

*This opinion is nonprecedential except as provided by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
A21-1627**

State of Minnesota,
Respondent,

vs.

Mark Daniel Murrell, Jr.,
Appellant.

**Filed November 14, 2022
Affirmed
Jesson, Judge**

Rice County District Court
File No. 66-CR-20-2809

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

John L. Fossum, Rice County Attorney, Sean R. McCarthy, Assistant County Attorney,
Faribault, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Amy Lawler, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

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

NONPRECEDENTIAL OPINION

JESSON, Judge

Appellant Mark Daniel Murrell, Jr., was charged with one count of criminal sexual
conduct for allegedly penetrating his 15-year-old stepdaughter after intentionally giving
her medication to render her helpless. Respondent State of Minnesota offered to dismiss

the count of first-degree criminal sexual conduct and request a presumptive guidelines sentence if Murrell pleaded guilty to one count of third-degree criminal sexual conduct. Murrell agreed. The district court accepted the guilty plea and imposed a sentence of 91 months in prison, a top-of-the-box sentence.

On direct appeal, Murrell argues that the district court abused its discretion by imposing a top-of-the-box guidelines sentence. Because the district court acted within its broad discretion by imposing a presumptive sentence, we affirm.

FACTS

On the evening of December 12, 2020, Murrell was at home with his wife, his 15-year-old stepdaughter, and the couple's three children. Murrell testified at the plea hearing that his stepdaughter was incapacitated because "she had taken something" like a sleeping pill.¹ While she slept, Murrell entered his stepdaughter's room and penetrated her vagina with his penis.

On September 9, 2021, Murrell was sentenced pursuant to a plea agreement with the state. The agreement called for Murrell to plead guilty to one count of third-degree criminal sexual conduct, and for the state to dismiss one count of first-degree criminal sexual conduct. The agreement further called for Murrell to receive a guideline sentence with the possibility of release and a minimum term of imprisonment of 65 months.

¹ Throughout the record, both parties and the district court reference the pill that incapacitated Murrell's stepdaughter as a prescription "sleeping pill" without identifying the type or brand of medication. Because the brand name of the pill does not impact our analysis, we do the same.

Murrell was assigned two criminal-history points: one point for custody status and one felony point. Murrell’s criminal sexual conduct is a severity-level-C offense. Minn. Sent’g Guidelines 4.B (2020). Here, the presumptive sentence duration was 76 months in prison, with a range between 65 and 91 months. *Id.* The district court observed that Murrell was in a position of trust over his 15-year-old stepdaughter and the criminal sexual conduct took place while the victim was incapacitated with a sleeping pill.² The district court then imposed a top-of-the-box sentence of 91 months in prison, a sentence within the presumptive range.

Murrell appeals.

DECISION

The district court has broad discretion in the imposition of sentences. *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014). Appellate courts will reverse a sentencing decision only for an abuse of discretion. *Id.* And where, as is the case here, the sentence falls within the presumptive sentencing guidelines,³ we are reticent to exercise our authority to modify a sentence. *See State v. Delk*, 781 N.W.2d 426, 428 (Minn. App. 2010), *rev. denied* (Minn.

² On appeal, Murrell does not argue that the district court’s reliance, in part, on an element of the offense for a longer—though still presumptive—sentence is improper. *State v. Butcher*, 563 N.W.2d 776, 780 (Minn. App. 1997) (noting that issues not briefed on appeal are waived), *rev. denied* (Minn. Aug. 5, 1997).

³ A presumptive sentence is “presumed to be appropriate for all typical cases sharing criminal history and offense severity characteristics.” Minn. Sent’g Guidelines 1.B.13 (2020). In determining a presumptive sentence, the district court locates the cell on the grid that corresponds to the offense level and the defendant’s criminal history score. *See* Minn. Sent’g Guidelines 4.B. Here, the corresponding cell contained three numbers, each number representing a presumptive sentence. *See State v. Jackson*, 749 N.W.2d 353, 359 n.2 (Minn. 2008).

July 20, 2010). We would consider doing so only in the rare case, with compelling circumstances. *Id.*

Murrell argues that compelling circumstances exist here because “he showed remorse and pled guilty to prevent trauma to the victim.” And he relies upon a report from the Minnesota Sentencing Guidelines Commission to bolster his argument that the sentence unfairly exaggerates the criminality of his conduct. We address each issue in turn.

With regard to Murrell’s remorse and decision to plead guilty, we observe that Murrell’s acknowledgement of wrongdoing did not come until the sentencing hearing. As the district court noted, Murrell gave conflicting descriptions of events, and that his “responsibility or acknowledgment” of the criminal sexual conduct at the sentencing hearing was unexpected. And the district court acknowledged that Murrell did not put his stepdaughter through a trial and ultimately took responsibility for his criminal sexual conduct. We discern no abuse of discretion in the district court’s careful consideration of Murrell’s exceptional-circumstances argument with regard to his remorse and decision to plead guilty.

To persuade us otherwise, Murrell points to a report from the Minnesota Sentencing Guidelines Commission which compiled data from 526 convictions for first- through fifth-degree criminal sexual conduct in 2019.⁴ According to the report, 54% of the 2019 criminal-sexual-conduct sentences in Minnesota did not call for an executed sentence in

⁴ See Minn. Sent’g Guidelines Comm’n, *Sex Offenses: Sentencing Practices for Offenses Sentenced in 2019* (2021), http://mn.gov/sentencing-guidelines/assets/MSGC2019ReportSexOffenses_tcm30-509087.pdf.
[<https://perma.cc/J6Y2-PAFG>]

contrast to the top-of-the-box sentence the district court imposed. *Id.* at 19. This data, Murrell contends, should compel us to reverse the district court and remand for resentencing.

We disagree. The report qualifies the probation statistic Murrell relies on, providing that, “[o]f the probation sentences, 68 percent received probation because it was the presumptive sentence.” *Id.* And here, Murrell received just that: a presumptive sentence.

In sum, the record shows that the district court carefully considered the testimony and other evidence presented before imposing a presumptive sentence of 91 months in prison. Given that appellate courts only reverse a district court’s refusal to depart from a presumptive sentence in a “rare case,” we see no compelling reasons to do so here. *Delk*, 781 N.W.2d at 428 (quotation omitted). Thus, the district court did not abuse its discretion by imposing a 91-month sentence.

Affirmed.