

*This opinion is nonprecedential except as provided by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
A23-1046**

State of Minnesota,
Respondent,

vs.

Andre Benjamin Stigger,
Appellant.

**Filed July 15, 2024
Affirmed
Johnson, Judge**

Ramsey County District Court
File No. 62-CR-22-4519

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

John J. Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Max B. Kittel, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Johnson, Judge; and Reyes, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

Andre Benjamin Stigger pleaded guilty to second-degree criminal sexual conduct. The district court imposed a middle-of-the-box sentence of 140 months of imprisonment.

We conclude that the district court did not err by denying Stigger’s request for a bottom-of-the-box sentence of 119 months of imprisonment. Therefore, we affirm.

FACTS

In August 2022, the state charged Stigger with first-degree criminal sexual conduct, in violation of Minn. Stat. § 609.342, subd. 1a(e) (2022). The state later amended the complaint to add a charge of second-degree criminal sexual conduct, in violation of Minn. Stat. § 609.343, subd. 1a(e) (2022). The state alleged in both the original complaint and the amended complaint that Stigger removed a five-year-old boy’s pants and touched the boy’s penis with his hands and his mouth.

In October 2022, the parties entered into a plea agreement. Stigger agreed to enter a *Norgaard* plea¹ to the charge of second-degree criminal sexual conduct, and the state agreed to dismiss the charge of first-degree criminal sexual conduct.

At sentencing, the state asked the district court to impose a 140-month prison sentence, which is the middle of the presumptive sentencing range. *See* Minn. Sent’g Guidelines 4.B (2022). Stigger argued for a 119-month prison sentence, which is the shortest sentence in the presumptive sentencing range. *See id.* Stigger’s attorney relied on the probation officer’s recommendation of 119 months and argued that a shorter sentence is justified by Stigger’s remorse and age, which was 57 at the time of sentencing.

¹A defendant may be allowed to enter a *Norgaard* plea if he or she “claims a loss of memory, through amnesia or intoxication, regarding the circumstances of the offense” and “the evidence against the defendant is sufficient to persuade the defendant and his or her counsel that the defendant is guilty or likely to be convicted of the crime charged.” *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994); *see also State ex rel. Norgaard v. Tahash*, 110 N.W.2d 867, 871-72 (Minn. 1961).

The district court imposed a sentence of 140 months of imprisonment, to be followed by a lifetime term of conditional release.

Stigger appeals. His appellate public defender raises one issue, and he raises two additional issues in a *pro se* supplemental brief.

DECISION

I. Duration of Sentence

With the assistance of appellate counsel, Stigger argues that the district court erred by denying his request for a 119-month sentence and imposing a 140-month sentence.

The Minnesota Sentencing Guidelines prescribe presumptive sentences for felony offenses. Minn. Sent’g Guidelines 2.C (2022). The applicable cell in the applicable grid of the sentencing guidelines typically states a “presumptive range,” which spans durations that are “15 percent lower and 20 percent higher than the fixed duration displayed in each cell.” Minn. Sent’g Guidelines 1.B.13.c (2022). For any particular offense, a sentence within the presumptive range is “presumed to be appropriate for all typical cases sharing criminal history and offense severity characteristics.” Minn. Sent’g Guidelines 1.B.13. Accordingly, a district court “must pronounce a sentence . . . within the applicable [presumptive] range . . . unless there exist identifiable, substantial, and compelling circumstances to support a departure.” Minn. Sent’g Guidelines 2.D.1 (2022). A bottom-of-the-box sentence is “not a downward departure.” *State v. Jackson*, 749 N.W.2d 353, 359 n.2 (Minn. 2008).

An appellate court “generally will not interfere with a sentencing court’s decision to impose a term within the presumptive sentence range.” *State v. Kangbateh*, 868 N.W.2d

10, 14 (Minn. 2015). Furthermore, “any sentence within the presumptive range . . . constitutes a presumptive sentence.” *State v. Delk*, 781 N.W.2d 426, 428 (Minn. App. 2010), *rev. denied* (Minn. July 20, 2010). “This court will not generally review a district court’s exercise of its discretion to sentence a defendant when the sentence imposed is within the presumptive guidelines range.” *Id.* We may modify a presumptive sentence but only in “rare” cases and only if modification is supported by “compelling circumstances.” *Id.* (quotations omitted).

In this case, the district court stated reasons for its sentencing decision after listening to the parties’ arguments and the child’s mother’s victim-impact statement. The district court stated that a middle-of-the-box sentence is more appropriate than a bottom-of-the-box sentence in light of Stigger’s criminal history, his “failure to take responsibility until this moment today,” the child’s vulnerability, the unlikelihood that Stigger would engage in sex-offender treatment, and the likelihood that Stigger would re-offend. The district court acknowledged the probation officer’s recommendation of a bottom-of-the-box sentence but stated that there was “no reason” to impose such a sentence.

Stigger contends that, for three reasons, there are compelling circumstances that should cause this court to modify the presumptive sentence.

