

*This opinion is nonprecedential except as provided by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
A21-0807**

State of Minnesota,
Respondent,

vs.

Samson Odey Finch,
Appellant.

**Filed May 23, 2022
Affirmed
Wheelock, Judge**

Chisago County District Court
File No. 13-CR-19-1163

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

Janet Reiter, Chisago County Attorney, Lacy E. Schumacher, Assistant County Attorney,
Center City, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Minnesota; and

Melissa Sheridan, Assistant Public Defender, Eagan, Minnesota (for appellant)

Considered and decided by Bryan, Presiding Judge; Wheelock, Judge; and Smith,
John, Judge.*

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

NONPRECEDENTIAL OPINION

WHEELLOCK, Judge

In this appeal from the district court's sentence following his guilty plea to first-degree criminal sexual conduct, appellant argues that the district court abused its discretion by failing to adequately consider his mental, psychological, and emotional issues when it denied his motion for a downward durational departure. We affirm.

FACTS

In December 2019, then-22-year-old appellant Samson Odey Finch engaged in penetrative sex acts against a 12-year-old child in his vehicle. Finch thought the child was 13 years old. Respondent State of Minnesota charged Finch with first-degree criminal sexual conduct in violation of Minn. Stat. § 609.342, subd. 1(a) (Supp. 2019), and electronic solicitation of a child in violation of Minn. Stat. § 609.352, subd. 2a(1) (2018). Finch pleaded guilty to first-degree criminal sexual conduct. As part of the plea agreement, Finch acknowledged that the presumptive sentence for his offense was an executed 144-month prison term. The state dismissed the solicitation charge and acknowledged that Finch could move for a sentencing departure. The parties submitted extensive information and documents to the district court for its consideration at sentencing.

Finch voluntarily participated in a psychosexual evaluation. The evaluator noted that, while growing up, Finch was abused physically, emotionally, and sexually by his father and several cousins. The evaluator stated that Finch “appears motivated for treatment” but presents the offense as “an accident or as something that ‘just happened.’” The evaluator suggested several possible mental-health diagnoses for Finch, including

depression, anxiety, obsessive-compulsive disorder (sexual preoccupation), other specified paraphilic disorder, antisocial personality disorder, and substance-abuse disorders. Finally, the evaluator concluded that Finch (1) is at “above average risk for re-offending”; (2) should begin his sex-offender treatment “in a setting where he has very limited degrees of freedom”; (3) failed to fully appreciate the nature of his actions; and (4) will require lengthy treatment to address his sexual and psychological issues.

Although Finch voluntarily entered and completed a Teen Challenge chemical-health treatment program shortly after committing this offense, he was unsuccessfully discharged from two follow-up treatment programs. After his second unsuccessful discharge from chemical-health treatment, Finch entered a residential sex-offender treatment program at Alpha Human Services. Finch initially displayed a positive attitude and complied with assignments, but Alpha discharged him for violating multiple program rules, including exhibiting threatening behavior and having a friend drop drugs off at the residence. Finch’s discharge summary states that he is not amenable to drug or sex-offender treatment because he lacks a motivating factor to continue treatment.

A presentence investigation (PSI) report recounted Finch’s traumatic past, his long history of substance abuse, his unsuccessful discharges from chemical-health treatment programs, his unsuccessful discharge from Alpha, and that, after his discharge from Alpha, Finch contacted a 14-year-old child via social media (though he stopped communicating with her after learning her age). The PSI report recommended the presumptive 144-month executed prison sentence.

Finally, Finch's dispositional advisor prepared an alternative PSI report. The advisor discussed several factors including (1) Finch's traumatic past involving abuse, drug use, and mental-health issues; (2) Finch's support from his brother and mother; (3) Finch's daughter as motivation for him to address his chemical- and mental-health issues; and (4) Finch's demonstrations of remorse and regret. The dispositional advisor concluded that a departure may be appropriate because Finch had not exhausted all treatment options and a "lighter sentence may provide [him] with a reason to continue his rehabilitation efforts."

At sentencing, the district court stated that it had thoroughly reviewed the parties' motion papers, the PSI report, the alternative PSI report, the psychosexual evaluation, letters and discharge summaries from various treatment programs, letters from Finch and his mother, and the arguments of counsel. It denied Finch's motion for a dispositional or durational departure and imposed the presumptive 144-month sentence.

