

*This opinion is nonprecedential except as provided by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
A24-1494**

State of Minnesota,
Respondent,

vs.

Larry Eddie Konah,
Appellant.

**Filed July 21, 2025
Affirmed
Ede, Judge**

Olmsted County District Court
File No. 55-CR-23-5157

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

Michael T. Walters, Olmsted County Attorney, Tyler L. Behrns, Assistant County Attorney, Rochester, Minnesota (for respondent)

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

Considered and decided by Smith, Tracy M., Presiding Judge; Frisch, Chief Judge;
and Ede, Judge.

NONPRECEDENTIAL OPINION

EDE, Judge

Appellant challenges his presumptive guidelines sentence of 120 months' imprisonment for receiving profits from prostitution. He argues that the district court abused its discretion by denying his motion for downward dispositional or durational

departures and by imposing a sentence in the middle of the presumptive guidelines range. Because we conclude that the district court acted within its discretion in sentencing appellant, we affirm.

FACTS

In July 2023, respondent State of Minnesota charged appellant Larry Eddie Konah with, among other criminal offenses, receiving profits from prostitution, a violation of Minnesota Statutes section 609.322, subdivision 1a(3) (2022). Konah reached a plea agreement with the state and pleaded guilty to the receiving-profits-from-prostitution charge. In exchange for his guilty plea, the state agreed to dismiss the other charges and to recommend a 100-month sentence—at the bottom of the parties’ anticipated guidelines range of 100 to 140 months—that would run concurrently with another sentence Konah was serving. The plea agreement also allowed Konah to move for a downward departure.

During his plea colloquy, Konah affirmed that he met A.C. sometime in or before January 2023 and they began a relationship. At some point, Konah made listings for A.C. on a website that he knew was used for prostitution. People seeking to pay money to have sex with A.C. responded to the listings that Konah had made. Konah arranged for multiple sexual encounters between such people and A.C. at his apartment, and he was present for some of them. He acknowledged that he took half of the money that individuals paid for the sexual encounters and that he allowed A.C. to take the other half. After Konah pleaded guilty, the district court ordered that community corrections complete a presentence investigation report (PSI).

Before the completion of the PSI, Konah moved for a downward dispositional departure, arguing that his age, cooperation with the system, attitude, and familial support established that he was particularly amenable to probation. More specifically, Konah asserted that he was young (i.e., 27 years old at the time of the motion), maintained respect for the court and the state, and had a daughter for whom he hoped to be present and to be “the best father he [could].” Although he acknowledged that he was serving a prison sentence for a previous charge of receiving profits from prostitution, Konah contended that he had “demonstrated a level of calmness and maturity that is emblematic of personal growth and advancement.”

Konah also requested in the same motion that, in the alternative, the district court grant him a downward durational departure. In support of this request, Konah maintained that his conduct was less serious than that typically involved in the commission of the offense because he was not charged with violent crimes, took responsibility for his actions, acknowledged that his conduct was wrong, and had a limited criminal history. And Konah argued that he had accepted responsibility by seeking to resolve the case via a plea agreement.

Shortly after Konah submitted his departures motion to the district court, community corrections filed the PSI, which included Konah’s version of events. According to the PSI, Konah blamed A.C. for what had happened and disputed her account.

A sentencing worksheet accompanying the PSI stated that Konah had a criminal history score of four and that receiving profits from prostitution was a severity-level-C offense. Based on that criminal history score and offense-severity level, the presumptive

duration for Konah’s sentence was 117 months and the presumptive guidelines range was 100 to 140 months, which was consistent with what the parties had anticipated when Konah pleaded guilty.¹ Community corrections recommended that the district court follow the sentencing guidelines and commit Konah to the Commissioner of Corrections for 117 months.

The district court held a sentencing hearing in June 2024. At the beginning of the hearing, the district court said that it had reviewed the PSI and the sentencing worksheet. The district court also stated that it had received Konah’s departures motion. Defense counsel provided oral argument in support of Konah’s motion, maintaining that Konah’s young age, cooperation in prison, and family ties supported a downward dispositional departure. And counsel argued that, in the alternative, a downward durational departure was justified because Konah was not charged with assault or another violent crime along with the underlying charge of receiving profits from prostitution. Counsel added that Konah “ha[d] made no effort to deny or minimize his behavior” and that Konah understood the consequences of his conduct. During his remarks, counsel acknowledged that Konah’s “last charge was the same type of offense.”