Stigger first contends that the probation officer’s recommendation of a 119-month sentence is a compelling circumstance. He acknowledges that the probation officer “did not specifically state why” a shorter sentence was more appropriate. That fact undercuts his contention that the district court should have relied on the recommendation. The district court provided its own reasons for a middle-of-the-box sentence and expressly stated that

it was not persuaded by the probation officer's recommendation. The district court was not bound by the probation officer's recommendation; rather, the district court was obligated to make an independent sentencing decision. *See State v. Park*, 305 N.W.2d 775, 776 (Minn. 1981); *State v. Halverson*, 373 N.W.2d 618, 621 (Minn. App. 1985).

Stigger next contends that his “speedy acceptance of responsibility and demonstration of remorse” justify a modification of his sentence. Stigger pleaded guilty on the morning of the day on which the case was scheduled for trial. At the sentencing hearing, the district court commented that Stigger “fail[ed] to take responsibility until this moment today,” which indicates that the district court did not consider his acceptance of responsibility to be “speedy.”

Remorse generally is relevant to a downward dispositional departure but not a downward durational departure. *State v. Rund*, 896 N.W.2d 527, 534-35 (Minn. 2017); *State v. Solberg*, 882 N.W.2d 618, 625-26 (Minn. 2016). Remorse may be relevant to a downward durational departure only if “a defendant can show that his demonstrated remorse is directly related to the criminal conduct at issue and made that conduct significantly less serious than the typical conduct underlying the offense of conviction.” *Solberg*, 882 N.W.2d at 626. For purposes of this non-precedential opinion, we assume without deciding that these principles also apply to a request for a shorter sentence within the presumptive range.

Stigger asserts that he was remorseful “immediately following the incident” when he walked the child home, faced the victim's family, and waited for police to arrive. He further asserts that his offense “would have been worse if [he] had simply walked away

after the incident and not walked the child home or waited for police to arrive.” The district court did not comment on that factual issue, perhaps because it was not specifically argued by Stigger’s attorney. We note that the complaint alleges a different motive for calling the police: that Stigger did so “because he feared that adults at the residence were going to assault him after the child’s disclosure.” In any event, the record does not conclusively show that whatever remorse Stigger might have had immediately following the incident is directly related to his criminal conduct so as to make the crime significantly less serious and a compelling circumstance that warrants modification of his sentence. *See Rund*, 896 N.W.2d at 534-35; *Solberg*, 882 N.W.2d at 626; *Delk*, 781 N.W.2d at 428. We note that, at the sentencing hearing, Stigger did express remorse and regret and apologized to the victim’s family. But expression of remorse at that stage of a criminal proceeding has no bearing on the duration of a prison sentence. *See Solberg*, 882 N.W.2d at 626.

Stigger last contends that a shorter sentence is justified by his age and the likelihood that he will spend the remainder of his life in prison or on conditional release. Typically, a defendant’s *young* age—not *old* age—is the basis of an argument for a more lenient sentence. *See State v. Soto*, 855 N.W.2d 303, 310 (Minn. 2014); *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). Stigger does not cite any caselaw for the proposition that his advanced age should reduce the duration of his imprisonment. Stigger asserts that, whenever he is released from prison, he “will be at a reduced risk to reoffend.” But the district court said otherwise, which is supported by the fact that Stigger committed the present offense at a similarly advanced age.

Thus, the district court did not abuse its discretion by imposing a sentence in the middle of the presumptive range.

II. *Pro Se* Arguments

Stigger filed a *pro so* supplemental brief approximately two months after the state filed a brief in response to Stigger's appellate counsel's brief. The state did not file a second responsive brief to respond to Stigger's *pro se* supplemental brief. We nonetheless consider Stigger's *pro se* arguments on the merits. *See* Minn. R. Civ. App. P. 142.03.

Stigger first contends that his guilty plea is constitutionally invalid. Specifically, he contends that he did not understand that there was a flaw in the district court's jurisdiction over him. But his jurisdictional theory has been rejected as a matter of law. *See State v. Winbush*, 912 N.W.2d 678, 686 (Minn. App. 2018) (stating that "sovereign-citizen jurisdictional defense has no conceivable validity in American law" (quotation omitted)), *rev. denied* (Minn. May 29, 2018). He also contends he was "under heavy pain medication" at the time of the plea. But that statement is contradicted by the plea petition, which he signed on the same day as the plea hearing, which states that he was "thinking clearly today."

Stigger also challenges the lifetime term of conditional release. Specifically, he contends that the facts do not satisfy the requirements of the applicable statute, which applies if a defendant "has a previous or prior sex offense conviction." *See* Minn. Stat. § 609.3455, subd. 7(b) (2022). He asserts that he should be subject to a ten-year term of conditional release, which is appropriate for a defendant who does not have a previous or prior sex-offense conviction. *See id.*, subd. 6. The record reflects that Stigger was

convicted in 1994 of first-degree criminal sexual conduct, in violation of Minn. Stat. § 609.342 (1992). Given that prior conviction, the district court did not err by ordering lifetime conditional release.

Thus, Stigger's *pro se* arguments do not warrant appellate relief.

Affirmed.