimless crime."

After the district court heard the parties' arguments, it briefly recessed the hearing before sentencing Quick to serve 107 months in prison, stating, "I can't find any substantial and compelling reason that allows me to find that this is less serious than the normal offense." The district court explained,

[I]t's not a victimless crime, this is drug sales. All of the people that come before me, the people like you before you were caught for drug sales, the people who are addicted, you are hurting them by engaging in drug sales in a very deep way by participating in that, and that's the reason the Legislature sets these the way that they do. And that's why I feel like there is no justifiable reason for me to depart.

¹ The sentencing worksheet revealed that the low end of the presumptive sentencing range for Quick's offense was actually 110 months due to a three-month custody enhancement.

Quick appeals, arguing that the district court erred by denying her request for a downward-durational departure to 75 months.

DECISION

A presumptive sentence under the Minnesota Sentencing Guidelines is presumed to be appropriate. Minn. Sent. Guidelines 2.D.1 (2016) (“The sentences provided in the Grids are presumed to be appropriate for the crimes to which they apply.”). The district court must impose the presumptive guidelines sentence unless there are “substantial and compelling circumstances” that warrant a downward departure. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). “The general issue that faces a sentencing court in deciding whether to depart durationally is whether the defendant’s conduct was significantly more or less serious than that typically involved in the commission of the crime in question.” *State v. Cox*, 343 N.W.2d 641, 643 (Minn. 1984).

The decision to depart from the sentencing guidelines rests within the district court’s discretion. *State v. Oberg*, 627 N.W.2d 721, 724 (Minn. App. 2001), *review denied* (Minn. Aug. 22, 2001). Ordinarily, this court will not disturb the district court’s imposition of a presumptive guidelines sentence, even if reasons exist for a downward departure. *State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006). Only in a “rare case” will an appellate court reverse a district court’s refusal to depart. *Kindem*, 313 N.W.2d at 7. “[A]s long as the record shows the [district] court carefully evaluated all the testimony and information presented before making a determination,” this court will not interfere with the district court’s decision to impose the presumptive sentence. *State v. Pegel*, 795 N.W.2d 251, 255 (Minn. App. 2011) (quotation omitted); *see State v. Witucki*, 420 N.W.2d 217, 223 (Minn.

App. 1988) (“An appellate court will not generally review the [district] court’s exercise of its discretion in cases where the sentence imposed is within the presumptive range.” (quotation omitted)), *review denied* (Minn. Apr. 15, 1988).

Quick contends that the district court abused its discretion by denying her motion for a downward-durational departure because “the offense was less serious than a typical drug sale offense.” Quick argues that her sale to the police informant involved “just \$800 and the substance purchased contained only a small portion of methamphetamine.” Quick also argues that she is not a “drug kingpin,” that she “sold drugs to feed her addiction, and that the State made no claim that [she] was a known drug dealer or part of a large drug network.” Quick therefore asks this court to modify her sentence to 75 months.

The state counters that the record shows that the district court acted within its broad discretion when it refused to grant Quick’s downward-departure request. The state argues that the district court properly evaluated Quick’s departure motion by considering the arguments from Quick, her counsel, and the prosecutor before concluding it could not find “substantial and compelling reasons” to depart. The state also argues that the district court had valid reasons to deny Quick’s departure request because the 28 grams Quick sold were “significantly higher than the minimum 17-gram threshold” and “the legislature seemingly accounted for the fact controlled substances do not exist in ‘pure’ form and thus chose to base the penalties on the weight of any ‘mixture’ containing the drug—as opposed to the drug concentration level or the cash amount exchanged.”

The state notes that the supreme court has only once reversed a district court’s refusal to grant a downward departure. In *State v. Hennum*, the defendant was convicted

of second-degree felony murder and was given a presumptive sentence of 102 months. 441 N.W.2d 793, 794, 800 (Minn. 1989). The supreme court reduced the prison term to 54 months, a downward-durational departure, because the defendant's husband, who was the victim, physically abused her the night she killed him and had done so throughout their relationship. *Id.* at 794, 800-01. In addition, there was expert testimony that the defendant suffered from "battered woman syndrome," and the PSI recommended a downward-durational departure. *Id.* at 797, 800-01. The state argues that unlike the circumstances in *Hennum*, Quick has not offered justifications "compelling enough to *mandate* a departure." We agree.

This is not a rare case justifying reversal of the district court's refusal to depart. The record shows that the district court carefully evaluated all of the information presented before concluding that there was no basis for a downward-durational departure beyond 107 months and did not abuse its discretion by refusing to grant Quick's request for a 75-month prison term. We therefore affirm Quick's sentence.

Affirmed.