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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0818**

State of Minnesota,
Appellant,

vs.

Samantha Lee Ramert,
Respondent.

**Filed April 8, 2008
Affirmed
Shumaker, Judge**

Lyon County District Court
File No. 42-CR-06-930

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

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Considered and decided by Shumaker, Presiding Judge; Toussaint, Chief Judge;
and Crippen, Judge.*

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

UNPUBLISHED OPINION

SHUMAKER, Judge

The state appeals from a sentence imposed on respondent following a jury trial finding her guilty of felony theft of a motor vehicle. The district court sentenced respondent to a gross misdemeanor sentence of 365 days stayed, which was a downward durational departure from the presumptive sentence. The state argues that the district court abused its discretion ordering this sentence because the circumstances did not warrant the departure. Because we find that the district court did not abuse its discretion, we affirm.

FACTS

Respondent Samantha Lee Ramert was with friends at a house in Cottonwood when she took the keys to the car parked outside, telling the owner that she needed to get her cell phone, which she had left in the car. When Ramert did not return, the owner went outside and saw her car was missing. The police were alerted, and at approximately 4 a.m. on September 1, 2006, Ramert was apprehended. She was charged with felony theft of a motor vehicle. After a jury trial, she was found guilty.

At sentencing, the district court imposed a gross misdemeanor sentence of 365 days in jail, stayed, and put Ramert on probation for two years, with numerous conditions imposed upon her. This was a downward departure from the presumptive guidelines sentence of one year and one day, stayed.

The district court set forth in writing that Ramert's amenability to probation and remorse were the main factors supporting the departure. The court also noted that a

felony would bar Ramert from obtaining employment in the cosmetology field, and the court also considered her voluntary intoxication and lack of a criminal record. This appeal followed.

D E C I S I O N

Appellant State of Minnesota argues that the district court erred in departing downward from the presumptive sentence. On appeal, this court “review[s] a sentencing court’s departure from the sentencing guidelines for abuse of discretion.” *State v. Geller*, 665 N.W.2d 514, 516 (Minn. 2003). The reviewing court must “examine the record to determine whether it supports the [district] court’s stated reasons for a departure.” *State v. Sebasky*, 547 N.W.2d 93, 100 (Minn. App. 1996), *review denied* (Minn. June 19, 1996). When a district court sentences a defendant to a stayed gross misdemeanor sentence of one year, rather than the presumptive stayed felony sentence of one year and one day, it has made a downward durational departure from the presumptive sentence that must be justified. *State v. Cizl*, 304 N.W.2d 632, 634 (Minn. 1981); *State v. Bauerly*, 520 N.W.2d 760, 762 (Minn. App. 1994), *review denied* (Minn. Oct. 27, 1994).

The district court must order the presumptive sentence provided in the sentencing guidelines unless the case involves “substantial and compelling circumstances” to warrant a downward departure. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). “[I]n exercising the discretion to depart from a presumptive sentence, the judge must disclose in writing or on the record the particular substantial and compelling circumstances that make the departure more appropriate than the presumptive sentence.” Minn. Sent. Guidelines II.D.

The Minnesota Sentencing Guidelines provide a list of nonexclusive factors that a district court may use as reasons for a downward departure. Minn. Sent. Guidelines II.D.2. Typically, offender-related factors, such as amenability to treatment, remorse, age, and rehabilitation, are considered when departing dispositionally. *State v. Chaklos*, 528 N.W.2d 225, 228 (Minn. 1995); *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). Offense-related factors, like the severity of the conduct as compared to similar crimes, are usually considered when departing durationally. *Chaklos*, 528 N.W.2d at 228; *Bauerly*, 520 N.W.2d at 763. Employment factors such as employment history and the impact of the sentence on employment are not appropriate reasons for departure. Minn. Sent. Guidelines. II.D.1. Nor are a defendant's clean criminal record, voluntary intoxication, or a desire to avoid burdening a defendant with a criminal conviction appropriate reasons to depart. *Cizl*, 304 N.W.2d at 634.

The state argues that the district court abused its discretion in its departure from the Minnesota Sentencing Guidelines presumptive sentence because the departure was based on improper reasons and the record does not support the district court's findings. However, this court has held that the sentencing guidelines are intended to produce consistent results while simultaneously preserving the tradition of judicial discretion in sentencing. *State v. Bendzula*, 675 N.W.2d 920, 923 (Minn. App. 2004). The guidelines do not deprive the district court of all discretion in sentencing matters. Minn. Sent. Guidelines I.

While the district court's consideration of Ramert's career in cosmetology, her voluntary intoxication, and her lack of criminal record may have been improper, the

record conclusively shows that those were not the only factors leading to the departure, nor even the main factors. As long as the district court expressly finds, or the record contains, appropriate reasons for a departure, a district court's reliance on other improper reasons does not make the ultimate sentencing departure an abuse of its discretion. *Williams v. State*, 361 N.W.2d 840, 844 (Minn. 1985).

The district court found Ramert's remorse compelling. A district court may consider a defendant's remorse when making a downward durational departure from the sentencing guidelines. *Bauerly*, 520 N.W.2d at 762-63. "Because the district court has an opportunity to actually observe the defendant throughout the proceedings, a reviewing court must defer to the district court's assessment of the sincerity and depth of the remorse and what weight it should receive in the sentencing decision." *State v. Sejnoha*, 512 N.W.2d 597, 600 (Minn. App. 1994), *review denied* (Minn. Apr. 21, 1994). The district court found that Ramert exhibited remorse, stating on the record, "I am satisfied that you do regret what you did," and the court included her remorse in its written departure findings. The district court believed that Ramert was sincere and that she took full responsibility for her actions. The record contains no evidence to the contrary that would undermine that finding.

In addition to her remorse, Ramert's crime was less serious than the typical felony vehicle theft offense. In *Bauerly*, this court upheld the district court's downward departure from the presumptive felony sentence of one year and one day, stayed, to a sentence of one year, stayed. 520 N.W.2d at 763. We held that, in a situation where the value of a stolen item was significantly less than the amount in the typical felony theft

case and the defendant's remorse was substantial, the record supported the departure. *Id.* Ramert did not cause major damage to the vehicle; restitution was \$340.74, most of which was mileage charges and a towing fee. Further, Ramert took an acquaintance's car, which is far less serious than the typical offense, in which a stranger's car is broken into on the street and stolen.

The state suggests that Ramert's amenability to probation did not matter as her sentence was presumptively stayed. "[A] defendant's particular amenability to individualized treatment in a probationary setting will justify departure in the form of a stay of execution of a presumptively executed sentence." *Trog*, 323 N.W.2d at 31. But even if we discount the amenability to probation finding altogether, the record supports a durational departure based on Ramert's remorse, coupled with the less-severe nature of her offense. The district court's finding of substantial and compelling reasons to grant a downward departure was appropriate. *See Bauerly*, 520 N.W.2d at 762-63 (finding remorse, along with the small property value of the stolen property, enough to uphold a downward durational departure). The downward durational departure is supported by the record and was an exercise of judicial discretion, not an abuse of it.

Affirmed.