

*This opinion is nonprecedential except as provided by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
A23-1873**

State of Minnesota,
Respondent,

vs.

Dwayne Edward Roach,
Appellant.

**Filed December 2, 2024
Affirmed
Segal, Chief Judge**

Scott County District Court
File No. 70-CR-22-5563

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

Ronald Hocesvar, Scott County Attorney, Elisabeth M. Johnson, Assistant County Attorney, Shakopee, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Charles F. Clippert, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bentley, Presiding Judge; Segal, Chief Judge; and Johnson, Judge.

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

In this appeal from the judgment of conviction of first-degree arson, appellant Dwayne Edward Roach argues that the district court abused its discretion in denying his

motion for a downward durational sentencing departure. He maintains that he was entitled to the departure because he has a history of mental illness that caused him to lack substantial capacity for judgment at the time of the offense. Because we discern no abuse of discretion in the district court's imposition of a presumptive sentence, we affirm.

FACTS

On May 4, 2022, Scott County sheriff's deputies were dispatched to a fire occurring at a homestead in Cedar Lake Township.¹ Upon arrival, the deputies observed flames and heavy smoke coming from a barn on the property and an unoccupied New Prague Fire Department sport utility vehicle (SUV) parked in the driveway. The deputies observed a person identified as Roach driving a side-by-side all-terrain vehicle around the yard. The deputies eventually were able to apprehend Roach and place him under arrest. Roach was wearing a New Prague Fire Department jacket and was holding a Bic lighter. While not explicitly in the state's summation of the evidence at the plea hearing, a necessary conclusion is that Roach had no connection to the family who owned the property, no reason to be at the homestead, and was not associated in any way with the fire department.

While the deputies were onsite, they also saw smoke coming from the residence on the property. The fire department was called to respond to the blaze. It was determined

¹ The facts underlying Roach's offense are taken from the summation of evidence presented by the state in conjunction with Roach's guilty plea pursuant to a plea agreement. Roach entered a *Norgaard* plea, which allows a defendant to plead guilty even though "he or she is unable to remember the specific facts of the offense because of intoxication or amnesia but is persuaded that he or she is likely to be convicted of the crime charged." *State v. Solberg*, 882 N.W.2d 618, 621 n.1 (Minn. 2016); *see also State ex rel. Norgaard v. Tahash*, 110 N.W.2d 867, 872 (Minn. 1961).

that the fire in the residence “started in the basement and that it was set with an open flame starting on the bed.” A box of matches was found in the basement bedroom and a window in the bedroom was broken.

Roach admitted to the deputies, as they were transporting him to the jail, that he stole the fire department SUV. The investigation revealed that Roach “had entered the New Prague Utilities Building without permission and turned dials on a water control panel that would have resulted in the New Prague Water Tower overflowing causing damage well over \$1,000.” An alarm, however, sounded and workers were able to reset the dials and prevent an overflow.

Respondent State of Minnesota charged Roach with, as relevant here, one count each of first-degree arson, second-degree arson, second-degree burglary, third-degree burglary, first-degree damage to property, theft of a motor vehicle, fifth-degree possession of a controlled substance (methamphetamine), and introduction of contraband into the jail. During the pretrial proceedings, Roach was initially found not competent to stand trial. The evaluators noted a diagnosis of schizoaffective disorder-bipolar type, a significant psychiatric history, and chemical-abuse issues. Roach was found competent a few months later.

The parties reached an agreement to resolve the case with Roach entering a *Norgaard* plea. Roach advised the district court during the plea hearing that he had taken methamphetamine on the day of the offense and could not recall how he obtained the drugs or anything that occurred afterward. In accordance with the terms of the agreement, Roach pleaded guilty to first-degree arson and third-degree burglary, and the state dismissed the

balance of the charges. Roach was allowed to argue for a downward durational departure at sentencing, but the plea agreement barred him from seeking a dispositional departure.² The district court accepted Roach's guilty plea.

