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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1957
A18-1999**

State of Minnesota,
Appellant (A18-1999), Respondent (A18-1957,)

vs.

Torrance Lee Royster,
Appellant (A18-1957), Respondent (A18-1999).

**Filed December 23, 2019
Affirmed
Cochran, Judge**

Hennepin County District Court
File No. 27-CR-17-25237

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

Michael O. Freeman, Hennepin County Attorney, Sean Patrick Cahill, Assistant County Attorney, Minneapolis, Minnesota (for appellant and respondent state)

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Considered and decided by Cochran, Presiding Judge; Johnson, Judge; and
Hooten, Judge.

UNPUBLISHED OPINION

COCHRAN, Judge

In these consolidated appeals, appellant Torrance Lee Royster challenges the sufficiency of the evidence supporting his conviction of failure to register as a predatory

offender. The state appeals Royster's sentence, arguing that the district court did not have substantial or compelling reasons to depart from the presumptive sentence. We conclude that the evidence is sufficient and affirm Royster's conviction. We also conclude that the district court's offense-related findings support the sentencing departure.

FACTS

Appellant Torrance Lee Royster is required to register as a predatory offender due to a prior offense. In December 2016, Royster completed an annual predatory-offender verification form and a duty-to-register-form. On the duty-to-register form Royster initialed statements indicating that he understood he must register all changes to his primary address five days before moving and that if he did not have a primary address he had to report to law enforcement within 24 hours of leaving his former primary address. In June 2017, Royster submitted a change-of-information form that listed a Thomas Avenue address as his primary address.

On September 7, 2017, the Bureau of Criminal Apprehension (BCA) sent Royster an address verification form to the Thomas Avenue address. The post office attempted to deliver the letter but it was "not deliverable as addressed." The letter was returned to the BCA on September 18. Because Royster did not complete the verification form, the BCA considered Royster as a non-compliant predatory offender.

Royster moved out of the Thomas Avenue address in early September. After moving, Royster contacted an appellate attorney knowledgeable in registration requirements. The attorney told Royster to go to the police station for a change-of-address form because he was no longer living at his registered address. Royster went to both the

BCA and the Minneapolis Police Department to obtain registration paperwork, and was informed that the correct place to register was at the Minneapolis Police Predatory Registration Office in city hall. Based on this advice, on October 3, Royster visited city hall to request a change-of-information form. Royster asked the officer who was assisting him if he could take the form with him and return later to submit it. The officer responded that Royster needed to complete the change-of-information form at the office and then the officer would fax it to the BCA for him. While at the registration office, Royster told the officer that he was staying with his grandmother but did not want to register her address. Royster also said he was looking for an apartment to rent. Royster told the officer that he had to go to work and that he would return with an address. Royster left without completing the form and did not return.

On October 6, three days later, an officer found Royster sleeping on a bench at the Minneapolis-St. Paul Airport. The officer checked Royster's identification, which listed a house on 11th Avenue as his address. The house belonged to Royster's grandmother. Royster told the officer that he was staying at the 11th Avenue house. The officer checked the law-enforcement database and found that Royster was considered non-compliant with the BCA. Because Royster was non-compliant, the officer arrested him. The state charged Royster with failure to register as a predatory offender under Minn. Stat. § 243.166 (2016).

Royster waived his right to a jury trial and proceeded with a court trial. At trial, the state presented the testimony of two police officers and a BCA employee. Royster testified on his own behalf. Royster testified that he thought he was compliant with the registration requirements because he was staying at his grandmother's house and he had previously

listed his grandmother as an emergency contact on a predatory-offender registration form. Royster also testified that his grandmother was concerned about the predatory-offender community-notification requirements applying to her address. Royster confirmed that he spoke with an attorney who told him to register, that he went to the registration office to fill out a form, and that he left without completing the form and did not return.

The district court found Royster guilty of failure to register as a predatory offender as required by the statute. Royster was previously convicted of failure to register as a predatory offender in 2012. Because this was Royster's second conviction of failure to register, the felony offense triggered a minimum sentence of 24 months' imprisonment unless the district court found "substantial and compelling reasons" to impose a different sentence. Minn. Stat. § 243.166, subd. 5(c)-(d). When pronouncing the verdict, the court indicated that Royster's offense was much less serious than the typical failure-to-register case, and that the court planned to impose a gross-misdemeanor sentence rather than a felony sentence. The state objected to any downward departure. The court ordered a presentence investigation (PSI) report which ultimately recommended that the district court not depart from the 24-month commitment.