Before the state provided argument, the district court heard A.C.’s victim-impact statement, which was read by an advocate. For its part, the state requested that the district court impose a 100-month sentence, consistent with the state’s recommendation contemplated in the plea agreement. In opposing Konah’s departures motion, the state

¹ See Minn. Sent’g Guidelines 4.B (2022).

asserted that Konah was not amenable to probation because, at the time of the underlying charge, he was awaiting sentencing in another county for a similar offense, “yet he continued to engage in this behavior.” And although the state acknowledged that Konah had participated in some treatment while he was incarcerated, the state contended that Konah’s conduct toward women had not changed.

Konah spoke on his own behalf and told the district court that, “during the PSI, [he] did take accountability for receiving profits [from prostitution].” He expressed his disagreement with aspects of the victim-impact statement but admitted that he took money from A.C. and that his actions were wrong. Konah acknowledged that the offense for which he was being sentenced was not the first time he had engaged in this conduct, stating that he was “charged with the second crime [(i.e., this case) in] July 2023.” He said he would keep better company, be a better person, and refrain from criminal activity. And Konah reiterated that he did “take full accountability for what [he] did” and that he understood that what he had done was wrong.

After hearing from Konah, the district court stated as follows:

Well, you know, even today you talk about I’ll keep better people around me. I don’t know that that’s the problem here. It seems to me that greed was the problem. And using other people to get money is not good, obviously. And the fact that you already had another conviction when this whole thing started is, I think, not worthy of a departure here. So I’m going to deny your request for a departure. I don’t find that you’ve taken full responsibility. And even if you had taken responsibility, I don’t think that that warrants the substantial and compelling reasons that would rise to the level needed here for a departure. So for that reason I am denying your departure.

The district court sentenced Konah to 120 months in prison. This appeal follows.

DECISION

Konah argues that the district court abused its discretion (A) by denying his motion for downward (1) dispositional or (2) durational departures and (B) by imposing a sentence in the middle of the presumptive guidelines range, despite the lower recommendations of the state and community corrections. As explained below, we conclude that the district court acted within its discretion in sentencing Konah.

Appellate courts “afford the [district] court great discretion in the imposition of sentences and reverse sentencing decisions only for an abuse of that discretion.” *State v. Soto*, 855 N.W.2d 303, 307–08 (Minn. 2014) (quotation omitted). A departure is an abuse of discretion “if the court’s reasons are improper or insufficient and there is insufficient evidence of record to justify the departure.” *Id.* at 308 (quotation omitted).

“The Minnesota Sentencing Guidelines . . . limit the sentencing court’s discretion by prescribing a sentence or range of sentences that is presumed to be appropriate.” *Id.* (quotation omitted). Based on Konah’s criminal history score of four and offense-severity level of C, the presumptive duration for Konah’s sentence under the sentencing guidelines was 117 months, and his presumptive guidelines range was 100 months to 140 months. *See* Minn. Sent’g Guidelines 4.B.

The district court “must pronounce a sentence within the applicable range unless there exist identifiable, substantial, and compelling circumstances that distinguish a case and overcome the presumption in favor of the guidelines sentence.” *Soto*, 855 N.W.2d at 308 (quotation omitted). Accordingly, the district court “can exercise its discretion to

depart from the guidelines only if aggravating or mitigating circumstances are present and those circumstances provide a substantial and compelling reason not to impose a guidelines sentence.” *Id.* (quotation omitted). “But the mere fact that a mitigating factor is present in a particular case does not obligate the court to place [a] defendant on probation or impose a shorter term than the presumptive term.” *State v. Pegel*, 795 N.W.2d 251, 253–54 (Minn. App. 2011) (quotation omitted).

Applying these principles, we next address each of Konah’s arguments in turn.

A. The district court acted within its discretion in denying Konah’s departures motion.

1. Downward Dispositional Departure

Konah asserts that the district court should have granted his motion for a downward dispositional departure based on several factors, including: his young age; his criminal history; his family and community support; his remorse; and his attitude in court. The state counters: that these factors do not make Konah particularly amenable to probation; that the district court properly considered the record before it; and that the court acted within its discretion by imposing a sentence within the presumptive guidelines range. We agree with the state.

