

*This opinion is nonprecedential except as provided by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
A20-1012**

State of Minnesota,
Respondent,

vs.

Jonathon Ross Rudquist,
Appellant.

**Filed April 19, 2021
Affirmed
Worke, Judge**

Carver County District Court
File No. 10-CR-19-323

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

Mark Metz, Carver County Attorney, Angella Erickson, Assistant County Attorney,
Chaska, Minnesota (for respondent)

Deborah Ellis, Ellis Law Office, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Worke, Judge; and Jesson,
Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant challenges his convictions for dissemination and possession of child
pornography, arguing that the district court improperly imposed sentences for offenses that

were committed as part of a single behavioral incident and abused its discretion by denying his request for a downward dispositional departure. We affirm.

FACTS

In December 2019, appellant Jonathon Ross Rudquist pleaded guilty to two counts of dissemination of child pornography in violation of Minn. Stat. § 617.247, subd. 3(a) (2016), and four counts of possession of child pornography in violation of Minn. Stat. § 617.247, subd. 4(a) (2016). Rudquist admitted that on June 13 and 14, 2017, an FBI agent downloaded 44 images of child pornography that Rudquist made available from his computer; on June 17, 2017, an FBI agent downloaded 119 files of child pornography that Rudquist made available from his computer; on July 25, 2017, he personally downloaded three images of child pornography; and on July 27, 2017, he personally downloaded one image of child pornography.

A presentence-investigation (PSI) report showed that the presumptive sentences for the counts of dissemination of child pornography were 24 months stayed for count one and 36 months stayed for count two. The presumptive sentence for the first count of possession of child pornography was also a stayed sentence of 30 months. The presumptive sentences for the final three possession counts were presumptive commits of 39 months, 51 months, and 60 months respectively. The PSI report recommended that the district court sentence Rudquist to 60 months in prison.

Rudquist objected to the criminal-history-score calculation in the PSI report, arguing, among other things, that the possession counts were part of a single behavioral incident.¹ Rudquist also moved for a downward dispositional departure.

At Rudquist's sentencing, the district court indicated that it reviewed the PSI report and the victim-impact statements. Rudquist argued that he should receive probation because he has no new offenses and will continue to be observed on probation. He argued that he took accountability for his actions, was remorseful, and that his mental illness contributed to his offenses. Rudquist argued that he has a close friend who was a sex-trafficking victim who understands what he did and supports him. Rudquist argued that he never intentionally disseminated material, he was "simply participating in the system as it exists."

The state argued that Rudquist did not seek treatment on his own after the search warrant was executed in 2017, but waited until after he was charged and retained counsel in 2019. The prosecutor also noted that Rudquist was ranked at a moderate-to-high risk to reoffend and noted that his remorse stemmed from the fact that he was facing prison. The prosecutor stated that the videos were "horrific" and the children were "torture[d] and abuse[d]," but Rudquist was not disturbed and sought out the videos for sexual pleasure. The prosecutor agreed that Rudquist had little criminal history and was cooperative and

¹ The *Hernandez* method permits a conviction for which the defendant is first sentenced to be added to his criminal-history score for another conviction when he is sentenced for multiple convictions on the same day. See *State v. Williams*, 771 N.W.2d 514, 521 (Minn. 2009). But when a defendant is sentenced for multiple convictions based on a single behavioral incident, the district court is prohibited from using the *Hernandez* method to calculate the defendant's criminal-history score. *Id.* at 522.

appropriate in court, but stated that similar offenders are also appropriate and respectful and have minimal criminal history.

The district court denied Rudquist's motion for a dispositional departure. It imposed concurrent stayed sentences on counts one through three: 24 months on count one, 36 months on count two, and 30 months on count three. The district court sentenced Rudquist to a concurrent 27 months in prison on count four, which was a downward durational departure, and did not impose sentences on counts five and six. This appeal followed.

DECISION

Sentences for possession convictions

Rudquist first argues that the counts of possession of child pornography either arose out of a single behavioral incident with the dissemination counts, or were themselves part of a single behavioral incident for which he should have received one sentence. When facts are not in dispute, this court reviews de novo “[w]hether multiple offenses form part of a single behavioral act.” *State v. Marchbanks*, 632 N.W.2d 725, 731 (Minn. App. 2001).

The single-behavioral-incident rule requires a district court to impose punishment for only one crime when a defendant is convicted for conduct that involves more than one crime. *See* Minn. Stat. § 609.035, subd. 1 (2016); *Williams*, 771 N.W.2d at 520. The rule intends to “prohibit double punishment and . . . insure that punishment for a single incident of criminal behavior involving a multiplicity of violations will be commensurate with the criminality of [the] defendant’s misconduct.” *State v. Johnson*, 141 N.W.2d 517, 521-22 (Minn. 1966). Whether criminal behavior is a single behavioral incident depends on “factors of time and place . . . [and] whether the segment of conduct involved was

motivated by an effort to obtain a single criminal objective.” *Id.* at 525 (emphasis omitted). The state bears the burden of establishing that the underlying conduct did not occur as part of a single behavioral incident. *State v. Williams*, 608 N.W.2d 837, 841-42 (Minn. 2000).