At sentencing, after hearing from the state and Royster, the district court sentenced Royster's offense as a gross misdemeanor. The court ordered him to serve 365 days in custody with execution stayed for two years, on the condition that he serve 150 days in the Hennepin County workhouse with credit for 63 days served, and also imposed several probation conditions. The court found that a durational departure was warranted because Royster's offense was much less serious than the typical failure-to-register case. The court

found that a dispositional departure was warranted because Royster lacked “substantial capacity” at the time of the offense.

This appeal follows.

D E C I S I O N

Royster challenges his conviction of failure to register, arguing that the evidence is insufficient to support the conviction. The state argues that the district court abused its discretion in issuing both a downward durational departure and a downward dispositional departure. We first address the sufficiency of the evidence and then turn to the departure issue.

I. The direct evidence is sufficient to support Royster’s conviction.

Royster maintains that the circumstantial evidence introduced at trial is insufficient to prove beyond a reasonable doubt that he knowingly violated the predatory-offender registration requirements. The state contends that there is sufficient direct evidence to support the conviction. Because the parties disagree over whether the traditional direct-evidence standard or the heightened circumstantial-evidence standard applies to this court’s review of the sufficiency of the evidence, we first consider the appropriate standard to employ and then apply the standard to the evidence introduced at trial.

A. We review the sufficiency of the evidence under the traditional standard of review.

Royster argues that the circumstantial-evidence standard applies because the state relied solely on circumstantial evidence to demonstrate the elements of the crime. The

state argues that the traditional standard applies because direct evidence supports the conviction.

The circumstantial-evidence standard is appropriate when the conviction is based on circumstantial evidence, meaning that proof of the offense, or a single element of the offense, is based solely on circumstantial evidence. *State v. Fairbanks*, 842 N.W.2d 297, 307 (Minn. 2014). Circumstantial evidence is “evidence from which the [fact-finder] can infer whether the facts in dispute existed or did not exist.” *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted). Direct evidence, on the other hand, is evidence “based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.” *Id.* (quotation omitted). When a disputed element is sufficiently proven by direct evidence alone, we apply the traditional standard. *State v. Horst*, 880 N.W.2d 24, 39 (Minn. 2016).

To determine whether the direct-evidence standard or the circumstantial-evidence standard applies to our review, we first examine the elements of the offense. Under the predatory-offender registration statute, an offender is required to give written notice to law enforcement “at least five days before the person starts living at a new primary address.” Minn. Stat. § 243.166, subd. 3(b). And, an offender must register with law enforcement within 24 hours if they lack a primary address. *Id.*, subd. 3a. Here, Royster was convicted of failure to register his change in address after moving from Thomas Avenue, his primary address. To convict a predatory offender of failure to register, the state must prove (1) that the defendant is required to register as a predatory offender; (2) that the defendant knowingly violated a registration requirement; (3) that the offense occurred in the county

of prosecution; and (4) that the registration time period had not elapsed. Minn. Stat. § 243.166, subds. 5(a); *State v. Mikulak*, 903 N.W.2d 600, 603-04 (Minn. 2017) (concluding that an offender must know that he or she violated the statute when the violation occurred). The only element in dispute is the second element—whether Royster knowingly violated a registration requirement.

In this case, either standard could conceivably apply because the second element was proved by both direct and circumstantial evidence. But, when a disputed element is sufficiently proven by direct evidence alone, “it is the traditional standard, rather than the circumstantial-evidence standard, that governs.” *Horst*, 880 N.W.2d at 39. Witness testimony is direct evidence when it reflects a witness’s personal observations and allows the jury to find the defendant guilty without having to draw any inferences. *Id.* at 40. We conclude that the disputed element in this case is proven through direct evidence alone—specifically, witness testimony and Royster’s signed duty-to-register form. Accordingly, the traditional standard applies.

