

*This opinion is nonprecedential except as provided by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
A26-0241**

State of Minnesota,
Appellant,

vs.

James Riley Vernon Porter,
Respondent.

**Filed August 3, 2026
Reversed and remanded
Cochran, Judge**

Carver County District Court
File No. 10-CR-24-1087

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

Mark Metz, Carver County Attorney, Angella M. Erickson, Assistant County Attorney,
Chaska, Minnesota (for appellant)

Andrew C. Wilson, Wilson & Clas, Minneapolis, Minnesota (for respondent)

Considered and decided by Cochran, Presiding Judge; Ross, Judge; and Schmidt,
Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

In this sentencing appeal, appellant argues that the district court abused its discretion by granting respondent a downward durational departure from the presumptive guidelines sentence for several offenses to which respondent pleaded guilty. We reverse and remand

for imposition of a sentence within the presumptive sentencing range under the guidelines for offenses four through nine because the record does not support that respondent's conduct was less serious than the typical offense.

FACTS

In November 2024, appellant State of Minnesota charged respondent James Riley Vernon Porter with four counts of disseminating a pornographic work involving a minor under the age of 14 in violation of Minnesota Statutes section 617.247, subdivision 3(b)(3) (2022), and five counts of possessing a pornographic work involving a minor under the age of 14 in violation of Minnesota Statutes section 617.247, subdivision 4(b)(3) (2022).¹ According to the statement of probable cause, the Chaska Police Department received a Cyber Tipline report from the National Center for Missing and Exploited Children that Porter was sending videos and images of suspected child-sexual-abuse material via an online messaging account. Each of the videos or images depicted a different child victim. During a warranted search of Porter's home, police found images and videos of child-sexual-abuse material and evidence that Porter was trading and manufacturing these materials. The complaint alleged that the offenses of possession and dissemination were committed between 2023 and 2024.

¹ In 2025, the legislature amended the statute and changed "pornographic work" to "child sexual abuse material." Minn. Stat. § 617.247, subd. 2, 4 (Supp. 2025).

Pursuant to the terms of a plea agreement, Porter agreed to enter a straight plea² to all counts. The agreement indicated that Porter would argue for a departure at sentencing. During the plea hearing, Porter pleaded guilty and provided a factual basis for each of the nine counts alleged in the complaint. Porter admitted that he received and disseminated images or videos of child-sexual-abuse material on four occasions in 2023 and 2024, as reflected in counts one, four, five, and six of the complaint. And he further admitted that he possessed child-sexual-abuse material on five occasions in 2024, as reflected in counts two, three, seven, eight, and nine. Porter admitted that each image or video involved a different child victim, and that the material was classified as sexual conduct or sexual abuse involving minors under the age of 14. The district court found that Porter provided an adequate factual basis for each of the nine counts, accepted his plea, and adjudicated him guilty of each offense. The district court also ordered probation to prepare a presentence investigation report (PSI).

Prior to sentencing, Porter moved for a downward dispositional departure or, in the alternative, a downward durational departure. Porter sought a downward dispositional departure to a probationary sentence, arguing he was particularly amenable to probation and treatment. Alternatively, Porter moved for a downward durational departure on the ground that his conduct was less serious than the typical offense and based on his remorse.

² “A ‘straight plea’ is a guilty plea to the offense as charged with no agreement with the state regarding sentencing.” *Mason v. State*, 16 N.W.3d 828, 831 n.2 (Minn. App. 2025), *rev. denied* (Minn. Apr. 23, 2025).

Probation completed the PSI and filed it with the district court prior to sentencing.³ The PSI outlined the presumptive guidelines sentence for each offense. Probation recommended that the district court impose the presumptive sentence for each of the nine counts under the Minnesota Sentencing Guidelines.

