

*This opinion is nonprecedential except as provided by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
A20-0276**

State of Minnesota,
Respondent,

vs.

Michael Andre Richards,
Appellant.

**Filed February 8, 2021
Affirmed
Jesson, Judge**

Hennepin County District Court
File No. 27-CR-18-30318

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, Erik I. Withall, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Slieter, Presiding Judge; Jesson, Judge; and Cochran, Judge.

NONPRECEDENTIAL OPINION

JESSON, Judge

After pleading guilty to first-degree criminal sexual conduct for an incident of sexual abuse against his stepdaughter, appellant challenges the denial of a sentencing

departure. He argues that the district court erroneously believed it could not depart. That argument is refuted by the district court's own words and actions. Accordingly, we affirm.

FACTS

The state charged appellant Michael Andre Richards with first-degree criminal sexual conduct for molesting his ten-year-old stepdaughter. According to the complaint, Richards went into the victim's bedroom, supposedly to read her a bedtime story, and then sexually touched her shortly before being discovered by the victim's grandfather. The grandfather, suspicious of Richards, called the family pastor. The pastor spoke with the victim, who said that Richards had touched her. Richards ultimately admitted to his actions. He pleaded guilty to the first-degree criminal-sexual-conduct charge with no agreement as to the sentence.

The district court accepted the guilty plea and ordered a psychosexual evaluation and a presentence investigation (PSI).¹ The PSI recommended that the district court sentence Richards to 144 months in prison and ten years of conditional release.

Richards moved for downward dispositional and durational sentencing departures. In support of a dispositional departure, Richards suggested an intensive, residential, sex-offender-specific treatment program. In support of a durational departure, Richards pointed to the two psychosexual evaluations concluding that he presented a moderate to low risk to reoffend. He also noted his expressed remorse, early admission to the offense,

¹ Richards's public defender also arranged for a second psychosexual evaluation.

and his limited criminal history. The state argued that his age (34) and lack of criminal history did not distinguish him from other criminal defendants.

The district court rejected Richards's motion, stating:

I have heard what you've said. I heard what the prosecutor said. I heard what your lawyer . . . has said. I do see that there is a demonstration on your part in terms of remorse and acceptance, and I do believe that you need treatment and that it would help you. I am finding, *given all the facts and circumstances*, that *I am not able to depart* dispositionally or durationally and so I am going to impose the presumptive sentence.

(Emphasis added.) The district court imposed a 144-month sentence with ten years of conditional release.

Richards appeals, arguing that the district court's findings were ambiguous, suggesting that the district court believed it did not have the authority to grant a departure. He requests that we remand to the district court to clarify its findings.

DECISION

The Minnesota Sentencing Guidelines establish presumptive sentences for criminal offenses. Minn. Stat. § 244.09, subd. 5 (2018). The sentencing guidelines seek to “maintain uniformity, proportionality, rationality, and predictability in sentencing.” *Id.* “Consequently, departures from the guidelines are discouraged and are intended to apply to a small number of cases.” *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016). A district court may depart from the presumptive sentence only when “there exist identifiable, substantial, and compelling circumstances to support a departure.” Minn. Sent. Guidelines 2.D.1 (2018).

When substantial and compelling circumstances exist, the district court has broad discretion to depart, and we generally will not interfere with the exercise of that discretion. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). Only in a “rare” case will we reverse the district court’s refusal to depart from the presumptive sentence. *Id.* And we will not reverse the district court’s refusal to depart “as long as the record shows the [district] 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).

Here, Richards sought downward dispositional and durational sentencing departures. A downward durational departure (when the length of a sentence is shortened) must be based on factors that reflect the seriousness of the offense. *Solberg*, 882 N.W.2d at 623. A downward durational departure “is justified if the defendant’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). When considering a downward dispositional departure (when a prison sentence is stayed and the defendant is placed on probation), the district court focuses “more on the defendant as an individual and on whether the presumptive sentence would be best for him and for society.” *State v. Heywood*, 338 N.W.2d 243, 244 (Minn. 1983). A defendant’s particular amenability to probation may justify a dispositional-departure from a presumptive sentence. *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014).

The record here reflects that the district court considered the reasons proffered for both departure requests. Indeed, Richards does not argue that the district court failed to do

so. Instead, he argues that the district court *may* have erroneously believed that it lacked the discretion to depart. He relies on the district court’s statement that it was “not able to depart dispositionally or durationally.” He asks that we remand to the district court to clarify this statement.

While it is true that in some instances a district court lacks the discretion to grant a departure—for example, when a statute requires a mandatory-minimum sentence under certain circumstances—nothing here implies that the district court understood this case to be one of those instances. *See State v. Olson*, 325 N.W.2d 13, 17-18 (Minn. 1982) (noting that the legislature may restrict judicial discretion in sentencing). Before denying Richards’s departure motion, the district court explicitly noted that it had listened to each party’s sentencing arguments. No party asserted or implied that the district court did not have the discretion to depart. In fact, the prosecutor’s sentencing arguments recognized that the district court did have the discretion to depart if substantial and compelling circumstances existed. Neither the PSI nor the psychosexual evaluations suggested that the district court lacked the discretion to depart. And the prosecutor did not challenge the district court’s discretion or authority to grant a departure. Certainly, the district court never noted its lack of discretion, only its unwillingness to depart.

Richards leans heavily on two words spoken by the district court to argue error: “not able.” In doing so, Richards ignores the context provided in the same sentence: “I am finding, *given all the facts and circumstances* that I am not able to depart” (Emphasis added.) Considered in this context, it is clear to us that the district court did not erroneously

believe that it lacked the discretion to depart. The court simply chose not to do so.² Finally, we are not persuaded that the district court in this case confused its authority to grant a departure simply, as Richards suggests, because sentencing for first-degree criminal sexual conduct is confusing.³ We discern no such confusion in the district court's clear order here. In sum, the district court acted within its wide discretion by imposing a presumptive sentence.

Affirmed.

² Moreover, applying Richards's reading of the district court's comments, the court was not necessarily wrong. Based on *Soto*, if substantial and compelling circumstances do not exist, then the district court does not in fact have the discretion to depart. 855 N.W.2d at 308.

³ Richards also argues that the district court made findings that arguably support a departure, further supporting the conclusion that the district court erroneously believed that it lacked the discretion to depart. We disagree. Even if the findings might have supported a departure, the district court still had the discretion to impose the presumptive sentence. See *State v. Olson*, 765 N.W.2d 662, 664-65 (Minn. App. 2009). It is clear that the district court carefully considered the parties' arguments and the facts and circumstances of this case before exercising its discretion to impose the presumptive sentence.