

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-2086**

State of Minnesota,
Respondent,

vs.

Reginald Fenion Coe,
Appellant.

**Filed January 19, 2021
Affirmed
Bryan, Judge**

Hennepin County District Court
File No. 27-CR-18-22849

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

Michael O. Freeman, Hennepin County Attorney, Kelly O'Neill Moller, 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 Ross, Presiding Judge; Florey, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

BRYAN, Judge

In this appeal from final judgment of conviction for first-degree criminal sexual conduct, appellant argues that his conviction must be reversed because the state failed to prove his guilt beyond a reasonable doubt. We conclude that the evidence is sufficient and affirm the conviction. Appellant also challenges his sentence on the grounds that the

district court relied on legally impermissible reasons and abused its discretion when it denied his motion for a downward dispositional departure. Because the district court relied on valid reasons and carefully evaluated the record before making its determination, the district court did not err when it denied appellant's motion to depart, and we affirm the sentence imposed.

FACTS

In September 2018, respondent State of Minnesota charged appellant Reginald Fenion Coe with one count of first-degree criminal sexual conduct, in violation of Minnesota Statutes section 609.342, subdivision 1(a) (2016) (engaging in sexual penetration with a person under the age of 13 and more than 36 months younger). A jury found Coe guilty and the district court sentenced him to an executed sentence of 201 months, denying his motion for a downward dispositional departure.

The trial testimony established that in 2017, T.T. lived with her mother, younger sister, and Coe.¹ In April 2017, T.T. reported to a school counselor that she felt unsafe going home because of the way Coe looked at her and that he looked at her in the wrong places. Specifically, T.T. said that Coe would come into her bedroom and stare at her. Shortly after reporting to the school counselor that she felt uncomfortable, T.T. went to live at her grandmother's house. Grandmother testified that T.T. told her "she was afraid to be at home" and that Coe "was looking at her when she was in her room." Child protective services began an investigation and a social worker who interviewed T.T. and

¹ Coe met T.T.'s mother when T.T. was three. Both T.T.'s mother and Coe had drug and alcohol addictions. At times, T.T. and her younger sister lived with their grandmother.

Coe testified at trial. The social worker testified that T.T. was “quite specific” in speaking about feeling unsafe around Coe, and that T.T. seemed “[r]eserved, sad, cautious . . . [and] stressed.” The social worker explained that Coe acknowledged that T.T. said he was doing things that made her feel uncomfortable. Coe told the social worker that he was going into T.T.’s room to see if she was on her electronics. In August 2017, T.T.’s mother died.

In June 2018, T.T. and grandmother had an argument after grandmother tried to take her phone away. During this argument, T.T. stated that Coe had sex with her. After this disclosure, grandmother admitted T.T. to a hospital. A social worker with child protective services met T.T. while she was in the hospital. During the meeting, T.T. initially denied that anyone touched her inappropriately, but later disclosed that Coe had touched her “private parts.”

Shortly thereafter, a forensic interviewer met with T.T. at CornerHouse. The district court received into evidence the video recording of the forensic interview at CornerHouse. During the interview, T.T. disclosed that Coe had stared at her in her bed and that he had sexually penetrated her rectally and vaginally. T.T. described, and used dolls to demonstrate, that Coe came into her bedroom, pulled down her pants, and put his penis into her “butt” and “vagina.” T.T. said that it hurt and made her feel disgusting. After the abuse, T.T. said that Coe went into her younger sister’s bed, which was in the same room, and went to sleep. The forensic interviewer from CornerHouse testified at trial and stated that during the CornerHouse interview, T.T. was “able to talk about how people moved into the room and where the body positions were before, during, and after the assault. She talked about how her own body got turned, where he touched on her own body, and she

was able to demonstrate that in three dimensions.” T.T. also described Coe ejaculating: “It was like white stuff coming out . . . on my panties.” When asked if T.T. was stable, the forensic interviewer testified that she did not have any mental health or disassociation concerns about T.T. during that interview. In addition, the forensic interviewer explained that if abuse is by a family member or trusted adult, the victim is much more likely than victims abused by a stranger or acquaintance to delay reporting, to disclose the abuse incrementally, and to deny the abuse.