At the sentencing hearing, the district court denied Porter's motion for a downward dispositional departure and granted in part his motion for a downward durational departure. The district court imposed the presumptive prison sentence under the sentencing guidelines for the first three counts, calculating Porter's criminal-history score for each sentence using the *Hernandizing* method.⁴ But the district court granted Porter's request for a downward durational departure from the presumptive sentence on counts four through nine as follows:

Count four (dissemination): 90-month commitment (presumptive 153 months)

Count five (dissemination): 90-month commitment (presumptive 180 months)

³ Some documents in the record are not accessible to the public. See Minn. R. Pub. Access to Recs. of Jud. Branch 4, subd. 1(f)(1). But “[w]e are not precluded ‘from mentioning the contents’ of confidential or sealed documents when the information is ‘relevant to the particular issues or legal argument being addressed in the proceeding.’” *Cook v. Trimble*, 22 N.W.3d 196, 201 n.1 (Minn. App. 2025) (quoting Minn. R. Pub. Access to Recs. of Jud. Branch 4, subd. 4), *rev. granted* (Minn. Aug. 12, 2025). We also are not “constrained from disclosing information contained in the publicly filed briefs.” *Id.* Any reference to confidential documents herein is based on the parties’ publicly filed briefs, other public records, or is relevant to our determination of the issues on appeal.

⁴ The district court *Hernandized* the sentences for Porter's first three offenses, increasing his criminal-history score upon the imposition of each subsequent sentence. See *State v. Hernandez*, 311 N.W.2d 478, 479 (Minn. 1981). Under this method, district courts use each of the defendant's convictions, provided that the convictions are not part of the same behavioral incident, to incorporate an offender's criminal-history score for multiple felony convictions sentenced on the same day. See *id.*; see also Minn. Sent'g Guidelines 2.B.1.e (2022).

Count six (dissemination): 90-month commitment (presumptive 180 months)

Count seven (possession): 90-month commitment (presumptive 120 months)

Count eight (possession): 90-month commitment (presumptive 120 months)

Count nine (possession): 90-month commitment (presumptive 120 months)

The district court explained that it durationally departed downward on counts four through nine

because of the cumulative effects of the multiple counts and the *Hernandizing*, as it's called, of those counts, each sentence increases the criminal history score here. If this court were to blindly follow the guidelines, by the ninth count, the cumulative criminal history score of the guidelines would require a sentence of 15 years. The court believes that sentence unduly exaggerates the offenses and unduly exaggerates the criminality of those offenses before the court, making subsequent counts unduly onerous.

The district court further ruled that all nine sentences were to run concurrently.

The state appeals.

DECISION

Appellate courts review a district court's decision to depart from the presumptive guidelines sentence for an abuse of discretion. *Taylor v. State*, 670 N.W.2d 584, 588 (Minn. 2003). The district court abuses its discretion when the "reasons for departure are improper or inadequate." *State v. Edwards*, 774 N.W.2d 596, 601 (Minn. 2009) (quotation omitted). "If the reasons given are improper or inadequate and there is insufficient evidence of record to justify the departure, the departure will be reversed." *State v. Geller*, 665 N.W.2d 514, 516 (Minn. 2003) (quotation omitted).

The Minnesota Sentencing Guidelines provide presumptive sentences for felony offenses. Minn. Sent’g Guidelines 2.C (2022). A presumptive sentence is considered “appropriate for all typical cases sharing criminal history and offense severity characteristics.” Minn. Sent’g Guidelines 1.B.13 (2022). The sentencing guidelines prescribe “a sentence or range of sentences that is presumed to be appropriate.” *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014) (quotation omitted). The district court “must pronounce a sentence within the applicable range unless there exist identifiable, substantial, and compelling circumstances” distinguishing the case and overcoming the presumption in favor of the guidelines sentence. *Id.* (quotation omitted); *see also State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016) (noting that the “guidelines seek to maintain uniformity, proportionality, rationality, and predictability in sentencing of felony crimes” (quotation omitted omitted)). If a district court departs from the sentencing guidelines, it must state its reasons for doing so in writing or on the record. Minn. Sent’g Guidelines 2.D.1.c (2022).

