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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1307**

State of Minnesota,
Respondent,

vs.

Travis James Fritz,
Appellant.

**Filed June 15, 2020
Affirmed
Schellhas, Judge***

Carver County District Court
File No. 10-CR-18-911

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

Mark Metz, Carver County Attorney, Kevin A. Hill, Assistant County Attorney, Chaska,
Minnesota (for respondent)

Richard L. Swanson, Chaska, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Smith, Tracy M., Judge; and
Schellhas, Judge.

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

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges his sentence for third-degree controlled-substance sale, arguing that the district court abused its discretion by denying his motion for a downward durational departure. Because the district court did not abuse its discretion, we affirm.

FACTS

In June 2017, law enforcement observed appellant Travis James Fritz sell methamphetamine to an informant in a parking lot. The state charged Fritz with third-degree controlled-substance sale in violation of Minn. Stat. § 152.023, subd. 1(1) (2016) (count one), and fifth-degree controlled-substance possession in violation of Minn. Stat. § 152.025, subd. 2(1) (2016) (count two). A jury found Fritz guilty of both counts.

Prior to the sentencing hearing, Fritz moved for a dispositional sentencing departure and a durational sentencing departure. Also prior to the sentencing hearing, probation filed a presentence investigation report (PSI) and a sentencing worksheet. The sentencing worksheet set forth the presumptive guidelines sentence for count one as imprisonment for 57 months (with a range of 49 to 68 months) and for count two as 24 months. The PSI recommended that the district court impose the presumptive guidelines sentence for both counts.

At the sentencing hearing, neither Fritz nor his counsel addressed Fritz's motion for a downward dispositional departure, but Fritz's counsel argued for a downward durational departure sentence of 39 months. Fritz's counsel argued that Fritz's third-degree controlled-substance-sale offense was less serious than the ordinary offense because the

sale took place in an empty parking lot in the afternoon, the sale did not threaten public safety because undercover agents were present, Fritz did not use a weapon, Fritz was not involved in gang-related activities, and law enforcement orchestrated the sale.

The state opposed Fritz's durational-departure motion and requested a guidelines 68-month prison sentence on count one. The state argued that Fritz's controlled-substance-sale offense was a more serious offense because Fritz committed it during the middle of the day in a crowded parking lot, where people of all ages could be present; the amount of methamphetamine that Fritz sold was only three grams less than that of a second-degree sale offense; Fritz procured and sold the controlled substance for income, not solely for personal use; and controlled-substance sale is not a victimless crime. The state also opposed Fritz's downward dispositional departure, arguing that Fritz was not amenable to probation because he failed at least five opportunities for chemical-dependency treatment and the PSI reported Fritz to be at the highest level of risk for recidivism due to his chemical-dependency problems and criminal history.

The district court addressed Fritz's motion for a downward dispositional departure and concluded that it could not find Fritz to be particularly amenable to probation because he had not been successful in treatment, failed to cooperate with chemical testing, and continued to reoffend.

The district court also addressed Fritz's motion for a downward durational departure and discussed the potential mitigating factors that Fritz did not use a weapon in the commission of the offense and the offense did not involve gang activity. The court noted that Fritz had not been charged with using a weapon or acting for the benefit of a gang in

the commission of the offense, and noted that if Fritz had used a weapon or acted for the benefit of a gang, he would have faced “significant additional penalties.” The district court concluded that the third-degree controlled-substance offense was “more serious than the regular” and expressed concern that Fritz’s drug sales were “continuing the pipeline of the drugs into the community.”

The district court denied both of Fritz’s downward departure motions and sentenced him to 60 months’ imprisonment, a sentence within the presumptive guidelines range.

This appeal follows.

D E C I S I O N

Fritz does not challenge the district court’s denial of his motion for a downward dispositional sentencing departure. He argues that the district court abused its discretion by denying his motion for a downward durational departure because (1) the record shows that his offense was less serious than a typical controlled-substance-sale case and (2) the district court relied on offender-related factors, instead of offense-related factors, when it denied his motion for a downward durational departure.

The Minnesota Sentencing Guidelines establish presumptive sentences for felony offenses. Minn. Stat. § 244.09, subd. 5 (2018). A district court “may” depart from the presumptively appropriate guidelines sentence only if “identifiable, substantial, and compelling circumstances” warrant doing so. *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016) (quotation omitted). A downward durational departure may be justified when the offender’s conduct is significantly less serious than that typically involved in the commission of the offense. *State v. Rund*, 896 N.W.2d 527, 532 (Minn. 2017). But even if

mitigating factors are present, the district court is not obligated to depart from the guidelines. *State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006). 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).

Here, the district court imposed a sentence within the presumptive range. When the district court imposes a presumptive sentence, we generally will not interfere “as long as the record shows the sentencing court carefully evaluated all the testimony and information presented before making a determination.” *State v. Pegel*, 795 N.W.2d 251, 255 (Minn. App. 2011) (quotation omitted). Only a “rare case” warrants reversal of a district court’s refusal to depart. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

Fritz argues that the district court abused its discretion by denying his motion for a downward durational sentencing departure because his offense was significantly less serious than the typical offense. *See Rund*, 896 N.W.2d at 532-33 (noting that downward durational departure *may* be justified when offender’s conduct is significantly less serious than that typically involved in offense). Fritz contends that his offense was less serious and less dangerous than a typical offense because it was a controlled buy under the covert supervision of law enforcement. But Fritz offers no caselaw to support his proposition. And a review of caselaw involving third-degree controlled-substance-sale offenses negates the proposition. *See, e.g., State v. Bauer*, 792 N.W.2d 825, 826-27 (Minn. 2011) (multiple controlled buys through informants at staged storefront); *State v. Carufel*, 783 N.W.2d 539, 541 (Minn. 2010) (three controlled sales to informant); *State v. Frazier*, 631 N.W.2d 432,

434 (Minn. App. 2001), *aff'd on other grounds*, 649 N.W.2d 828 (Minn. 2002) (sale of crack cocaine to confidential reliable informant on three occasions by defendant who was gang member). As with Fritz's offense, all of these cases included controlled buys and none of them involved the use of weapons or violence. We are aware of no caselaw that supports the proposition that the sale of a controlled substance in a controlled buy is a less-serious or less-dangerous offense than the typical offense. Fritz's arguments are unavailing.

Fritz also argues that his offense was less serious because he committed it on one day only. But each individual sale is a controlled-substance crime—thus, the fact that Fritz's sale occurred on one day does not render his offense less serious than a typical third-degree drug sale. *See, e.g., Carufel*, 783 N.W.2d at 546 (affirming three drug-sale convictions for three separate sales).

Fritz argues that the district court improperly relied on offender-related, rather than offense-related, factors in denying his motion for a downward durational departure. This argument lacks merit. Fritz requested both a dispositional departure and a durational departure before sentencing, inviting the district court to consider and discuss both offender-related and offense-related factors. The district court did not abuse its discretion by considering and discussing both offender-related and offense-related factors before denying Fritz's motion for a downward durational departure.

We conclude that the district court carefully and properly considered the evidence presented regarding Fritz's motion for a downward durational sentencing departure. The court therefore did not abuse its discretion by denying the motion.

Affirmed.