Finch appeals.

DECISION

Finch argues that the district court abused its discretion by denying his request for a downward durational departure when his unique circumstances, specifically his mental, psychological, and emotional characteristics, as well as his remorse, are mitigating factors warranting departure.¹ We are not persuaded.

¹ We note that Finch submitted a lengthy pro se supplemental brief. We have carefully reviewed Finch's supplemental brief, but because it contains no legal arguments, we do not address its contents in this opinion. *State v. Taylor*, 869 N.W.2d 1, 22 (Minn. 2015).

We review a district court’s decision whether to depart from a presumptive sentence for an abuse of discretion. *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016). The Minnesota Sentencing Guidelines limit the district courts’ sentencing discretion by prescribing presumptive sentences. *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014). The district court must adhere to those presumptive sentences unless “identifiable, substantial, and compelling” reasons support its decision to depart. Minn. Sent. Guidelines 2.D.1 (2018). We will reverse the district court’s denial of a departure only in a “rare” case. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

In determining whether to grant a durational departure, the district court considers “factors that reflect the seriousness of the *offense*, not the characteristics of the offender.” *Solberg*, 882 N.W.2d at 623-24. “A downward durational departure is justified only if the defendant’s conduct was ‘significantly less serious than that typically involved in the commission of the offense.’” *Id.* at 624 (quoting *State v. Mattson*, 376 N.W.2d 413, 415 (Minn. 1985)). Nevertheless, the district court is not obligated to grant a departure even when there are grounds to do so. *State v. Olson*, 459 N.W.2d 711, 716 (Minn. App. 1990), *rev. denied* (Minn. Oct. 25, 1990). And the district court need not provide reasons for denying a departure. *State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985). Instead, the district court must demonstrate only that it exercised its discretion by considering the reasons for and against departure. *Id.*

Here, the district court found that none of Finch’s alleged mitigating factors corresponded with the elements of first-degree criminal sexual conduct; thus, none of them made Finch’s offense less serious. The district court found that Finch knew the victim was

a minor. It stated that Finch's offense was "typical" of a first-degree criminal-sexual-conduct case. It therefore denied Finch's motion for a downward durational departure.

The circumstances of the offense support the district court's decision. Finch knew the victim was no older than 13 years old and that he was 22 years old. He nevertheless subjected her to penetrative sex with him. The district court did not abuse its discretion by determining that Finch's conduct was not "significantly less serious than that typically involved" in a first-degree criminal-sexual-conduct case under Minnesota Statutes section 609.342, subdivision 1(a). *Solberg*, 882 N.W.2d at 624.

Finch's arguments on appeal are focused on his mental, psychological, and emotional characteristics as mitigating factors, but these characteristics are offender-related factors that are appropriate for the district court to consider in determining whether to grant a dispositional departure, not a durational departure. *See id.* (noting that age, family support, and cooperation with law enforcement are offender-related characteristics relating to dispositional departure, not durational departure). Moreover, the record shows that the district court reviewed and considered Finch's unique circumstances, including his childhood trauma, his mental- and chemical-health issues, and his remorse. That is all the district court is required to do. *See Van Ruler*, 378 N.W.2d at 80 (stating that the district court need only demonstrate that it considered the factors for and against departure). Further, the district court need not depart even if mitigating factors are present. *Olson*, 459 N.W.2d at 716.

Finally, Finch argues that his remorse for his actions is a mitigating factor. While remorse may support a downward durational departure when remorse or lack thereof “bears on a determination of the cruelty or the seriousness of the conduct,” a court need not grant a durational departure when it doubts that the remorse is genuine. *Solberg*, 882 N.W.2d at 626. Here, although the district court stated at sentencing that Finch showed some remorse for the victim and for his behavior, it also noted that based on the psychosexual evaluation, Finch did not fully appreciate the nature of his behavior or the risks to which he exposed himself and others. We discern no abuse of discretion in the district court’s consideration of Finch’s expressions of remorse or its decision to deny Finch’s motion for a downward durational departure.

Affirmed.