

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1353**

State of Minnesota,
Respondent,

vs.

Kimberly Ann Kruger,
Appellant.

**Filed June 24, 2019
Affirmed
Halbrooks, Judge**

Dakota County District Court
File No. 19HA-CR-18-275

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

James C. Backstrom, Dakota County Attorney, Anna Light, Assistant County Attorney,
Hastings, Minnesota (for respondent)

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

Considered and decided by Halbrooks, Presiding Judge; Connolly, Judge; and
Slieter, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges the district court's imposition of a 30-day executed jail sentence as a condition of her probation after she pleaded guilty to felony theft by swindle. We affirm.

FACTS

Beginning in January 2015, appellant Kimberly Ann Kruger lived with her mother-in-law, I.K., who had memory-impairment issues. Kruger asked I.K. for money, telling her that it would be used for household bills. Instead, Kruger gave the money to a third party.

In June 2016, police received a report from the Minnesota Adult Abuse Reporting Center (MAARC) that Kruger was accessing I.K.'s bank account, despite the fact that Kruger was not listed on the account and did not have power of attorney. Between 2015 and 2016, checks totaling approximately \$10,000 had been written out to cash and endorsed by Kruger. Another \$26,000 in checks had been made payable by Kruger to a third party. As a result, I.K.'s bank account had a negative balance.

Police spoke to I.K. and Kruger and noted that I.K. "did not appear able to process what she was told and was not going to remember the officers had told her that her money was gone." Kruger told the officers that she helped I.K. by paying household bills and that I.K. would "write a check to her for the costs." Initially, Kruger claimed that she had written the checks to the third party because she was being blackmailed. Eventually, Kruger admitted that she had spent over \$60,000 of I.K.'s money, knowing that it was

wrong to take the money and that I.K. did not have the capacity to understand what Kruger had done.

Kruger was charged with one felony count of financial exploitation of a vulnerable adult and one felony count of theft by swindle. She entered a guilty plea to the charge of theft by swindle. The district court accepted the plea, dismissed the charge of financial exploitation and sentenced Kruger to a stay of imposition, ten years of probation, and 30 days in jail each year for ten years. Minn. Stat. § 609.135 (2014). If Kruger successfully completes probation, she will have a misdemeanor—not a felony—on her record. Minn. Stat. § 609.13, subd. 1(2) (2014). The district court ordered that Kruger’s 30-day jail sentences could be vacated each year so long as she is compliant with probation. But Kruger is required to serve the first 30 days in jail. This appeal follows.

DECISION

Kruger challenges the district court’s inclusion of a 30-day executed jail term as a condition of her probation. On review, we “afford the [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). Generally, we will not “review a district court’s exercise of its discretion to sentence a defendant when the sentence imposed is within the presumptive guidelines range.” *State v. Delk*, 781 N.W.2d 426, 428 (Minn. App. 2010), *review denied* (Minn. July 20, 2010).

Here, the district court imposed a presumptive sentence for felony theft of an amount over \$35,000. The presumptive sentence for a severity level 6 offense is a stayed sentence of 21 months. Minn. Sent. Guidelines 4.A. (2014). When an offense calls for a

presumptive stayed sentence, the district court may, in its discretion, order up to one year of confinement and other non-jail sanctions as conditions of probation. *Id.*

Kruger argues that the district court abused its discretion by imposing the annual 30-day jail-condition term on her probation in light of her criminal-history score of zero, significant mental-health issues, and the fact that her mother-in-law, husband, and child would “suffer if [Kruger] were forced to serve time in jail.” We disagree.

The district court heard argument during the sentencing hearing regarding Kruger’s mental health, lack of criminal history, and the needs of Kruger’s family members. The district court also had the benefit of Kruger’s psychological evaluation and the pre-plea report, which recommended that Kruger serve 120 days in jail. The pre-plea report specifically noted that, due to Kruger’s “self-serving reasons for providing money to the third-party” and the “period of time over which she provided this person money from the victim,” the offense warranted “significant jail time.”

Based on our review of the record, we conclude that the district court acted well within its discretion in sentencing Kruger.

Affirmed.