“A dispositional departure places the offender in a different setting than that called for by the presumptive guidelines sentence.” *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016). This kind of departure “typically focuses on characteristics of the defendant that show whether the defendant is particularly suitable for individualized treatment in a probationary setting.” *Id.* “Numerous factors, including the defendant’s age, his prior

record, his remorse, his cooperation, his attitude while in court, and the support of friends and/or family, are relevant to a determination whether a defendant is particularly suitable to individualized treatment in a probationary setting.” *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982).

Konah maintains that several of the above factors establish that he is particularly amenable to probation. Konah argues that his young age and his minimal criminal history make him particularly amenable to probation. He asserts that his criminal history consists of two serious convictions, both of which occurred within six months of each other. Given his young age and the improvements he states that he has made in prison—e.g., by attending church and some treatment—Konah contends that he can be rehabilitated through probation. Konah asserts that his relationships with his parents, friends, and daughter make him particularly amenable to a probationary disposition. And Konah maintains that his remorse, positive attitude, and willingness to comply with court processes evince his amenability to probation.

But appellate courts “may not interfere with the [district] court’s exercise of discretion, as long as the record shows the [district] court carefully evaluated all the testimony and information presented before making a determination.” *State v. Van Ruler*, 378 N.W.2d 77, 80–81 (Minn. App. 1985). At the sentencing hearing, the district court said that it had reviewed the PSI and the sentencing worksheet, and the court stated that it had received Konah’s departures motion. In addition, the district court listened to the oral arguments that Konah’s counsel, Konah, and the state presented. And the district court received the victim-impact statement. The record reflects that the district court evaluated

the information presented by the parties before denying Konah's motion for a downward dispositional departure.

Moreover, although a district court need not explain its reasons for declining to depart from the guidelines, *see State v. Johnson*, 831 N.W.2d 917, 925 (Minn. App. 2013), *rev. denied* (Minn. Sept. 17, 2013), the court provided some reasoning for its decision here. The district court said that it did not think keeping better company was Konah's problem; instead, the court stated that greed was the problem. And the district court explained:

[T]he fact that you already had another conviction when this whole thing started is, I think, not worthy of a departure here. . . . I don't find that you've taken full responsibility. And even if you had taken responsibility, I don't think that that warrants the substantial and compelling reasons that would rise to the level needed here for a departure.

The record supports this reasoning by the district court. As the state pointed out during the sentencing hearing, Konah engaged in the charged conduct with A.C. while he was awaiting sentencing in another county for a similar offense. Indeed, Konah's counsel acknowledged that Konah's "last charge was the same type of offense" and Konah himself described this matter as his "second crime." And although he told the district court that he was remorseful, Konah blamed the victim for what had happened and disputed her version of events during the PSI interview. Because the district court evaluated the information presented by the parties before deciding whether to grant Konah's departures motion, and because the court's reasons for not departing are supported by the record, we conclude that the district court acted within its discretion by denying Konah's motion for a downward dispositional departure.

2. Downward Durational Departure

Konah alternatively contends that the district court should have granted his motion for a downward durational departure because his crime was significantly less serious than that typically involved in the commission of receiving profits from prostitution. He reasons that the offense occurred over a short period—under two weeks—and that he was not charged with any assaultive behavior in the complaint, nor did he admit to any facts suggesting that he engaged in coercive, assaultive, or threatening conduct. We respectfully disagree that Konah’s arguments warrant reversal.

“[A] durational departure is a sentence that departs in length from the presumptive guidelines range.” *Solberg*, 882 N.W.2d at 623. “A durational departure must be based on factors that reflect the seriousness of the *offense*, not the characteristics of the offender.” *Id.* This type of 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 (quotation omitted).

Even assuming without deciding that Konah presented evidence that his conduct was significantly less serious than that typically involved in the commission of receiving profits from prostitution, the district court was not required to depart. *See Pegel*, 795 N.W.2d at 253–54 (“[T]he mere fact that a mitigating factor is present in a particular case does not obligate the court to place defendant on probation or impose a shorter term than the presumptive term.” (quotation omitted)).

Konah nonetheless asserts that the district court ignored his motion for a downward durational departure. He reasons that “[t]he court’s refusal to exercise its discretion and

weigh the reasons for and against a durational departure constitutes an abuse of discretion, especially in the face of [his] crime being significantly less serious than that typically associated with receiving profits from prostitution convictions.” Konah cites *State v. Curtiss*, 353 N.W.2d 262, 264 (Minn. App. 1984), to support his argument. We conclude that Konah’s reliance on *Curtiss* is unavailing.