T.T. also testified at trial. She testified that at first, living with Coe was “good,” but that it changed. T.T. testified that Coe would stare at her at night in her room. T.T. thought this was wrong and she felt uncomfortable. T.T. testified that when she was in fifth grade, Coe came and slept in her bed. Then Coe pulled her clothes off. T.T. then remembered “[f]eeling numb and pressure” in her “butt and [her] vagina.” Coe was “[m]oving . . . [b]ack and forth.” T.T. could feel Coe’s “stomach and penis” on her “butt and [her] vagina.” T.T. testified that she could feel Coe on the inside and outside of her “butt,” which made her feel horrible. T.T. also described Coe’s penis “[g]oing in” her vagina. While this was happening, T.T. “was trying to pray and [she] was hoping he would stop, but [she] didn’t want him to know [she] was awake because [she] thought he would hurt [her].” Then, Coe got up and went into her sister’s bed. T.T. tried to go back to sleep and to “act like it never happened.”

T.T. testified that she did not plan on telling anyone about what happened with Coe in her bedroom because after her mother died, she didn’t have to see Coe “so it wouldn’t matter.” She explained that when she told her grandmother, she “just blurted it out” and

then felt bad because did not think her mother would want Coe in trouble. When asked why she did not disclose earlier, T.T. said she did not tell because she was scared. T.T. also explained that she did not tell her mother about what happened because she “knew that [her mother] loved [Coe] and [she] didn’t want her to be sad.”

In an effort to discredit T.T., Coe presented the testimony of T.T.’s psychologists and her psychiatrist. One psychologist testified that she met with T.T. and her mother in 2016 when T.T. was transitioning back into her mother’s home. At the time, T.T. was seeing things, such as “girls dancing,” and “something with yellow eyes.” The psychologist testified that T.T. had moderate to severe paranoia. She also testified that T.T. did not pose a risk of mental instability. A family therapist for T.T., her mother, and Coe testified that he counseled the family in the spring of 2017 because T.T. was sad and having sleep disturbances. T.T. appeared withdrawn and “very resistant.” T.T.’s psychiatrist testified as well. He met T.T. when she was eleven because she “gets angry too much.” T.T. told him that when she “gets angry she says things impulsively without thinking and then often regrets what she has said.”

The jury found Coe guilty of criminal sexual conduct in the first degree. The jury then determined that two aggravating factors were present: that Coe had a significant relationship with T.T. and that Coe engaged in multiple forms of penetration. Prior to sentencing, the district court ordered a presentence investigation report (PSI). The PSI stated that due to Coe’s criminal-history score, the presumptive term of commitment was 168 months. But because the jury found the presence of two aggravating factors—significant relationship and multiple forms of penetration—the PSI recommended an

executed sentence of 336 months in prison. A forensic psychologist with the Hennepin County District Court also prepared a presentence psychosexual evaluation report. In that report, Coe denied “all allegations against him” and indicated that “the victim made up the allegation to get revenge for her mother’s death.” The psychologist concluded that Coe has a “below average risk to reoffend sexually.” The psychologist noted that Coe could receive treatment in prison, or “based on his level of risk and cooperation with this evaluation he could participate [in treatment] on an outpatient basis.”

Coe moved the district court for a downward dispositional departure. He argued that he was particularly amenable to probation because he has community and family support, and because he shows remorse for how his addiction issues affected T.T.’s life (despite claiming his innocence). Coe also attached over twenty letters from family and friends attesting to his character. Coe presented testimony from his mother and son, and also spoke on his own behalf. The state opposed a dispositional departure and sought a double upward departure. The state argued that a dispositional departure in a criminal-sexual-conduct case against a child is “extraordinary” and emphasized Coe’s significant criminal history.

The district court denied both the state’s upward departure motion and Coe’s downward departure motion. In denying the departure requests, the district court noted the presence of two aggravating factors. The district court also observed that no one else had alleged Coe of criminal sexual conduct before, stating “I don’t know you’re a risk to the community in the way that the jury found that you were in this particular incident because there isn’t any allegation that it happened before.” The district court balanced this

observation against the conduct in this case: “I cannot overlook what I’ve heard and what I saw about how this affected [T.T.]. I don’t need to go on about what a horrible thing it is to have a child raped and to have so much of her life lost as a result of it.” The district court, “after balancing all the things out,” sentenced Coe within the guidelines, “but the top end of the box to reflect the aggravating factors that were there.” Coe received a 201-month prison sentence. Coe appeals.

DECISION

I. Sufficiency of the Evidence

Coe argues that the evidence is insufficient to sustain the jury’s verdict because T.T.’s testimony is uncorroborated. In a supplemental pro se brief, Coe reiterates that the evidence is insufficient and that T.T.’s testimony is unreliable.² Because T.T.’s testimony does not need to be corroborated and the jury found her credible, we conclude that the evidence is sufficient to sustain Coe’s conviction.

