

*This opinion is nonprecedential except as provided by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
A21-1339**

State of Minnesota,
Respondent,

vs.

Scott Wayne Srnsky,
Appellant.

**Filed August 15, 2022
Affirmed
Connolly, Judge**

Pennington County District Court
File No. 57-CR-20-276

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

Seamus P. Duffy, Pennington County Attorney, Max W. Lacoursiere, Assistant County Attorney, Thief River Falls, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Kathryn J. Lockwood, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Connolly, Judge; and Larkin, Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

On appeal from his conviction of conspiracy to commit first-degree controlled-substance crime, appellant argues that the district court abused its discretion by denying his motion for a downward durational departure. We affirm.

FACTS

In May 2020, respondent State of Minnesota charged appellant Scott Srnsky with one count of conspiracy to commit first-degree controlled-substance crime—possession. The complaint alleged that between December 7, 2019, and April 29, 2020, Srnsky and a codefendant arranged to have eleven packages containing methamphetamine and marijuana shipped to Srnsky’s home from California. The complaint also alleged that on May 1, 2020, a package sent from California to Srnsky’s address was intercepted by law enforcement and a search of the package revealed approximately 127 grams of methamphetamine.

Srnsky waived his right to a jury trial and entered an *Alford* plea to the charged offense.¹ In exchange for Srnsky’s guilty plea, the state agreed to request the presumptive sentence of 95 months in prison and Srnsky would be permitted to argue for a downward durational departure. Srnsky subsequently moved for a downward durational departure, arguing that a departure was warranted because his offense was less serious than the typical first-degree controlled-substance conspiracy crime due to his limited role in the offense. The district court found that there were no “substantial, identifiable, and compelling reasons to depart” and, therefore, denied Srnsky’s motion. The district court then sentenced Srnsky to a bottom-of-the-box guidelines sentence of 81 months in prison. This appeal follows.

¹ A defendant may plead guilty even though he maintains innocence under *North Carolina v. Alford*, 400 U.S. 25, 38 (1970).

DECISION

Srnsky challenges the district court's denial of his motion for a downward durational departure. We review such a claim for an abuse of the wide discretion given to the district court in the imposition of criminal sentences. *State v. Rund*, 896 N.W.2d 527, 532 (Minn. 2017). Only rarely would an appellate court reverse a sentence that falls within the presumptive range. *State v. Kangbateh*, 868 N.W.2d 10, 14 (Minn. 2015).

The Minnesota Sentencing Guidelines establish presumptive sentences for felony offenses. Minn. Stat. § 244.09, subd. 5 (2020). The sentencing guidelines seek to “maintain uniformity, proportionality, rationality, and predictability in sentencing” of felony crimes. *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 (2019).

A durational departure is a sentence that is shorter or longer than the presumptive range prescribed by the Minnesota Sentencing Guidelines. *Solberg*, 882 N.W.2d at 623. Only offense-related reasons may justify a durational departure. *Rund*, 896 N.W.2d at 533. A downward durational departure is not justified unless the defendant's conduct was significantly less serious than the conduct typically associated with the offense. *Solberg*, 882 N.W.2d at 624.

Srnsky argues that his conduct “was less serious than the conduct typically associated with a first-degree controlled substance charge” because his codefendant “was

the individual getting methamphetamine shipped from California to [Srnsky's] residence,” and his codefendant was the individual who “would primarily possess and sell the methamphetamine.” This argument is unpersuasive. When the defendant’s actions fit squarely within the conduct prohibited by the statute, the offense is not significantly less serious than typical. *Rund*, 896 N.W.2d at 534; *Solberg*, 882 N.W.2d at 627.

Here, Srnsky was charged with first-degree conspiracy to commit a controlled-substance crime, which required the state to prove that there was “(1) an agreement between two or more people to commit a crime; and (2) an overt act in furtherance of the conspiracy.” *State v. Kuhnau*, 622 N.W.2d 552, 556 (Minn. 2001). Srnsky’s conduct fits squarely within the prohibited conduct; he had an agreement with his codefendant to have methamphetamine shipped to his address and committed an overt act in furtherance of this conspiracy by having the methamphetamine shipped to his residence. Moreover, the record reflects that when law enforcement searched Srnsky’s residence, they discovered cash, methamphetamine, a scale, and small baggies used for repackaging and distributing controlled substances. The record also includes text messages between Srnsky and his codefendant demonstrating that Srnsky played more than a passive role in the conspiracy offense. And even if there were substantial and compelling reasons to depart, the district court was not required to actually do so. *See State v. Olson*, 459 N.W.2d 711, 716 (Minn. App. 1990) (stating that even if the individual case provides grounds for departure, the district court is not required to depart), *rev. denied* (Minn. Oct. 25, 1990).

Srnsky also contends that a “downward durational departure was . . . appropriate because [his] sentence was excessive when compared to that of his codefendant.” But the

record reflects that the district court sentenced both Srnsky and his codefendant to bottom-of-the-box guidelines sentences. Although Srnsky's sentence is longer than his codefendant's sentence, he has a criminal-history score of three and Srnsky's codefendant has a criminal-history score of one. Srnsky makes no argument that his criminal-history score was improperly calculated and, therefore, Srnsky cannot show that the district court abused its discretion by imposing a longer sentence on Srnsky than his codefendant. Accordingly, the district court did not abuse its discretion by denying Srnsky's motion for a downward durational departure.

Affirmed.