

*This opinion is nonprecedential except as provided by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
A24-1503**

State of Minnesota,
Respondent,

vs.

Phillip James Merrill,
Appellant.

**Filed May 12, 2025
Affirmed
Smith, Tracy M., Judge**

Carver County District Court
File No. 10-CR-22-1099

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

Mark Metz, Carver County Attorney, Kevin A. Hill, Assistant County Attorney, Chaska,
Minnesota (for respondent)

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

Considered and decided by Smith, Tracy M., Presiding Judge; Ross, Judge; and
Bratvold, Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

Appellant Phillip James Merrill appeals from the district court's sentencing order, arguing that the district court erred by not exercising its discretion on remand when it imposed the presumptive sentence for his conviction for first-degree possession of a

controlled substance despite there being substantial and compelling circumstances justifying a downward departure. We affirm.

FACTS

The following facts are drawn from our opinion in a previous appeal of Merrill's sentence, *State v. Merrill*, No. A23-1220, 2024 WL 542234, at *3 (Minn. App. Feb. 12, 2024), *rev. denied* (Minn. Apr. 24, 2024), and from the record developed on remand.

In December 2022, police discovered Merrill unconscious in the driver's seat of a suspiciously parked vehicle with a bag containing 120 grams of methamphetamine on the passenger's seat. Respondent State of Minnesota charged Merrill with first-degree possession of a controlled substance for possession of 50 grams or more of methamphetamine, in violation of Minnesota Statutes section 152.021, subdivision 2(a)(1) (2022).

Merrill pleaded guilty to the charge and moved for a downward durational departure from the presumptive sentence of 128 months in prison. The district court held a sentencing hearing and granted Merrill's motion, sentencing him to an executed sentence of 60 months.¹ In making its decision, the district court reasoned:

You were found passed out in a car with the drugs. It was the anniversary of your family's tragic car accident and the death of your son. I can't even imagine what that is like to go through. And so I do believe there's exonerating circumstances here that warrant a durational departure. And I don't believe sending you to prison for 128 months is good for public safety

¹ As the district court informed Merrill, the 60-month sentence would consist of 40 months in prison and 20 months of supervised release. For that reason, in our opinion in Merrill's direct appeal, we stated that Merrill was sentenced to serve 40 months in prison. *Merrill*, 2024 WL 542234, at *1.

or the state or you or the prison system, quite frankly, or the tax payer.

The state appealed. In our decision, we reviewed the district court's reasoning and determined that "none of the reasons the district court offered to depart from the mandated sentence can support its implied finding that Merrill's drug-possession conduct was significantly less serious than that of the typical first-degree possessor." *Id.* at *2-3. We reversed and remanded "for the district court to impose the statutorily mandated sentence." *Id.* at *3.

On remand, the district court held a review hearing, during which Merrill's counsel asked the district court to consider a durational departure on its own motion, arguing that there was still an "opening" for the district court to depart durationally because there was a "substantial and compelling reason" to do so. Specifically, Merrill's counsel argued that Merrill possessed a large amount of drugs on the anniversary of his son's death to "set up for suicide that day" and not for sale or distribution as is typical when someone possesses a large amount of methamphetamine.

The district court declined to depart and imposed the presumptive 128-month sentence, stating:

I'm going to deny the motion, and here's why: One, the factual basis that I used -- and that was what was presented to me by you and your client -- to grant your motion were those two indicators that the court of appeals did analyze, and the way I read the opinion, . . . they do not consider those ample grounds to warrant a departure. As much as I would like to give a departure, it's clear to me those were rejected by the court, so whether I simply reinsert those or reapply those under my own order or my own motion, I think I would face the same results. . . . I read the opinion to give me clear instructions, and

I'd have to follow what they tell me, whether I like it or not.
So with that in mind, I am going to deny the motion this
morning, okay.

Merrill appeals.

DECISION

“A sentencing 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.” *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014) (quotation omitted). “Substantial and compelling circumstances are those circumstances that make the facts of a particular case different from a typical case.” *State v. Olson*, 765 N.W.2d 662, 664 (Minn. App. 2009) (quotation omitted). “A downward durational departure is justified only if the defendant’s conduct was significantly less serious than that typically involved in the commission of the offense.” *State v. Solberg*, 882 N.W.2d 618, 624 (Minn. 2016) (quotation omitted); see Minn. Sent’g Guidelines 2.D.3 (2022) (providing a “nonexclusive list of factors” that a district court may use to depart).