We review a claim of insufficient evidence to determine whether, given the evidence presented and the legitimate inferences drawn from the record, a jury could determine guilt beyond a reasonable doubt. *State v. Flowers*, 788 N.W.2d 120, 133 (Minn. 2010). We view the evidence in the light most favorable to the verdict, and we assume that the jury believed the evidence supporting the verdict and disbelieved contrary evidence.³ *Id.*; *State*

² The supplemental pro se brief contains no argument or citation to legal authority to support the assertions made. To the extent that Coe intended to raise an issue not briefed by his counsel, we deem such issues forfeited. *See State v. Krosch*, 642 N.W.2d 713, 719 (Minn. 2002).

³ The parties do not dispute that Coe’s conviction rests on direct evidence—T.T.’s testimony. *See State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (noting that direct

v. Porte, 832 N.W.2d 303, 309 (Minn. App. 2013). We will not disturb a guilty verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, reasonably could conclude that the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

To prove the first-degree criminal-sexual-conduct offense, the state had to prove the following elements: (1) Coe sexually penetrated T.T.; (2) T.T. was under the age of 13 at the time of the offense; and (3) Coe was 36 months older than T.T. at the time of the offense. Minn. Stat. § 609.342, subd. 1(a). Coe only disputes the first element. As noted above, the state’s evidence consisted of T.T.’s testimony, T.T.’s forensic interviews, and testimony from other individuals to whom T.T. had reported Coe’s abuse.

Coe argues that T.T.’s testimony is insufficient to sustain his conviction. Coe acknowledges that the law does not require corroboration of a victim’s testimony in criminal-sexual-conduct cases. *See* Minn. Stat. § 609.347, subd. 1 (2018) (the testimony of a victim in criminal-sexual-conduct cases “need not be corroborated”); *see also State v. Foreman*, 680 N.W.2d 536, 539 (Minn. 2004) (discussing that a guilty verdict may be based on the testimony of a single witness). Nevertheless, Coe claims that the evidence is insufficient based on *State v. Ani*, 257 N.W.2d 699, 700 (Minn. 1977), in which the Minnesota Supreme Court contemplated the possibility that an absence of corroboration might render a victim’s testimony insufficient to establish guilt. We are not persuaded that *Ani* requires reversal, as Coe argues, for two reasons.

evidence is “based on personal knowledge or observation and that, if true, proves a fact without inference or presumption” (quotation omitted)).

First, the language relied on by Coe from *Ani* is dictum, because the supreme court upheld *Ani*'s conviction based only on the victim's uncorroborated testimony:

Appellant claims the evidence is insufficient because there was no corroboration of the victims' testimony of sexual abuse and no medical testimony establishing penetration. This claim is without foundation. . . .

Appellant relies solely on dictum in *State v. Ani*, 257 N.W.2d 699 (Minn.1977), to support his contention Appellant's use of this language distorts the court's holding in *Ani*. In that case, the supreme court upheld the defendant's conviction for rape, finding the victim's testimony positive, uncontradicted and strongly corroborated by other evidence. *Ani*, 257 N.W.2d at 700.

State v. Folley, 378 N.W.2d 21, 24-25 (Minn. App. 1985); *see also Foreman*, 680 N.W.2d at 539 (“*Ani* clearly states that corroboration is not mandated by statute or the constitution.”).

Second, we defer to the fact-finder's credibility determinations, and it is not our role on appeal to reweigh the evidence or to reassess witness credibility. *See State v. Franks*, 765 N.W.2d 68, 73 (Minn. 2009) (“Our precedent does not permit us to re-weigh the evidence.”); *State v. Pippitt*, 645 N.W.2d 87, 94 (Minn. 2002) (“weighing the credibility of witnesses is a function exclusively for the jury”); *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989) (holding that appellate courts defer to the jury's credibility determinations even in the face of contrary evidence). Here, the jury credited T.T.'s testimony, disbelieving the evidence to the contrary. T.T. testified that Coe came into her bed, pulled her clothes off, and put his penis in her vagina and inside and outside her anus. T.T. testified that Coe moved back and forth and that she remembered feeling “numb and

pressure.” In addition, the forensic interviewer from CornerHouse described how T.T. was “able to talk about how people moved into the room and where the body positions were before, during, and after the assault. She talked about how her own body got turned, where he touched on her own body, and she was able to demonstrate that in three dimensions.” The interview also included T.T.’s description of Coe ejaculating. Deferring to the jury’s assessment of witness credibility and assuming that “the jury believed the state’s witnesses and disbelieved any evidence to the contrary,” *Porte*, 832 N.W.2d at 309 (quotation omitted), we conclude that there is sufficient evidence to support Coe’s conviction of first-degree criminal sexual conduct beyond a reasonable doubt.

