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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1179**

State of Minnesota,
Respondent,

vs.

Saudi Askari-Habib Miller,
Appellant.

**Filed May 4, 2020
Affirmed
Connolly, Judge**

Hennepin County District Court
File No. 27-CR-18-6432

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

Michael O. Freeman, Hennepin County Attorney, Adam E. Petras, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rachel F. Bond, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Connolly, Judge; and Hooten, Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant challenges the district court's denial of his motion for a downward durational departure from his bottom-of-the-box guideline sentence for first-degree sale of cocaine. Because the district court did not abuse its discretion in finding that appellant's conduct was not less serious than typical for that offense and denying the motion, we affirm.

FACTS

In March 2018, a search pursuant to a warrant of appellant Saudi Askari-Habib Miller's apartment revealed over 50 grams of cocaine, over four grams of heroin, digital scales, rubber gloves, baggies, four cellphones, and almost \$12,000 in cash. Appellant was charged with and pleaded guilty to first-degree sale of cocaine, first-degree possession of cocaine, second-degree sale of heroin, and third-degree possession of heroin.

After appellant moved for a downward durational departure, respondent State of Minnesota opposed the motion and proposed the presumptive middle-of-the-box sentence under the sentencing guidelines for first-degree sale of cocaine, 125 months in prison.¹ The presentence investigation (PSI), which showed that appellant had a criminal-history score (CHS) of ten, also recommended a sentence of 125 months in prison.

Appellant failed to appear for the scheduled sentencing hearing, and a bench warrant was issued for his arrest. When the hearing was held two months later, appellant asked for

¹ No sentence was imposed on the other counts.

a sentence of 86 months in prison, a downward durational departure of 21 months in prison from the bottom-of-the-box sentence of 107 months in prison, arguing that his conduct was less serious than typically involved in the offense.

The district court disagreed and sentenced him to 107 months in prison. Appellant now argues that this sentence was an abuse of discretion.

D E C I S I O N

“This court will not generally 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). Only in a “rare” case will an appellate court reverse a sentencing court’s refusal to depart from the guidelines. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

Appellant argues that the district court abused its discretion in denying his request for a downward durational departure from the presumptive sentence for first-degree sale of cocaine by an offender with a CHS of ten because his “conduct was less serious than that typically involved [in a] first-degree controlled substance offense.” But it is not an abuse of discretion not to depart if there are valid reasons for adhering to the presumptive sentence, even if there is also a reason for not adhering. *Id.* at 7-8.

Moreover, appellant’s view that his conduct was less serious than that typically involved in his crime is based on three misreadings of the statute. First, appellant’s argument that “the offense contemplates multiple sales over an extended period of time” ignores the statute’s prohibition of selling “on *one* or more occasions” (emphasis added).

Minn. Stat. § 152.021, subd. 1(1) (2016). Thus, the fact that appellant was charged with offending on only one day is not less serious conduct than the statute envisioned.

Second, the statute envisions the sale of 17 grams of cocaine, *id.*; appellant testified that he possessed and planned to sell at least 50 grams—roughly three times the amount mentioned in the statute, and therefore significantly more serious, not less serious, than the statute envisioned.

Third, appellant’s view that his conduct was less serious because no actual sale, transaction, or controlled buy occurred ignores the fact that Minn. Stat. § 152.01, subd. 15a (3) (2016), includes “to possess with intent to perform [the act of selling]” among the definitions of “sell,” so his possession of the 50 grams of cocaine with intent to sell it was the statutory equivalent of selling it.

Finally, the fact that appellant did not use or possess a weapon explains why he was not also charged under the firearm-enhancement statute; it does not explain why appellant is entitled to a downward departure.

Because the district court did not abuse its discretion in sentencing appellant, we affirm the sentence.

Affirmed.