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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A12-0614**

State of Minnesota,  
Respondent,

vs.

Christina Anne Wevley,  
Appellant.

**Filed January 22, 2013  
Affirmed  
Chutich, Judge**

Olmsted County District Court  
File No. 55-CR-11-1958

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

Mark A. Ostrem, Olmsted County Attorney, James P. Spencer, Assistant County  
Attorney, Rochester, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Cathryn Middlebrook, Assistant  
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hudson, Presiding Judge; Chutich, Judge; and  
Klaphake, Judge.\*

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

## UNPUBLISHED OPINION

**CHUTICH**, Judge

On appeal from her conviction of third-degree drug possession, appellant Christina Anne Wevley argues that the district court abused its discretion by not considering mitigating factors that support a downward durational departure. Because the district court did not abuse its discretion by refusing to depart, we affirm.

### FACTS

On September 13, 2010, police investigators with the Southeast Minnesota Narcotics and Gang Task Force conducted a controlled cocaine buy with the use of a confidential reliable informant. Christopher Dahl, Wevley's ex-boyfriend, picked up the informant in Winona. Dahl told the informant that he could get cocaine for the informant, but they would need to drive to Rochester to get it from Wevley. Dahl dropped off the informant in a parking lot in Rochester and continued on to pick up the cocaine. An officer followed Dahl as he drove to Wevley's apartment and observed him "walk up to Wevley's vehicle, stay there briefly then walk away." Dahl then returned to the informant and gave him the cocaine, keeping a portion of the drugs as payment.

Officers from the Winona County Sheriff's office stopped Dahl after he and the informant parted ways. Dahl admitted that he had some cocaine with him and told the officers that he had purchased it from Wevley. The investigators then questioned Wevley, and she admitted to selling cocaine to Dahl on the day in question.

The state charged Wevley with one count of second-degree drug sale in violation of Minn. Stat. § 152.022 (2010). Wevley pleaded guilty to an amended charge of third-

degree drug possession. In return, the state agreed to request a sentence on the lower end of the presumptive guidelines as determined by Wevley's pre-sentence investigation report. The parties also agreed that Wevley could bring a motion for a downward durational departure at the sentencing hearing.

At sentencing, Wevley sought a downward durational departure to 24 months, the mandatory minimum for a third-degree possession charge. Wevley argued that she acted under duress and out of fear of an emotionally and physically abusive ex-boyfriend. Wevley stated that she previously had a violent relationship with Dahl and that she had initially resisted his request to sell him cocaine. The state opposed the downward departure, arguing that Wevley failed to prove that she acted under duress because she had not taken full responsibility for her actions. The state requested a sentence of 34 months, which was the low end of the presumptive sentencing range.<sup>1</sup>

After listening to the parties' arguments for and against the departure, the district court stated that it did not "find any substantial or compelling basis for a durational departure." The district court sentenced Wevley to 34 months, and she now appeals her sentence.

## **D E C I S I O N**

The district court has broad discretion in deciding whether to grant a downward durational departure, and we will generally not interfere with its decision. *State v. Curtiss*, 353 N.W.2d 262, 263 (Minn. App. 1984); *see also State v. Kindem*, 313 N.W.2d

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<sup>1</sup> Based on the severity of the crime and Wevley's criminal history score, the presumptive sentencing range was 34 to 46 months.

6, 7 (Minn. 1981) (“[I]t would be a rare case which would warrant reversal of the refusal to depart.”). A district court may depart from a presumptive sentence only if “identifiable, substantial, and compelling circumstances” exist to support departure. Minn. Sent. Guidelines II.D (2010). When a valid mitigating factor exists, the district court is not required to depart, but it must exercise its discretion by “deliberately considering circumstances for and against departure.” *State v. Mendoza*, 638 N.W.2d 480, 483 (Minn. App. 2002), *review denied* (Minn. Apr. 16, 2002). While a decision to depart must be explained in writing, no written explanation is required when the court considers reasons for departure but elects to impose the presumptive sentence. *State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985); *cf.* Minn. R. Crim. P. 27.03, subd. 4(C); Minn. Sent. Guidelines II.D.

Wevley argues that the district court failed to properly consider her request for a downward durational departure on the basis that she acted under duress.<sup>2</sup> In support of her argument, Wevley relies on this court’s decision in *State v. Curtiss*, 353 N.W.2d 262 (Minn. App. 1984). In *Curtiss*, this court considered the district court’s imposition of a presumptive sentence after it found that no compelling circumstances justified a downward durational departure. *Id.* at 263. This court noted several compelling circumstances that supported a downward durational departure and found that the district

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<sup>2</sup> In her pro se brief, Wevley supplements the arguments made before the district court by discussing her abusive relationship in greater detail. Wevley also discusses her progress in treatment and participation in therapy programs during her incarceration. While we commend Wevley’s initiative in taking advantage of the programming offered, this information is not relevant to the issue on appeal. We must evaluate the district court’s decision based on the record before it when it ruled on her motion for a downward departure.

court erred by failing to consider them “alongside valid reasons for non-departure.” *Id.* at 264 (quotation omitted). Because the district court failed to exercise its discretion, we remanded the case for further consideration of a downward departure. *Id.*

Unlike *Curtiss*, the record here demonstrates that the district court properly considered Wevley’s argument and exercised its discretion. At the beginning of the sentencing hearing, the district court noted that it had received Wevley’s documents supporting her motion, including caselaw, a letter from Wevley’s therapist, and Dahl’s criminal history. The district court specifically noted that it had reviewed the submitted caselaw. It heard Wevley’s argument that she was acting under duress and that her possession charge was not the “typical” possession charge. The district court also listened to the state’s argument against a downward durational departure. The state acknowledged that duress was a valid mitigating factor, *see* Minn. Sent. Guidelines II.D.2.a.(2) (“The offender . . . participated under circumstances of coercion or duress.”), but argued that Wevley failed to prove she had acted under duress when committing the crime. After listening to the proffered arguments, the district court concluded that it did “not find any substantial or compelling basis for a durational departure.”

Based on this record, we conclude that the district court was fully aware of its authority to depart downwards from the guidelines sentence based upon the mitigating factor of duress. The district court, after listening to cogent arguments for and against departure, concluded that Wevley had not demonstrated compelling circumstances supporting departure. While a more detailed record of the district court’s analysis would assist in appellate review, we recognize that, because the district court did not depart

from the presumptive sentence, it was not required to further explain its reasoning. *Van Ruler*, 378 N.W.2d at 80. Thus, we conclude that the district court did not abuse its discretion in denying Wevley's motion for a downward durational departure.

**Affirmed.**