Appellate courts will reverse a district court’s refusal to depart from a presumptive sentence only in rare cases. *State v. Johnson*, 831 N.W.2d 917, 925 (Minn. App. 2013) (citing *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981)), *rev. denied* (Minn. Sept. 17, 2013). Generally, if the record shows that the district court evaluated the testimony and information presented to it before determining whether to depart, this court “may not interfere with the sentencing court’s exercise of discretion.” *State v. Van Ruler*, 378 N.W.2d 77, 80-81 (Minn. App. 1985). But, “[w]hen the record contains evidence of factors

supporting departure, which could have been, but were not, considered by the district court, we may remand for consideration of those factors.” *Johnson*, 831 N.W.2d at 925-26 (citing *State v. Curtiss*, 353 N.W.2d 262, 264 (Minn. App. 1984)).

Merrill argues that the district court erred by not exercising its discretion on remand when it imposed the presumptive sentence despite there being substantial and compelling circumstances justifying a downward departure.

Remand Instructions

First, Merrill argues that the district court abused its discretion by not considering departure on remand because the district court was of the “mistaken belief” that it lacked the discretion to depart. “On remand, a district court must ‘execute [a reviewing court’s] mandate strictly according to its terms’ and lacks power to ‘alter, amend, or modify [that] mandate.’” *Rooney v. Rooney*, 669 N.W.2d 362, 371 (Minn. App. 2003) (alterations in original) (quoting *Halverson v. Village of Deerwood*, 322 N.W.2d 761, 766 (Minn. 1982)), *rev. denied* (Minn. Nov. 25, 2003). A district court’s compliance with remand instructions is reviewed for an abuse of discretion. *Janssen v. Best & Flanagan, LLP*, 704 N.W.2d 759, 763 (Minn. 2005).

Our instruction to the district court on remand was “to impose the statutorily mandated sentence.” *Merrill*, 2024 WL 542234, at *3. Merrill argues that this instruction did not mean that the district court could not depart from the presumptive 128-month sentence. Merrill was sentenced pursuant to Minnesota Statutes section 152.021, subdivision 3(c) (2022), which provides for a mandatory prison sentence of “not less than 65 months or the presumptive fixed sentence under the Minnesota Sentencing Guidelines,

whichever is greater,” unless the district court, when presented with a motion by the prosecutor or “on its own motion,” finds substantial and compelling reasons to depart. Minn. Stat. § 152.021, subd. 3(c). Merrill argues that the “statutorily mandated sentence” that we directed the district court to impose on remand contemplated the granting of a downward departure if the district court, on its own motion, found substantial and compelling reasons to depart.

We are not convinced that the district court abused its discretion by interpreting our remand instruction to require imposition of the presumptive sentence. In the previous appeal, we concluded that the district court’s reasons for departing did not “involve circumstances that make Merrill’s crime less serious than the conduct a first-degree methamphetamine possessor typically engages in, let alone significantly less serious.” *Merrill*, 2024 WL 542234, at *2. While expressing sympathy for Merrill’s tragic loss and the “bondage of drug addiction,” we concluded that his possession of about a quarter pound of methamphetamine was not “significantly less serious” than the typical possession offense. *Id.* at *3. We explained that “the district court [was] bound to impose the presumptive sentence mandated by [section 152.01]” in the absence of substantial and compelling reasons, and we directed the district court on remand “to impose the statutorily mandated sentence.” *Id.* at *2-3. We conclude that the district court correctly interpreted our remand instruction.

Substantial and Compelling Circumstances

Second, even if our remand instructions permitted the district court to exercise its discretion to consider a departure, we conclude that the district court did not abuse its

discretion by determining that the circumstances asserted by Merrill on remand were no different from those that we previously rejected and that there were therefore not grounds to justify a departure.

Merrill's arguments for why his conduct was significantly less serious than that in a typical possession offense are based on his history of addiction and trauma as well as his subsequent remorse and cooperation with the criminal justice system. Merrill's argument during his review hearing—that a substantial and compelling reason to depart was that he sought to commit suicide and lacked an intent to sell or distribute the methamphetamine—is a version of his previous argument that, because his actions were motivated by grief resulting from the trauma of losing his family, his conduct is significantly less serious than that of another first-degree possessor. Although, in our previous opinion we did not explicitly review each of the arguments articulated by Merrill in this appeal, we fully reviewed the record from which Merrill's current arguments are drawn and implicitly rejected them when we instructed the district court to impose the statutorily mandated sentence. *See id.*

Because Merrill's arguments on remand were based on reasons that were previously rejected by this court, he did not present a valid reason for departure, and as a result, the district court did not err by imposing the presumptive sentence.

Affirmed.