II. Denial of Downward Dispositional Sentencing Departure

Coe makes two arguments regarding his sentence. First, Coe argues that the district court relied on an impermissible reason when it denied his motion for a dispositional departure because it considered offense-related factors rather than offender-related factors. We conclude that the district court properly relied on offense-related factors in denying the dispositional departure. Second, Coe argues that the district court abused its discretion when it denied his departure motion because he is particularly amenable to probation. Because the district court carefully evaluated the record before denying Coe’s departure motion, it did not abuse its discretion.

The Minnesota Sentencing Guidelines establish presumptive sentences for felony offenses. Minn. Stat. § 244.09, subd. 5 (2016). A sentence prescribed under the Minnesota Sentencing Guidelines is presumed to be appropriate. *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014). 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). “Substantial and compelling circumstances are those circumstances that make the facts of a particular case different from a typical case.” *State v. Peake*, 366 N.W.2d 299, 301 (Minn. 1985). The sentencing guidelines provide “a nonexclusive list of factors that may be used as reasons for departure.” *State v. Hicks*, 864 N.W.2d 153, 157 (Minn. 2015) (quotation omitted); *see also* Minn. Sent. Guidelines 2.D.3 (2016). To maintain uniformity and proportionality in sentencing, departures from the guidelines sentence are discouraged. *State v. Rund*, 896 N.W.2d 527, 532 (Minn. 2017).

The standard of review applied depends on the nature of the challenge to the district court’s departure decision. We apply a de novo standard of review to questions of law, such as the validity of the stated reason for departure. *State v. Jackson*, 749 N.W.2d 353, 357 (Minn. 2008); *see also* *Dillon v. State*, 781 N.W.2d 588, 595 (Minn. App. 2010) (observing that a de novo standard of review applies “when reviewing whether a particular reason for an upward departure is permissible”), *review denied* (Minn. July 20, 2010). We apply an abuse-of-discretion standard of review to the district court’s decision whether to depart. *Soto*, 855 N.W.2d at 307-08. Where a district court makes factual findings to which it then applies the provisions of the sentencing guidelines, we review those facts for clear error. *See State v. Critt*, 554 N.W.2d 93, 95 (Minn. App. 1996) (stating the general rule that district court findings of fact are subject to review for clear error), *review denied* (Minn. Nov. 20, 1996). In applying these standards of review, we have observed that only

“a rare case . . . would warrant reversal of the refusal to depart” on appeal. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

Coe first argues that the district court denied his dispositional departure motion for a legally impermissible reason: that it considered offense-related factors to deny the motion. Contrary to Coe’s argument, appellate courts have repeatedly held that district courts may consider both offense-related and offender-related factors when deciding whether to grant a request for a dispositional departure. *See State v. Stempfley*, 900 N.W.2d 412, 418 (Minn. 2017) (holding that a district court may issue a dispositional departure when it finds that the offense is significantly less serious than the typical case); *State v. Walker*, 913 N.W.2d 463, 468 (Minn. App. 2018) (“For a downward dispositional departure, a district court may consider both offender- and offense-related factors.”); *see also State v. Allen*, 706 N.W.2d 40, 46 (Minn. 2005) (“Upward dispositional departures under the guidelines may be based on either offender- or offense-related aggravating factors.”). We conclude that the district court properly relied on both offense-related and offender-related factors when it considered Coe’s departure motion.

Next, Coe argues that the district court abused its discretion in denying the departure request because he is particularly amenable to probation. When the district court imposes a sentence within the presumptive guidelines range, as is the case here, 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).

The district court did not abuse its discretion because the district court gave careful consideration to Coe's request before determining that the identified reasons for departure were not substantial or compelling. The district court denied the departure request because Coe's conduct was "so severe." The district court noted that, although it had few safety concerns regarding a probationary sentence because Coe did not have a history of criminal-sexual-conduct charges, the district court could not overlook the impact that Coe's offense had on T.T. And that it is "a horrible thing . . . to have a child raped and to have so much of her life lost as a result of it." The district court also reiterated that the jury found Coe guilty and found that the state established "two aggravating factors" that could support an upward departure. Ultimately, "after balancing all the things out," the district court concluded that it would not grant a departure either for the state or for Coe.

While there were reasons to support a downward departure, there were also reasons to support an upward departure and reasons to impose a presumptive guidelines sentence. The district court carefully considered all testimony and decided that none of the identified reasons were substantial or compelling enough to justify any departure. We conclude that the district court acted well within its discretion when it denied Coe's departure request.

Affirmed.