B. The direct evidence is sufficient to support Royster’s conviction of failure to register as a predatory offender under Minn. Stat. § 243.166, subd. 5.

Under the traditional direct-evidence standard, we limit our review to “a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, was sufficient.” *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012) (quotation omitted). We apply the same standard to a conviction after a court trial as we do to a conviction after a jury trial. *State v. Hough*, 585 N.W.2d 393, 396 (Minn. 1998). We assume that the fact-finder believed the state’s witnesses and

disbelieved evidence to the contrary. *State v. Caldwell*, 803 N.W.2d 373, 384 (Minn. 2011). We will not disturb the verdict if the fact-finder, “acting with due regard for the presumption of innocence” and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the crime charged. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004) (quotations omitted).

Royster maintains that the evidence is insufficient to show that he knowingly failed to register at the time of the offense. Viewing the evidence in a light most favorable to the conviction, we conclude that the evidence is sufficient. First, Royster’s testimony that he spoke with an attorney who told him to fill out a new registration form, his testimony that he was told by an officer how to register, and his acknowledgement on the duty-to-register form of the registration requirements, all constitute direct evidence of Royster’s knowledge that he was required to register a change of primary address. Second, the officer’s testimony that Royster was at the predatory registration office and left without completing the form or returning to complete the form is direct evidence of Royster failing to register after moving from his primary address. Taken at face value, this evidence is sufficient to demonstrate Royster’s knowledge and actions without inference or presumption. *See Harris*, 895 N.W.2d at 599.

Viewing the evidence in the light most favorable to the verdict, we conclude that there is sufficient direct evidence to support Royster’s conviction because a fact-finder could reasonably find that Royster was guilty, beyond a reasonable doubt, of failure to register under Minn. Stat. § 243.166, subd. 5.

II. The district court did not abuse its discretion when it issued both a dispositional and a durational departure.

The state appeals the district court's imposition of a stayed gross misdemeanor sentence for Royster's felony offense. The state argues that the sentence is both a downward dispositional departure and a downward durational departure, and contends that the record does not support substantial or compelling reasons for either departure. Royster argues that the district court issued only a durational departure and moreover that any dispositional departure is supported by the district court's finding that Royster lacked substantial capacity. We first determine that the sentence constitutes both a durational departure and a dispositional departure. We then turn to whether the district court abused its discretion in departing from the presumptive sentence.

A. The court issued both a downward durational departure and a downward dispositional departure.

Minn. Stat. § 243.166, subd. 5(c) mandates a sentence of at least 24 months in prison for predatory offenders, such as Royster, who have previously been convicted of failure to register. The statute also allows the court on its own motion to depart if it finds "substantial and compelling reasons to do so." *Id.*, subd. 5(d). The statute specifically provides that sentencing a person "without regard to the mandatory minimum sentence" is a "departure from the Sentencing Guidelines." *Id.* Here, the district court sentenced Royster without regard to the presumptive minimum sentence and therefore departed from the sentencing guidelines.

The Minnesota Sentencing Guidelines establish presumptive sentences for felony offenses. Minn. Stat. § 244.09, subd. 5 (2016); Minn. Stat. § 609.02, subd. 2 (2016)

(providing that a felony offense is a crime for which a sentence of imprisonment for more than one year may be imposed). The guidelines define two types of sentencing departures: dispositional and durational. Minn. Sent. Guidelines 1.B.5 (2017). A “dispositional departure” places the offender in a different setting than that called for by the presumptive guidelines sentence. *Id.* at 1.B.5.a. A mitigated dispositional departure occurs “when the Guidelines recommend a prison sentence but the court stays the sentence.” *Id.* at 1.B.5.a.(2). A “durational departure” departs in length from the presumptive guidelines range. *Id.* at 1.B.5.b. Departures with respect to disposition and duration are separate decisions, with each requiring a written reason for departing. Minn. Sent. Guidelines 2.D.1.a (2017).

In this case, under the plain language of the sentencing guidelines, the pronounced sentence was both a dispositional departure and a durational departure. The court imposed a dispositional departure when it sentenced Royster to a stayed sentence rather than the presumptive commitment to prison. Minn. Sent. Guidelines 1.B.5.a.(2). And, the court imposed a durational departure when it imposed a sentence shorter than the presumptive sentence. *Id.* at 1.B.5.b.(2).

