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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A13-1331**

State of Minnesota,  
Respondent,

vs.

Chad Matthew Pulju,  
Appellant.

**Filed April 21, 2014  
Affirmed  
Connolly, Judge**

Stearns County District Court  
File No. 73-CR-12-7907

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Janelle Kendall, Stearns County Attorney, Michael J. Lieberg, Assistant County  
Attorney, St. Cloud, Minnesota (for respondent)

Eric L. Newmark, Newmark Law Office LLC, Minneapolis, Minnesota (for appellant)

Considered and decided by Chutich, Presiding Judge; Connolly, Judge; and Smith,  
Judge.

## UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant argues that the district court abused its discretion by denying his motion for a downward durational departure and by sentencing him to the presumptive guidelines sentence of 261 months in prison. We affirm.

### FACTS

On August 23, 2012, at approximately 12:34 a.m., officers were dispatched to G.D.B.'s residence based on a report of an ongoing domestic assault. When officers arrived, they found G.D.B. with blood covering her face and neck. Her son, appellant Chad Pulju, was standing behind her and had blood on his clothing. Appellant had a small folding knife with blood on it in his possession. G.D.B. was transported to the hospital where she was pronounced dead at 2:10 a.m. The autopsy report indicates that G.D.B. died of exsanguination due to multiple sharp force injuries; she had 47 stab wounds to her face, neck, arm, and hand.

Appellant claims to have no recollection of the murder. In his statement to police, appellant said that, on the night in question, he had been drinking alcohol with G.D.B. at her house until 10:30 p.m. Appellant did not remember anything else from the night, and did not know how G.D.B.'s blood got on his clothing.

The state charged appellant with second-degree intentional murder in violation of Minn. Stat. § 609.19, subd. 1(1) (2012), and second-degree unintentional murder in violation of Minn. Stat. § 609.19, subd. 2(1) (2012) and filed a notice of its intent to seek an aggravated sentence. On March 29, 2013, appellant entered an *Alford/Norgaard* plea

and pleaded guilty to second-degree intentional murder.<sup>1</sup> In exchange for his guilty plea, the state agreed to a sentencing cap of 306 months in prison and agreed to withdraw its motion seeking an aggravated sentence.

On May 8, appellant moved for a downward durational departure. On May 24, the district court held a sentencing hearing. At the hearing, appellant called Dr. Cramer Bornemann, an expert in sleep behavior and disorders, as a witness to explain why appellant murdered his mother. After determining that appellant's actions were not the result of a sleep disorder, Dr. Cramer Bornemann began to focus on appellant's alcohol consumption as a cause for his apparent anterograde amnesia, or "loss of memory after the event that caused the amnesia."

According to Dr. Cramer Bornemann, Alcoholic Blackout with a Dissociative State (alcoholic blackout) is anterograde amnesia that is caused by the rapid rise of an individual's blood-alcohol concentration. He analogized appellant's behavior during the murder to a "temporary psychosis" and opined that the dissociative state and/or psychosis were not foreseeable or intended and can be accompanied by paranoid or delusional behavior.

The district court denied appellant's motion for a downward durational departure, reasoning that appellant's voluntary intoxication is not a substantial and compelling circumstance justifying departure. The district court sentenced appellant to 261 months

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<sup>1</sup> An *Alford* plea enables a defendant to plead guilty to an offense while maintaining his innocence. *North Carolina v. Alford*, 400 U.S. 25, 26-27, 91 S. Ct. 160, 162 (1970). A *Norgaard* plea allows a defendant to plead guilty while maintaining that he has no recollection of the facts supporting the charges against him. *Norgaard v. Tahash*, 261 Minn. 106, 108, 110 N.W.2d 867, 869 (1961).

in prison, which is a bottom-of-the-box sentence under the sentencing guidelines for the offense.<sup>2</sup>

## DECISION

Appellant argues that the district court erred by denying his motion for a downward durational departure. We disagree. The district court must order the presumptive sentence unless “substantial and compelling circumstances” merit a downward durational departure. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). We review de novo whether there are substantial and compelling circumstances that merit a departure. *Dillon v. State*, 781 N.W.2d 588, 595 (Minn. App. 2010), *review denied* (Minn. July 20, 2010). But the district court’s decision to grant or deny a sentencing departure is reviewed for abuse of discretion. *State v. Geller*, 665 N.W.2d 514, 516 (Minn. 2003).