Dissemination and possession offenses

“[P]ossession of a pornographic work involving a minor is an included offense of dissemination of such a work.” *State v. Bertsch*, 707 N.W.2d 660, 664 (Minn. 2006). “[A] defendant cannot be convicted of both dissemination and possession of a pornographic work unless the offenses constitute separate criminal acts.” *State v. McCauley*, 820 N.W.2d 577, 590 (Minn. App. 2012) (quotation omitted), *review denied* (Minn. Oct. 24, 2012). In determining whether two offenses are separate criminal acts, courts consider, “whether the conduct (1) shares a unity of time and place and (2) was motivated by an effort to obtain a single criminal objective.” *Id.* at 591 (quotation omitted).

Here, the dissemination and possession offenses are separate criminal acts because they do not share unity of time. The dissemination offenses occurred in June 2017; the possession charges occurred in July 2017. Further, this court determined in *McCauley* that child pornography dissemination and possession offenses are not motivated by the same criminal objective, because possession is for “personal use and prurient enjoyment,” and dissemination is “sharing those files with others.” *Id.*

Possession offenses

The single-behavioral-incident rule has several exceptions, including an exception for multiple victims. *State v. Skipintheway*, 717 N.W.2d 423, 426 (Minn. 2006). A district court may impose multiple sentences for crimes arising out of a single behavioral incident

when there are multiple victims and the sentences do not unfairly exaggerate the criminality of the defendant's conduct. *Id.* The multiple-victim exception applies to sentencing for multiple convictions of possessing child pornography when the crimes affected more than one victim. *State v. Rhoades*, 690 N.W.2d 135, 139 (Minn. App. 2004). This court reviews a district court's decision to impose multiple sentences involving multiple victims for an abuse of discretion. *State v. Cruz-Ramirez*, 771 N.W.2d 497, 512 (Minn. 2009). On appeal, Rudquist bears the burden of showing that his sentence unfairly exaggerates the criminality of his conduct. *See State v. Hough*, 585 N.W.2d 393, 398 (Minn. 1998).

In pleading guilty to the four possession offenses, Rudquist admitted that “each of the children depicted in these images are identified children that were under the age of 16 that were identified by the National Center for Missing and Exploited Children,” and that “each of the images . . . depicted separate, distinct children.” As different victims were identified and admitted to, the district court properly imposed multiple sentences for multiple victims. Additionally, the district court did not impose sentences on counts five and six, and Rudquist received a downward durational departure on count four; thus, he has not shown that his sentence unfairly exaggerates the criminality of his conduct.

Dispositional departure

Finally, Rudquist argues that the district court abused its discretion by denying his motion for a downward dispositional departure. A sentence prescribed by the sentencing guidelines is presumed appropriate. *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014). A district court may depart from a presumptive sentence only if “identifiable, substantial, and compelling circumstances” warrant a departure. *State v. Solberg*, 882 N.W.2d 618, 623

(Minn. 2016) (quotation omitted). Appellate courts “afford the [district] court great discretion in the imposition of sentences and reverse . . . only for an abuse of that discretion.” *Soto*, 855 N.W.2d at 307-08 (quotation omitted). “[I]t would be a rare case which would warrant reversal of the refusal to depart.” *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

In considering a motion for a downward dispositional departure, a district court’s focus is on the defendant and whether he is particularly amenable to probation. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982) (stating that in assessing whether a defendant is particularly amenable to probation, a district court may consider age, prior record, remorse, cooperation, attitude in court, and support of family and friends).

Rudquist argues that after analyzing the *Trog* factors, the district court concluded that he was particularly amenable to probation, but denied him a dispositional departure. The district court stated that, although Rudquist was particularly amenable to probation, an “executed sentence [was] necessary in this case.” A district court may deny a dispositional departure even if the defendant is amenable to probation. *State v. Olson*, 765 N.W.2d 662, 664-65 (Minn. App. 2009). And, as the district court did here, a district court may consider offense-related factors in deciding whether a dispositional departure is appropriate. *See State v. Walker*, 913 N.W.2d 463, 468 (Minn. App. 2018).

The district court stated that it had kept an open mind while giving a lot of thought to Rudquist’s sentence and decided that a prison sentence was required based on the reasons explained by the prosecutor. The prosecutor argued that Rudquist did not seek treatment until after he was charged in 2019, even though the search warrant was executed

in 2017; was ranked at a moderate-to-high risk to reoffend; did not undergo a polygraph to assess whether he had ever sexually touched a child, and most individuals similarly charged have engaged in contact offenses; was remorseful only because he was facing prison; sought out videos for sexual pleasure in which children were “torture[d] and abuse[d]”; and was like most child-pornography-possession offenders in that he was cooperative and appropriate in court and had minimal criminal history. Thus, the district court properly considered all relevant factors and did not abuse its discretion by denying Rudquist a downward dispositional departure.

Affirmed.