At sentencing, Roach argued that he should receive a downward durational departure because his mental illness caused him to lack substantial capacity for judgment at the time of the arson offense.³ After hearing Roach's departure argument, the district court indicated that it could not find authority that would allow the court to grant a downward durational departure based on mental impairment. The district court judge stated:

Where the Court is struggling is that I've looked in every area that I can as we've been even sitting here today and before coming here today, just to see if the Court is wrong. I cannot find anything which gives this Court permission to durationally depart based on the factors that are present here.

The district court denied Roach's departure motion and sentenced him, as relevant here, to 50 months in prison for first-degree arson.

² "A dispositional departure places the offender in a different setting than that called for by the presumptive guidelines sentence. . . . By contrast, a durational departure is a sentence that departs in length from the presumptive guidelines range." *Solberg*, 882 N.W.2d at 623.

³ Roach also suggested other bases for departure to the arson offense in his argument to the district court, but on appeal he challenges only the district court's determination surrounding lack of substantial capacity for judgment.

DECISION

The Minnesota Sentencing Guidelines provide presumptive sentences for felony offenses. Minn. Stat. § 244.09, subd. 5 (2022). A district court must impose a presumptive sentence unless there are substantial and compelling circumstances that warrant a departure. *State v. Pegel*, 795 N.W.2d 251, 253 (Minn. App. 2011); Minn. Sent’g Guidelines 2.D.1 (Supp. 2021). If circumstances warranting a departure exist, “[t]he decision whether to depart from [the] sentencing guidelines rests within the discretion of the [district] court.” *State v. Oberg*, 627 N.W.2d 721, 724 (Minn. App. 2001), *rev. denied* (Minn. Aug. 22, 2001).

Even if factors supporting departure are present, a district court is not required to depart. *State v. Olson*, 459 N.W.2d 711, 716 (Minn. App. 1990), *rev. denied* (Minn. Oct. 25, 1990). A district court need not explain its reasoning “when [it] considers reasons for departure but elects to impose the presumptive sentence.” *State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985).

We review the denial of a downward-departure motion for abuse of discretion. *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014). A district court abuses its discretion if it misapplies the law or makes a decision contrary to the facts in the record. *State v. Guzman*, 892 N.W.2d 801, 810 (Minn. 2017). A district court properly exercises its discretion “as long as the record shows [it] carefully evaluated all the testimony and information presented before making a determination.” *Pegel*, 795 N.W.2d at 255 (quotation omitted); *see also State v. Johnson*, 831 N.W.2d 917, 925 (Minn. App. 2013), *rev. denied* (Minn. Sept. 17, 2013). Only in rare cases will an appellate court reverse a district court’s decision

to impose a presumptive sentence. *State v. Olson*, 765 N.W.2d 662, 664 (Minn. App. 2009).

The factors relevant to consideration of a durational departure typically focus on offense-related characteristics—whether the defendant’s conduct in committing the offense is significantly more or less serious than that involved in the typical offense. *State v. Abrahamson*, 758 N.W.2d 332, 337-38 (Minn. App. 2008), *rev. denied* (Minn. Mar. 31, 2009). By contrast, the factors relevant to a dispositional departure typically focus on offender-related characteristics—“characteristics of the defendant that show whether the defendant is particularly suitable for individualized treatment in a probationary setting.” *Solberg*, 882 N.W.2d at 623 (quotation omitted).

In support of his argument, Roach points to the sentencing guidelines, which provide that a mitigating factor supporting a departure may be present when “[t]he offender, because of physical or mental impairment, lacked substantial capacity for judgment when the offense was committed.” Minn. Sent’g Guidelines 2.D.3.a.(3) (Supp. 2021). He maintains that this factor is an appropriate consideration for not just a dispositional departure, but also a durational departure. Roach cites two cases of the supreme court as authority for his argument: *State v. Hennum*, in which the supreme court reduced a sentence from the presumptive sentence that had been imposed by the district court when the defendant killed her husband after suffering severe physical and mental abuse throughout their relationship, including physical abuse on the night of the homicide,

441 N.W.2d 793, 801 (Minn 1989);⁴ and *State v. Wall*, in which the supreme court reversed an upward durational departure that was almost 50% longer than the top of the presumptive range and directed imposition of a presumptive sentence when the defendant had a severe mental illness and it was “clear from the record that [the] defendant, because of * * * mental impairment, lacked substantial capacity for judgment when the offense was committed,” 343 N.W.2d 22, 25 (Minn. 1984) (quotation omitted).