Specifically, appellant argues that the district court erroneously believed that it did not have the discretion to grant his motion for a downward durational departure even though he presented evidence that he lacked substantial capacity for judgment due to his alcoholic blackout. “Substantial and compelling circumstances are those demonstrating that the defendant’s conduct in the offense of conviction was significantly more or less serious than that typically involved in the commission of the crime in question.” *State v. Jones*, 745 N.W.2d 845, 848 (Minn. 2008) (quotation and emphasis omitted). Under the Minnesota Sentencing Guidelines, one permissible factor for departure is the offender’s

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<sup>2</sup> At the time of sentencing, appellant had a criminal-history score of zero. The offense severity level for second-degree intentional murder is 11, making the presumptive guidelines range 261-367 months in prison.

lack of substantial capacity for judgment because of physical or mental impairment. Minn. Sent. Guidelines 2.D.3.a.(3) (2012). But a defendant's voluntary intoxication at the time of the offense may not be relied upon as a mitigating factor to justify a downward durational departure. Minn. Sent. Guidelines 2.D.3.a.(3); *see also State v. Cizl*, 304 N.W.2d 632, 634 (Minn. 1981) (stating that the defendant's voluntary intoxication is not a substantial and compelling circumstance warranting departure). "[T]o constitute a mitigating factor in sentencing, a defendant's impairment must be extreme to the point that it deprives the defendant of control over his actions." *State v. McLaughlin*, 725 N.W.2d 703, 716 (Minn. 2007) (quotation omitted).

At the sentencing hearing, appellant presented evidence from Dr. Cramer Bornemann to show that he lost control of his actions due to his alcoholic blackout. According to Dr. Cramer Bornemann, "the most likely cause for [appellant's] outburst . . . is not Alcohol Intoxication . . . but rather an Alcoholic Blackout with a Dissociative State." In an alcoholic blackout the individual is conscious and may appear completely normal but may engage in behaviors that they otherwise would not engage in, including deviant behavior. Dr. Cramer Bornemann opined that in appellant's case, "an Alcoholic Blackout with a Dissociated State is a state of absence of the mind which was the unanticipated result of social drinking, when intoxication was neither desired nor expected."

Contrary to appellant's statement that "[t]he [c]ourt acknowledged that [the mental impairment] mitigating factor was present," the district court expressed its doubts that appellant suffered from an alcoholic blackout. It stated, "I do believe here that the

evidence largely supports the proposition of some type of alcohol-related action, whether or not it's a complete psychosis as suggested by the physician, or something short of that, I don't know."

Even if his alcoholic blackout did, in fact, deprive appellant of control over his actions, the district court had discretion whether to impose a durational departure. *State v. Wall*, 343 N.W.2d 22, 25 (Minn. 1984) ("The fact that a mitigating factor was clearly present [does] not obligate the court to place [the] defendant on probation or impose a shorter term than the presumptive term."). Although the district court is required to give reasons for departure, no explanation is required when a presumptive sentence is imposed. *State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985). But where compelling circumstances for departure exist, the district court must deliberately consider those factors before imposing the presumptive sentence. *State v. Curtiss*, 353 N.W.2d 262, 264 (Minn. App. 1984).

The record demonstrates that the district court considered appellant's evidence and applicable mitigating factors before denying his motion for a downward durational departure. Appellant drank approximately one liter of rum before he murdered his mother. His blood-alcohol concentration was .120 on August 23, 2013, indicating that his blood-alcohol concentration would have been approximately .255 at the time of his arrest. The district court considered these circumstances and stated,

What I am going to do is this: I do feel that the expert who testified, the explanation offered there is probably as good an explanation as anything. I do think that what happened here is incomprehensible. On the other hand, looking at the Sentencing Guidelines and mitigating factors expressed

therein and how voluntary alcohol use applies, I am going to deny the motion, but take into consideration the argument when it comes to sentencing within the parameters of the Guidelines.

Moreover, the district court explained that appellant's conduct was not significantly less serious than a typical second-degree murder. Appellant stabbed his mother 47 times. The district court referred to the crime as "incomprehensible" and stated,

Intoxication, or psychosis or whatever may be an explanation, but it is not a defense in this situation. It may reduce culpability to the extent as to the decision he made when the attack occurred, but not necessarily culpability when choosing to drink a liter . . . of rum. . . . But unfortunately, the consequences of those actions are no less serious than if those circumstances discussed by [Dr. Cramer Bornemann] had not . . . existed.

We conclude that the district court did not abuse its discretion by denying appellant's motion for a downward durational departure; this is not a "rare case" where this court should reverse the district court's imposition of the presumptive guidelines sentence. *See Kindem*, 313 N.W.2d at 7-8.

**Affirmed.**