A downward durational departure is a sentence that is shorter in length than the presumptive sentence. *Solberg*, 882 N.W.2d at 623. “Durational departures may be justified by offense-related reasons only.” *State v. Rund*, 896 N.W.2d 527, 533 (Minn. 2017). “[T]o support a downward durational departure, the reason [given by the district court] must demonstrate that the defendant’s conduct was *significantly less serious* than that typically involved in the commission of the crime in question.” *Id.* at 535 (emphasis added) (quotation omitted).

We review de novo whether the district court’s stated reason for departure is proper. *Dillon v. State*, 781 N.W.2d 588, 595 (Minn. App. 2010), *rev. denied* (Minn. July 20, 2010). Additionally, “[t]he interpretation of a statute and the sentencing guidelines are questions of law that we review de novo.” *State v. Williams*, 771 N.W.2d 514, 520 (Minn. 2009) (concluding that the standard of review as to whether the district court properly calculated the defendant’s criminal-history score under *Hernandez* is de novo). Generally, the remedy for an unsupported durational departure is to remand for resentencing within the presumptive range. *Geller*, 665 N.W.2d at 517.

Here, the state argues that the district court abused its discretion by departing downward durationally on counts four through nine because the district court made no findings that the conduct involved in those offenses was significantly less serious than that typically involved in the commission of the offenses at issue—possession and dissemination of child-sexual-abuse material. In response, Porter argues that the district court’s factual findings are adequate to support its departure decision. We agree with the state.

Without findings that a defendant’s conduct is significantly less serious than that typically involved in the commission of the offense, there are no substantial and compelling circumstances to support a downward durational departure. *See Rund*, 896 N.W.2d at 533, 535. Here, the record reflects that the district court failed to make the required findings. In granting a downward durational departure for counts four through nine, the district court did not identify any circumstances that made Porter’s conduct underlying the charges of

possession and dissemination of child-sexual-abuse material in counts four through nine less serious than that typically involved in the commission of the offenses.

Instead of considering the conduct underlying each of these offenses, the district court considered the impact of *Hernandizing* the sentences. The *Hernandizing* method is a process by which “a district court sentencing a defendant on the same day for multiple convictions based on multiple offenses that were not part of a single behavioral incident or course of conduct can increase the defendant’s criminal-history score incrementally as each successive sentence is imposed.” *State v. Longo*, 909 N.W.2d 599, 611 (Minn. App. 2018) (citing *Hernandez*, 311 N.W.2d at 481); *see also* Minn. Sent’g Guidelines 1.B.10, 2.B.1.e (2022). Under this process, the district court calculates the criminal-history score by accounting for the previous conviction when sentencing on subsequent convictions. Minn. Sent’g Guidelines 1.B.10, 2.B.1.e.

The district court explained that it departed downward durationally from the sentencing guidelines for counts four through nine “based on what the court consider[ed] to be the onerous and unfair exaggeration of the criminality of the sentence [for counts four through nine], if the guidelines were to be strictly adhered to.” The district court noted that the effect of *Hernandizing* consistent with the guidelines would increase the criminal-history score for counts four through nine. The district court explained that if it “were to blindly follow the guidelines, by the ninth count, the cumulative criminal history score of the guidelines would require a sentence of 15 years.” The district court emphasized that it did not intend to minimize “the seriousness of the underlying offenses, but rather [it] believe[d] justice [was] properly served by th[e] departure.” In other words,

according to the district court, “to impose the sentence as set forth by the guidelines would exaggerate the criminality of those subsequent offenses.” The district court gave no further reasoning for its departure, nor did it disclose the reasons for the departure in writing.⁵