In *Hennum*, the supreme court noted that *Wall* was the only case where the supreme court “reduced a trial court’s sentence to the presumptive sentence because the defendant lacked substantial capacity for judgment when the offense was committed.” 441 N.W.2d at 801 (quotation omitted). And the court emphasized that it is only in “rare cases” that an appellate court would be “justified in interfering with the trial court’s decision not to downwardly depart.”⁵ *Id.*

The state argues that a mental impairment, regardless of how extreme, can only serve as a mitigating factor in connection with a motion for a *dispositional* departure, not a *durational* one. The state cites to a more recent supreme court opinion, *State v. Rund*, in

⁴ *Hennum* was abrogated in part on a different issue by *State v. Glowacki*, 630 N.W.2d 392 (Minn. 2001).

⁵ Roach also cites two cases from this court. In the first case, *State v. Martinson*, we affirmed a downward durational departure based on an extreme mental impairment, rejecting an appeal by the state that the district court abused its discretion in granting a durational departure due to a mental impairment. 671 N.W.2d 887, 891-92 (Minn. App. 2003), *rev. denied* (Minn. Jan. 20, 2004). In the second case, *State v. Barsness*, we rejected an appeal by the defendant that he was entitled to a longer downward durational departure than the departure granted by the district court based on the defendant’s borderline intellectual disability and severe depression. 473 N.W.2d 325, 329 (Minn. App. 1991), *rev. denied* (Minn. Aug. 29, 1991).

which the court expressly stated, albeit in a footnote, that “mental impairment is an offender-related characteristic that cannot justify a downward durational departure.” 896 N.W.2d 527, 534 n.11 (Minn. 2017). The footnote in *Rund* appears to eliminate mental impairment as a mitigating factor when considering a durational departure.⁶ But because we conclude that Roach did not establish the elements of the factor—that “because of . . . mental impairment, [he] lacked substantial capacity for judgment when the offense was committed”—we need not decide whether the supreme court intended to categorically bar consideration of a mental impairment as a mitigating factor for a durational departure. Minn. Sent’g Guidelines 2.D.3.a.(3).

Here, Roach admitted in his plea colloquy that he was high on methamphetamine during the offense and that is why he had no memory of what occurred. The sentencing guidelines expressly exclude mental impairment due to “[t]he voluntary use of intoxicants” from consideration as a mitigating factor in sentencing. *Id.* And while Roach clearly suffers from mental illness and has a significant psychiatric history, the record does not support that any alleged lack of substantial capacity for judgment during the offense was due to mental illness and not due to his voluntary ingestion of methamphetamine.

⁶ The state also cites to *Solberg*, an opinion of the supreme court decided a year before *Rund*, where the court rejected remorse as a factor relevant to a durational departure because such a “departure is justified only if the defendant’s conduct was significantly less serious than that typically involved in the commission of the offense.” 882 N.W.2d at 624 (quotation omitted). But the court stopped short of “entirely foreclos[ing] consideration of remorse in the context of durational departures,” if the remorse relates back to the offense such that it could “be considered as evidence of remediation that makes the conduct significantly less serious than the typical conduct underlying the offense.” *Id.* at 625-26.

Moreover, the sentencing transcript in this case bears out that the district court thoughtfully and with empathy considered all information presented, including Roach's significant history of mental illness. The fact remains, however, that Roach's offense involved voluntary intoxication, which cannot serve as a basis for establishing a mental impairment impacting the defendant's capacity for judgment. And Roach entered into a plea agreement that barred him from arguing for a dispositional departure. Given these constraints, we discern no abuse of discretion in the district court's sentencing of Roach to a bottom-of-the-box presumptive sentence.

Affirmed.