Royster argues that the judge issued only a durational departure because the sentence actually imposed was a gross misdemeanor sentence and the sentencing guidelines apply only to felony sentences. Royster’s argument is not persuasive for several reasons. First, Royster’s argument is inconsistent with the plain language of Minn. Stat. § 243.166, subd. 5. The statute provides for a presumptive felony sentence of at least 24 months executed in prison where the offender has previously been convicted of

failure to register. *Id.* at subd. 5(c). When the district court departs from the presumptive sentence, the statute requires the court to find “substantial and compelling reasons to do so.” *Id.* As applied to this case, where the district court imposed a stayed sentence of 365 days, the court was required to find “substantial and compelling reasons” for *both* staying the executed prison sentence *and* issuing a sentence of less than 24 months. The statute also expressly provides that “[s]entencing a person in the manner described in this paragraph is a departure from the Sentencing Guidelines.” *Id.* Second, Royster’s argument is inconsistent with the plain language of the sentencing guidelines. *See* Minn. Sent. Guidelines 2.D.1.a. (“A court departing from the presumptive disposition as well as the presumptive duration has made two separate departure decisions.”).

Third, Royster’s reliance on *State v. Bauerly*, 520 N.W.2d 760 (Minn. App. 1994) *review denied* (Minn. Oct. 27, 1994), is misplaced. In *Bauerly*, the defendant faced a presumptively-stayed felony sentence but the district court instead imposed a stayed gross-misdemeanor sentence. *Id.* at 762. This court noted that there was no dispositional departure because the district court “stayed Bauerly’s sentence, which was the presumptive disposition.” *Id.* The *Bauerly* court’s statements imply that had there been a presumptive prison commit, the departure to a probationary gross-misdemeanor sentence would have constituted a dispositional departure. Consequently, *Bauerly* supports our conclusion that the district court’s sentence in this case amounts to both a durational and a dispositional departure.

Accordingly, we conclude that in this case, under the plain language of the sentencing guidelines, the pronounced sentence was both a dispositional departure and a

durational departure. The district court imposed a dispositional departure when it sentenced the appellant to a stayed sentence rather than the presumptive commitment to prison. Minn. Sent. Guidelines 1.B.5.a.(2). The court also imposed a durational departure when it imposed a sentence shorter than the presumptive sentence. *Id.* at 1.B.5.b. As a result, the court was required to find and explain substantial and compelling reasons not only for why it sentenced Royster to 365 days rather than the mandatory 24 months, but also for why it stayed execution of a mandatory executed sentence. *Id.* at 2.D.1.a.; Minn. Stat. § 243.166, subd. 5(d).

B. Both the durational departure and dispositional departure are supported by the record.

The next issue before us is whether the court based its decision on substantial and compelling reasons to support each departure. A district court may depart from the presumptive sentence only when “identifiable, substantial, and compelling circumstances” exist to support a departure. Minn. Sent. Guidelines 2.D.1 (2017); *see also State v. Solberg*, 882 N.W.2d 618, 623-24 (Minn. 2016) (discussing circumstances to justify a durational departure); *State v. Pegel*, 795 N.W.2d 251, 253 (Minn. App. 2011) (discussing circumstances to justify a dispositional departure); Minn. Stat. § 243.166, subd. 5(d) (the court may depart “if the court finds substantial and compelling reasons to do so”). We review a district court’s decision to depart from the presumptive guidelines sentence for an abuse of discretion. *Taylor v. State*, 670 N.W.2d 584, 588 (Minn. 2003).

A substantial and compelling circumstance is one that makes a case “atypical.” *State v. Walker*, 913 N.W.2d 463, 468 (Minn. App. 2018). The sentencing guidelines

provide a non-exclusive list of mitigating and aggravating factors that can constitute substantial and compelling circumstances that may justify departure. Minn. Sent. Guidelines 2.D.3.a (2017). Relevant to this appeal is the catchall provision that indicates that “other substantial grounds that tend to excuse or mitigate the offender’s culpability, although not amounting to a defense,” may constitute a mitigating factor. *Id.* at 2.D.3.a(5). We address each departure in turn.

i. Downward Durational Departure

Downward durational departures are justified when the offender’s conduct is “significantly less serious than that typically involved in the commission of the offense.” *State v. Mattson*, 376 N.W.2d 413, 415 (Minn. 1985); *see also State v. Rund*, 896 N.W.2d 527, 532 (Minn. 2017) (indicating that a downward durational departure is justified when offender’s conduct is less serious than typical). Here, the district court found a durational departure was warranted because Royster’s offense was much less serious than the typical failure-to-register case.