In *Curtiss*, appellant moved the district court for a downward durational departure. 353 N.W.2d at 263. At the sentencing hearing, the district court determined that “there were no legitimate reasons for departure” and imposed a presumptive guidelines sentence. *Id.* On appeal, we concluded that the district court erred in “putting aside arguments for departure rather than considering them alongside ‘valid reasons’ for non-departure” and that the court had not exercised its sentencing discretion. *Id.* at 264 (quoting *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981)).

Here, before making its sentencing determination, the district court stated that it had reviewed the PSI and the sentencing worksheet, and the court said that it had received Konah’s departures motion. The district court also heard arguments from the state and defense counsel, and the court received a statement by Konah. Unlike in *Curtiss*, the departure topic was not abandoned before the district court exercised its discretion. *See id.* at 263 (determining that “the departure topic was abandoned before the [district] court exercised its broad discretion, comparing reasons for and against departure”). That said, “[a]lthough the [district] court is required to give reasons for departure, an explanation is not required when the court considers reasons for departure but elects to impose the presumptive sentence.” *Van Ruler*, 378 N.W.2d at 80. Thus, because the district court

ultimately imposed a sentence within the presumptive guidelines range, the court did not need to discuss its reasons for declining to depart. *See id.* We therefore conclude that the district court acted within its discretion in denying Konah’s motion for a downward durational departure.

B. The district court acted within its discretion in imposing a 120-month sentence.

Konah maintains that the district court’s sentence was excessive and unjustifiably disparate because the court exceeded the middle of the presumptive guidelines range, as well as the recommendations of the state and community corrections. This argument does not warrant reversal of Konah’s sentence.

“Appellate courts may vacate or modify a sentence on many grounds, including that the sentence is unreasonable or inappropriate.” *State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006). But appellate courts “will not ordinarily interfere with a sentence falling within the presumptive sentence range, either dispositionally or durationally, even if there are grounds that would justify departure.” *Id.* (quotation omitted).

Konah’s sentence is not excessive or unjustifiably different because it is a presumptive sentence. 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 (2022). The presumptive duration for Konah’s sentence under the sentencing guidelines was 117 months, and his presumptive range was 100 months to 140 months. *See* Minn. Sent’g Guidelines 4.B. “All three numbers in any given cell constitute an acceptable sentence based solely on the offense at issue and the offender’s criminal

history score” *State v. Jackson*, 749 N.W.2d 353, 359 n.2 (Minn. 2008). The district court sentenced Konah to 120 months, which was within the applicable sentencing guidelines range and which we presume to be appropriate. *See id.*; Minn. Sent’g Guidelines 1.B.13.

The state and community corrections’ recommendations do not alter our analysis. The district court “is not bound by a plea agreement as to any sentence to be imposed.” *Johnson v. State*, 641 N.W.2d 912, 918 (Minn. 2002). And the plea agreement here did not even include an agreed-upon sentence by the parties—it just set forth the state’s agreement to recommend a 100-month sentence. Community corrections’ recommendation, as stated in a PSI, likewise does not bind the district court. *See Hamilton v. State*, 398 N.W.2d 680, 683 (Minn. App. 1987) (explaining that “[a] PSI with a favorable recommendation is not, by itself, a mitigating factor” and that, “[e]ven assuming, arguendo, that a PSI can be a mitigating factor, it does not compel a downward departure”), *rev. denied* (Minn. Mar. 13, 1987). Although Konah argues that the district court exceeded the recommendations of the state and community corrections without justification, the district court did not need to provide an explanation when it declined to depart and instead imposed a presumptive guidelines sentence. *Van Ruler*, 378 N.W.2d at 80.

In sum, this is not the rare case that might warrant reversal of the imposition of a presumptive sentence. *See State v. Delk*, 781 N.W.2d 426, 428 (Minn. App. 2010) (“Only in a rare case will a reviewing court reverse imposition of a presumptive sentence.” (quotation omitted)), *rev. denied* (Minn. July 20, 2010). We therefore conclude that the

district court acted within its discretion in sentencing Konah to 120 months in prison.

Affirmed.