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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1582**

State of Minnesota,
Respondent,

vs.

Lanell Thaddeus Crenshaw,
Appellant.

**Filed April 6, 2020
Affirmed
Bryan, Judge**

Hennepin County District Court
File No. 27-CR-16-12176

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

Michael O. Freeman, Hennepin County Attorney, Jordan W. Rude, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Lanell T. Crenshaw, Bayport, Minnesota (pro se appellant)

Considered and decided by Reyes, Presiding Judge; Bratvold, Judge; and Bryan, Judge.

U N P U B L I S H E D O P I N I O N

BRYAN, Judge

In this appeal after remand for resentencing, appellant challenges his sentence of 288 months, which constitutes a double upward durational departure. Appellant argues that his constitutional rights were violated for the following two reasons: (1) he asserts that

he received no notice of the state's intent to seek an upward departure to enhance his sentence; and (2) he asserts that he did not waive his jury trial right regarding the aggravating sentencing factor. Because these constitutional challenges lack merit, we affirm.

FACTS

In 2016, respondent State of Minnesota charged appellant Lanell Thaddeaus Crenshaw with two counts of criminal sexual conduct in the first degree and one count of criminal sexual conduct in the second degree. Approximately seven months before Crenshaw's trial, respondent filed its notice of intent to seek an upward sentencing departure based on its belief that Crenshaw's criminal conduct harmed multiple victims, among other grounds. Crenshaw was present while his trial counsel, respondent, and the district court discussed the content of a special verdict form that would be submitted to the jury regarding multiple victims. Crenshaw was also present at trial when the district court instructed the jury to read the special verdict form and presented the special verdict form to the jury.

The jury convicted Crenshaw of all three counts. On the special verdict form, the jury specifically found that Crenshaw engaged in sexual penetration and/or sexual conduct with more than one victim in relation to the first count of criminal sexual conduct in the first degree. The district court sentenced Crenshaw to life imprisonment, concluding that a "heinous" element existed. Minn. Stat. § 609.3455, subd. 3 (2016). Crenshaw appealed

his sentence, and this court reversed the life sentence and remanded for resentencing.¹ On remand, the district court resentenced Crenshaw to 288 months' imprisonment, a double upward departure from the presumptive sentence, based on the jury's finding that appellant committed his offense against multiple victims. Crenshaw appeals this sentence.

D E C I S I O N

Crenshaw argues that the sentence is unlawful for two reasons.² First, he argues that the sentence is unlawful because the state failed to provide notice of its intent to seek an upward departure from the presumptive sentence. He asserts that he “was never informed of any aggravating factors . . . and only learned about them on the day of re-sentencing.” Second, he argues that his sentence is unlawful because he never waived his right to a jury trial on the existence of an aggravating factor. Neither of Crenshaw's arguments has merit.

Generally, the decision to depart from the presumptive sentence rests within the discretion of the district court and will not be disturbed absent a clear abuse of discretion. *State v. Hagen*, 690 N.W.2d 155, 157 (Minn. App. 2004) (applying *Blakely v. Washington*, 542 U.S. 296, 303-04, 124 S. Ct. 2531, 2537 (2004)). This court reviews de novo a

¹ See *State v. Crenshaw*, No. A17-1237 (Aug. 20, 2018), for this court's analysis and for more detailed facts underlying appellant's conviction.

² Respondent's brief also addresses whether the aggravating factor used by the district court to enhance his sentence was an element of another offense of conviction. Because Crenshaw does not argue that the sentence is unlawful for this reason, we need not address respondent's argument that the sentence satisfies *State v. Edwards*, 774 N.W.2d 596, 602 (Minn. 2009) and *State v. Fleming*, 883 N.W.2d 790, 797 (Minn. 2016).

constitutional challenge under *Blakely*. *Id.* In this case, the record does not support Crenshaw's constitutional challenges.

First, Crenshaw claims that he was never informed of the state's intent to seek an upward departure. The record, however, does not support this claim. Respondent provided notice of its intent seek an upward sentencing departure based on harm to multiple victims seven months before the trial. In addition, Crenshaw and his attorney had ample opportunity to prepare for this part of the trial, and they were present when the district court discussed the content of the special verdict form to be submitted to the jury regarding multiple victims. Therefore, we conclude that respondent provided sufficient and timely notice of its intent to seek an upward departure.

Second, Crenshaw asserts that we must reverse the upward departure because he never waived his right to a jury trial on the existence of an aggravating factor. We conclude that Crenshaw cannot prevail on this constitutional challenge because instead of waiving his right to a jury trial on the aggravating factor, Crenshaw exercised this right and submitted the issue to the jury. No constitutional violation occurred.

Affirmed.