Porter cites to no authority—nor are we aware of any—that permits a district court to grant a downward durational departure solely based on the district court’s disagreement with the impact of *Hernandizing* in a particular case or the district court’s disagreement with the sentencing guidelines. Rather, the sentencing guidelines provide: “Multiple offenses sentenced at the same time before the same court must be sentenced in the order in which they occurred.” Minn. Sent’g Guidelines 2.B.1.e. And the district court was required under the sentencing guidelines and *Hernandez* to increase Porter’s criminal-history score before sentencing the next offense. Minn. Sent’g Guidelines 1.B.10; *Hernandez*, 311 N.W.2d at 479. Consequently, because the district court’s disagreement with the impact of *Hernandizing* on Porter does not support a downward durational departure and the district court did not make any findings that Porter’s conduct for offenses four through nine was significantly less serious than that typically involved in the commission of the offenses, we conclude the district court abused its discretion by durationally departing downward on counts four through nine.

⁵ A district court’s reasons for departure must be stated in the sentencing order or set forth in a departure report and filed with the Minnesota Sentencing Commission. *See* Minn. Stat. § 244.10, subd. 2 (2022) (requiring the district court to provide “written findings of fact as to the reasons for departure”); *see also* Minn. R. Crim. P. 27.03, subd. 4(C); Minn. Sent’g Guidelines 2.D.1.c.

In urging us to affirm, Porter argues that the district court implicitly found that his conduct was “significantly less serious than typical [conduct] in possession [and dissemination] cases” because the district court stated that *Hernandizing* and imposing the presumptive sentences for counts four through nine would artificially make the offenses “more onerous.” And he notes that the district court discussed at sentencing that crimes involving child-sexual-abuse material are “serious and heinous,” which shows that the district court carefully reviewed the entire record before departing.⁶ These arguments are unpersuasive.

The district court stated that imposing the guidelines sentence would “unduly exaggerate[] the offenses and unduly exaggerate[] the criminality of those offenses” under *Hernandez*. But the district court did not make any findings that imposing sentences within the guidelines range would unfairly exaggerate Porter’s *conduct* or that his conduct was significantly less serious than the typical offense. As noted, a downward durational departure from the guidelines must be based on a finding that the defendant’s conduct *was significantly less serious* than that typically involved in the commission of the crime in question. *See Rund*, 896 N.W.2d at 535. And it is undisputed that the district court made no such findings regarding the conduct underlying counts four through nine. Without such findings, the district court has not articulated a substantial and compelling reason to depart. *See id.*

⁶ Porter also relies on nonprecedential caselaw that does not control our analysis. *See* Minn. R. Civ. App. P. 136.01(c) (noting that nonprecedential opinions are not binding authority).

Further, we discern no circumstances in the record to distinguish this case from the typical case involving the possession and dissemination of child-sexual-abuse material. If “the district court gives improper or inadequate reasons for a *downward* departure, [an appellate court] may independently examine the record to determine whether alternative grounds support the departure.” *Id.* at 532-33. Based on our independent review, we conclude that Porter’s conduct underlying counts four through nine was not significantly less serious than that typically involved in the commission of the offenses. At the plea hearing, on counts four through nine, Porter admitted that he disseminated pornographic works of young children with adults touching or penetrating the children’s bodies. And, on counts four through nine, Porter admitted that he possessed images or videos of young children with adults penetrating the children’s bodies. Nothing about this conduct indicates that Porter’s conduct was less serious than typical for these offenses. Therefore, based upon our independent examination of the record, we conclude that there is no basis on which to affirm the district court’s downward durational departure from the sentencing guidelines.

In sum, we conclude that the district court abused its discretion by granting a downward durational departure on counts four through nine because it did not find that Porter’s conduct was significantly less serious than that typically involved in the commission of the crimes in question. And, based on our independent review, we discern that the record does not support the downward durational departures. We therefore reverse

Porter's sentences for counts four through nine and remand for imposition of a sentence within the presumptive sentencing range under the guidelines for each of these counts.

Reversed and remanded.