

*This opinion is nonprecedential except as provided by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
A25-1448**

State of Minnesota,
Respondent,

vs.

Jeffery Lee Niemi,
Appellant.

**Filed June 1, 2026
Affirmed
Reilly, Judge***

St. Louis County District Court
File No. 69DU-CR-24-2880

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

Kimberly Maki, St. Louis County Attorney, Nathaniel T. Stumme, Assistant County Attorney, Duluth, Minnesota (for respondent)

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

Considered and decided by Bratvold, Presiding Judge; Ross, Judge; and Reilly, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

REILLY, Judge

Appellant challenges the sentences imposed for his first-degree criminal-sexual-conduct convictions, arguing that the district court abused its discretion by denying him a downward dispositional departure, or alternatively, a downward durational departure. Appellant also argues that the district court erred by convicting him of multiple offenses and imposing multiple sentences based on a single course of conduct. We affirm.

FACTS

In October 2024, respondent State of Minnesota charged appellant Jeffery Lee Niemi with four counts of first-degree criminal sexual conduct, alleging that, between October 1, 2021, and October 1, 2024, Niemi sexually penetrated his child.

According to the complaint, Homeland Security Investigations provided the county sheriff's department with 26 videos and 21 screenshot images of child sexual abuse discovered by the Queensland Police Service in Australia. The material showed an adult male engaged in numerous sexual acts with a child. Law enforcement identified Niemi as the adult in the material. Counts one and two are based on one video involving one form of sexual penetration. Counts three and four are based on a separate video involving a different form of sexual penetration.

In 2016, Niemi was convicted of possessing pornographic work involving children. Niemi was on probation and had successfully met the expectations of sex-offender treatment when he engaged in the conduct underlying the current offenses.

In April 2025, Niemi pleaded guilty to counts one and three, first-degree criminal sexual conduct, in violation of Minn. Stat. § 609.342, subd. 1a(e) (Supp. 2021), and the state agreed to dismiss counts two and four. In establishing the factual basis for the guilty pleas, Niemi agreed that counts one and three reference “separate video[s]” and that the offenses occurred on “separate occasion[s].” As for count one, Niemi agreed that “between the dates of October 1, 2021, and October 1, 2024” he “penetrat[ed] [the victim’s] anus with [his] penis.” For count three, Niemi agreed that he put his “penis in [the victim’s] mouth.”

The presumptive sentences were 180 months in prison for count one and 360 months in prison for count three. Niemi moved for a downward durational and a downward dispositional departure. He also argued that he should be sentenced on only one count because the complaint alleged one unitary course of conduct. He claimed that he was entitled to a probationary sentence based on his age (40 years old), his amenability to probation and treatment, his limited criminal history, his respectfulness in court, his remorse, and his parents’ support.

At his sentencing hearing, Niemi did not challenge the calculation of his criminal-history score. He argued, however, that, with six criminal-history points, the presumptive sentence of 360 months in prison was not justified, and he was entitled to either a probationary sentence, or “no more than 153 months” in prison. The state countered that Niemi “deserve[d]” to be imprisoned for “360 months,” but if the district court were to depart it should be only a “modest reduction.”

The victim, one of the victim's siblings, and the victim's mother gave statements. Together with explaining the many ways that they have been damaged and will continue to be harmed (physical, emotional, mental, financial, reputation), the victims described Niemi's manipulation, deceptiveness, and his grooming behaviors. The victim asked the district court to sentence Niemi to "prison time for the rest of his life."

The district court found that Niemi's conduct was not less serious than that typically involved in the commission of a first-degree criminal-sexual-conduct offense and denied his motion for a durational departure. The district court also determined that Niemi was not particularly amenable to probation or treatment and denied his request for a dispositional departure. Finally, the district court denied Niemi's request to be sentenced for only one offense, under Minn. Stat. § 609.04 (2020), finding that the two offenses were separate and distinct. The district court sentenced Niemi to 180 months in prison for count one and a concurrent 360 months in prison for count three. The district court also imposed life-time conditional release. This appeal followed.

DECISION

Departure Requests

Niemi argues that the district court abused its discretion by imposing the presumptive sentences and denying his request for departures.