The state argues that the district court abused its discretion when it concluded that Royster’s offense was less serious than the typical offense. The state contends that Royster’s offense was actually more serious because Royster ignored advice of officers and an attorney telling him to register, was noncompliant for approximately one month, and avoided registering his grandmother’s address. Royster maintains his offense is less onerous than usual because the typical registration offense occurs over a longer period of time and typical offenders do not make efforts to comply with the statute.

Based on our review of the record, we conclude that the district court relied on sufficient, appropriate offense-related factors in granting the downward durational departure. The district court found that Royster took steps to register including visiting the BCA and contacting an attorney for legal advice. The court also found that the short time period of noncompliance made the offense less serious. The district court concluded that these circumstances demonstrated that Royster's offense was much less serious than the typical failure-to-register case. Consequently, we conclude that the district court did not abuse its discretion by issuing a downward durational departure.

ii. Downward Dispositional Departure

The state argues that the district court abused its discretion by issuing a downward dispositional departure because the court did not have substantial or compelling reasons to do so. Royster maintains that the dispositional departure is supported by the record. We conclude that the record supports the departure but not for the reason provided by the district court.

For a downward dispositional departure, the district court may consider both offense-related and offender-related reasons. *Walker*, 913 N.W.2d at 468. The district court identified Royster's past struggles with mental health issues and "lack of substantial capacity" not related to drugs or alcohol as the reasons for a dispositional departure.

Based on the record, we conclude that Royster's mental health issues and "lack of substantial capacity" are not sufficiently extreme to support a mitigating factor in sentencing. Specifically, the record lacks evidence that Royster had a mental impairment

that deprived him of “control over his actions.” *See State v. McLaughlin*, 725 N.W.2d 703, 716 (Minn. 2007) (stating that “in order to constitute a mitigating factor in sentencing, a defendant’s impairment must be ‘extreme’ to the point that it deprives the defendant of control over his actions” (quoting *State v. Wilson*, 539 N.W.2d 241, 247 (Minn.1995))); *see also State v. Martinson*, 671 N.W.2d 887, 891 (Minn. App. 2003), *review denied* (Minn. Jan. 20, 2004) (concluding that diagnosis of paranoia and schizophrenia, supported by a well-documented record of the mental condition, constituted a sufficiently extreme mental impairment to support a downward departure). We conclude that the district court’s finding that Royster lacked substantial capacity is not adequate to support a departure.

When the reason given by the district court is not adequate to support a departure, we examine the record to determine whether there is sufficient evidence to support other reasons to justify the departure. *Williams v. State*, 361 N.W.2d 840, 844 (Minn. 1985). If so, the departure will be affirmed. *Id.*

We conclude that the district court’s finding that the offense was “significantly less onerous” than the typical offense also supports the downward dispositional departure. *See State v. Stempfley*, 900 N.W.2d 412, 418 (Minn. 2017) (holding that a court may depart when it finds that the offense is significantly less serious than the typical case). A less onerous offense can support a dispositional departure without any offender-related finding. *See id.* (affirming a downward dispositional departure solely on the grounds that the offender played a minor or passive role in the offense). And, the same offense-related reason can support both a durational and a dispositional departure. *State v. Lalli*,

338 N.W.2d 419, 421 (Minn. 1983) (affirming durational and dispositional departures, both relying on the offense-related factor of a “major economic offense”). Because, as discussed above, the record supports the district court’s finding that Royster’s offense is significantly less onerous than the typical offense, this mitigating factor also supports the dispositional departure.

In sum, there is sufficient direct evidence to support Royster’s conviction of failure to register, and the district court’s finding that the offense was significantly less onerous than usual supports both the downward durational departure and the downward dispositional departure.

Affirmed.