The sentencing guidelines prescribe a sentence that is "presumed to be appropriate." *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014). The district court "must pronounce a sentence within the [presumptive] range unless there exist identifiable, substantial, and

compelling circumstances” distinguishing the case and overcoming the presumption in favor of the guidelines sentence. *Id.*

A district court has “great discretion in the imposition of sentences” and its decision will be reversed only if that discretion is abused. *Id.* at 307-08. And a district court need not depart, even when substantial and compelling circumstances are present. *See State v. Back*, 341 N.W.2d 273, 275 (Minn. 1983). This court will not interfere with a district court’s sentencing decision “as long as the record shows the [district] court carefully evaluated all the testimony and information presented before making a determination.” *State v. Pegel*, 795 N.W.2d 251, 255 (Minn. App. 2011) (quotation omitted). In only a “rare” case will this court reverse a district court’s sentencing decision. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

Durational Departure

Niemi first argues that the district court abused its discretion by denying his request for a downward durational departure. A downward durational departure results in a sentence that is shorter in length than the presumptive sentence and is based on “the seriousness of the *offense*, not the characteristics of the offender.” *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016). In considering a motion for a durational departure, a district court considers factors that “excuse or mitigate the offender’s culpability for the offense.” *State v. Esparza*, 367 N.W.2d 619, 621 (Minn. App. 1985). But such a departure is justified only when the offender’s conduct “was significantly less serious than that typically involved in the commission of the offense.” *Solberg*, 882 N.W.2d at 624 (quotation omitted).

The district court determined that Niemi's conduct was not significantly less serious than that typically involved in the commission of first-degree criminal-sexual-conduct committed against a child. The district court considered that the child was "vulnerable," around seven to eight years old, and Niemi's own child. The district court said that Niemi "groom[ed]" the victim and "normalize[d] his behaviors." The district court noted that Niemi's conduct escalated from his 2016 conviction for possessing and viewing child pornography to penetrating the victim. And Niemi committed the assaults while he was on probation and in treatment, which the district court found concerning and showed that Niemi was a threat to the public.

Niemi argues that the district court's decision is based on improper reasoning. He argues that the district court considered the victim's age despite the fact that it is an element of the offense. He also argues that he has only one past offense, the state supported his request for a reduced sentence, and he took responsibility for his actions by pleading guilty.

Niemi pleaded guilty to first-degree criminal sexual conduct, in violation of Minn. Stat. § 609.342, subd. 1a(e). This statute criminalizes penetration of a victim who is "under 14 years of age" and the offender is more than 36 months older than the victim. Niemi was in his late-30s when he sexually penetrated the victim, who was seven or eight years old. The district court properly considered the victim's young age.

Niemi may have only one past offense, but the district court properly considered the escalation from possessing and viewing child pornography to acting on it, while Niemi was on probation and in treatment. Further, the state did not support a departure. The prosecutor stated that Niemi "deserve[d]" the 360-month prison sentence. And while

Niemi accepted responsibility by pleading guilty, the district court noted that the record showed that Niemi “was resistant to changing his thinking when it came to the use of pornography and images of child sexual abuse and refused to attend sex[-]offender treatment with a facilitator that challenged his thinking and required him to address his deviant behaviors and thoughts.” So, while Niemi accepted responsibility for these particular acts, he remained resistant to change. Based on this record, the district court considered all the information before imposing the presumptive sentences and did not abuse its discretion by denying Niemi a downward durational departure.

Dispositional Departure

A dispositional departure occurs when a district court stays execution or imposition of a presumptive prison sentence contingent on probationary terms. *Solberg*, 882 N.W.2d at 623. To maintain uniformity and proportionality in sentencing, departures are discouraged. *State v. Rund*, 896 N.W.2d 527, 532 (Minn. 2017). But a district court may depart when a defendant shows that he “is particularly amenable to probation.” Minn. Sent’g Guidelines 2.D.3.a(7) (2020).

Being *particularly* amenable distinguishes the defendant from other offenders and is a substantial and compelling circumstance justifying a departure. *Soto*, 855 N.W.2d at 309. Because a district court has discretion in sentencing, it may still impose the presumptive sentence even if the record shows that a defendant is particularly amenable to probation. *State v. Olson*, 765 N.W.2d 662, 664-65 (Minn. App. 2009). In considering whether to grant a dispositional departure, a district court considers the *Trog* factors. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). These factors are unique to the offender

(rather than the offense) and include the “defendant’s age, his prior record, his remorse, his cooperation, his attitude while in court, and the support of friends and/or family.” *Id.*

The district court properly considered the *Trog* factors and determined that the sole factor that supported a departure was Niemi’s attitude in court, stating that he “behaved in a respectful manner” and “was fairly forthcoming with his factual basis for the plea.”

The district court found Niemi’s cooperation to be neutral because he “was cooperative in the courtroom,” but it was unknown whether he cooperated with law enforcement. The district court also found that support was neutral because, although his parents and one sibling supported him, there was “no indication of any other family support, friend support, or support of any treatment providers.”

The district court found that other factors did not support a departure. It stated that Niemi was in his late-30s when he assaulted the victim, “[h]e’s not young, and he’s not old. . . . He is old enough, though, to have the capacity for judgment in this current offense.” And although Niemi had a limited criminal history, he was under supervised probation when he committed these offenses, and the record shows that his conduct, while on probation, escalated to grooming and assaulting the victim. As the district court noted, the escalation in conduct demonstrated Niemi’s dangerousness and his lack of amenability to probation.

The district court stated that, based on the record, Niemi has a long-standing history with pornography; he struggled with completing mental-health therapy; he was resistant to changing his thinking when it came to the use of images of child-sexual abuse; he refused to attend sex-offender treatment; he was described as not having much accountability when

participating in treatment; and he blamed his probation agent, his therapist, and sex-offender treatment providers, claiming that they failed to help him, which led to him sexually abusing the victim.

Niemi argues that the district court did not consider his motivation to reform and that he is stronger now and willing to ask for help to correct his thinking and behavior. But the district court considered that Niemi had been on probation and in treatment. The district court noted Niemi's resistance to participation in treatment and the blame he attributed to others. Niemi may now feel that he can ask for help, but help was available after his first conviction. The record supports the district court's findings. The district court did not abuse its discretion by concluding that Niemi was not particularly amenable to probation or treatment and denying his request for a probationary sentence.

Multiple Convictions and Sentences

In district court, Niemi argued that two sentences would violate section 609.04. The district court considered whether Niemi could be convicted of two offenses and receive two sentences, under Minn. Stat. §§ 609.035 (2020), .04. On appeal, Niemi challenges both his two convictions and two sentences, requesting that we reverse and remand to vacate "his conviction and/or sentence for count 3."

We review de novo a district court's decision regarding multiple convictions and imposition of multiple sentences. *State v. Bonkowske*, 957 N.W.2d 437, 443 (Minn. App. 2021) (stating that whether conviction violates section 609.04 is a legal question reviewed de novo); *State v. Branch*, 942 N.W.2d 711, 713 (Minn. 2020) (stating that whether sentence violates section 609.035 is a legal question reviewed de novo).

“Upon prosecution for a crime, the actor may be convicted of either the crime charged or an included offense, but not both.” Minn. Stat. § 609.04, subd. 1. “The statute . . . proscribes multiple convictions when those convictions are for the crime charged and an included offense.” *State v. Bradley*, 4 N.W.3d 105, 111 (Minn. 2024) (quotation omitted). If a defendant is convicted of two offenses and one “is a lesser-included offense of the other, [the] conviction on the included offense must be vacated.” *State v. Degroot*, 946 N.W.2d 354, 364 (Minn. 2020).

Here, Niemi committed two separate criminal acts. The crimes charged did not include a lesser-included offense. So Niemi’s two convictions did not violate section 609.04.

Under Minn. Stat. § 609.035, subd. 1, “if a person’s conduct constitutes more than one offense . . . the person may be punished for only one of the offenses.” “A defendant may not be convicted of two counts of criminal sexual conduct . . . on the basis of the same act or unitary course of conduct.” *State v. Folley*, 438 N.W.2d 372, 373 (Minn. 1989). In assessing whether two counts of criminal sexual conduct are based on a unitary course of conduct requires an inquiry into time, place, and whether the conduct was motivated to achieve a single criminal objective. *State v. Johnson*, 141 N.W.2d 517, 525 (Minn. 1966). A broad criminal objective of “sexual gratification” does not unify separate acts of criminal sexual conduct. *State v. Barthman*, 938 N.W.2d 257, 267 (Minn. 2020).

Here, the offenses constituted separate criminal acts. They are described as separate acts in the complaint, and at the plea hearing, Niemi agreed that the offenses are two

separate acts and admitted to committing two separate criminal acts of sexual penetration.

The district court properly entered two convictions and imposed two sentences.

Affirmed.