This opinion is nonprecedential except as provided by Minn.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
A22-1157

State of Minnesota,
Respondent,

vs.

Sterling Royce Haukom,
Appellant.

Filed June 20, 2023
Affirmed
Klaphake, Judge*

Olmsted County District Court
File No. 55-CR-21-1068

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

Mark A. Ostrem, Olmsted County Attorney, James E. Haase, Senior Assistant County Attorney, Rochester, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Anders J. Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Bryan, 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.

NONPRECEDENTIAL OPINION

KLAPHAKE, Judge

Appellant Sterling Royce Haukom appeals his sentence of 96 months' imprisonment—an upward durational departure—for his conviction of felony criminal vehicular homicide.[1] Because Haukom's offense was more serious than a typical criminal-vehicular-homicide offense, the district court did not abuse its discretion and we affirm.

DECISION

"We review a district court's decision to depart from the presumptive guidelines sentence for an abuse of discretion." *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016). "If the reasons given for an upward departure are legally permissible and factually supported in the record, the departure will be affirmed. But if the district court's reasons for departure are improper or inadequate, the departure will be reversed." *State v. Edwards*, 774 N.W.2d 596, 601 (Minn. 2009) (quotation omitted).

The Minnesota Sentencing Guidelines establish presumptive sentences for felony offenses. *Solberg*, 882 N.W.2d at 623. The guidelines seek to "maintain uniformity, proportionality, rationality, and predictability in sentencing." Minn. Stat. § 244.09, subd. 5 (2022). A district court may depart from the presumptive sentence only when there are "identifiable, substantial, and compelling circumstances to support a departure." Minn. Sent'g Guidelines 2.D.1 (2020); *see also State v. Kindem*, 313 N.W.2d 6, 7

[1] Respondent State of Minnesota charged Haukom with this crime in violation of Minnesota Statutes section 609.2112, subdivision 1(a)(2)(i) (2020).

(Minn. 1981). "Substantial and compelling circumstances are those circumstances that make the facts of a particular case different from a typical case." *State v. Peake*, 366 N.W.2d 299, 301 (Minn. 1985).

A durational departure is a sentence shorter or longer than the presumptive range prescribed by the sentencing guidelines. Minn. Sent'g Guidelines 1.B.5.b (2020). This type of departure "must be based on factors that reflect the seriousness of the offense, not the characteristics of the offender." *Solberg*, 882 N.W.2d at 623-24. A durational departure is justified where the conduct underlying the offense represents "a greater than normal danger to the safety" of other people, *State v. McClay*, 310 N.W.2d 683, 684 (Minn. 1981), or where the conduct is significantly more serious than conduct typically involved in the commission of the crime. *State v. Cox*, 343 N.W.2d 641, 643 (Minn. 1984). We will not modify an upward durational departure unless we have a "strong feeling" that the sentence is disproportional to the offense and that the district court exceeded its discretion in granting the departure. *State v. Schantzen*, 308 N.W.2d 484, 487 (Minn. 1981).

Under the Sixth Amendment, a defendant is entitled to have a jury find the facts that would justify an upward departure—referred to as aggravating factors—unless the defendant waives this right. *State v. Jones*, 745 N.W.2d 845, 847-48, 851 (Minn. 2008) (citing *Blakely v. Washington*, 524 U.S. 296, 303 (2004)). Haukom waived this right and allowed the district court to determine potential aggravating factors. The district court, after an evidentiary hearing on the state's suggested aggravating factors, found that Haukom was highly intoxicated at the time of the crash, his driving behavior—inclusive of

his excessive speed—was egregious, and his state of mind while operating his vehicle went beyond simple negligence into gross negligence, including recklessness.

Haukom pleaded guilty to felony criminal vehicular homicide which states that "a person is guilty of criminal vehicular homicide . . . if the person causes the death of a human being not constituting murder or manslaughter as a result of operating a motor vehicle . . . in a negligent manner while under the influence of . . . alcohol." Minn. Stat. § 609.2112, subd. 1(a)(2)(i). The degree of Haukom's intoxication, Haukom's egregious driving behavior, and his grossly negligent and or reckless state of mind are not elements of this crime. Haukom's alcohol concentration was 0.251, he drove at a speed of 60 miles per-hour in a 30 mile-per-hour residential neighborhood, ran a red light, hit another vehicle, and killed its occupant. And in an interview after the crash, he stated that while he was not trying to kill himself, "I'd say I was willing to go." These actions and circumstances distinguish the crime he committed from a typical criminal-vehicular-homicide offense and can justify an upward durational departure because they make his crime more serious than the conduct typically involved in this crime. Haukom gave the factual basis in his guilty plea to support these aggravating factors, and he does not contest that basis on appeal. The district court properly determined the aggravating factors that it based its sentencing decision on and did not abuse its discretion here.

Haukom contends that because the conduct that justified an upward durational departure is criminalized by different parts of the same statute, his conduct cannot be more serious than conduct supporting a typical criminal-vehicular-homicide charge. But

Haukom's conduct is more severe than a typical criminal-vehicular-homicide crime *because* his conduct went beyond violating the single subdivision to which he pleaded guilty. "[G]enerally, it is proper for the sentencing court to consider the course of conduct underlying the charge for which the defendant is being sentenced." *Cox*, 343 N.W.2d at 643. Because the district court based its sentencing decision on (1) evidence supporting the conclusion that Haukom committed the offense in a particularly serious way, and (2) conduct underlying the charge for which the district court sentenced him, not other potential charges, it did not abuse its discretion here.[2]

Affirmed.

[2] Haukom also argues that this situation is ripe for charging manipulation, incentivizing prosecutors to charge a defendant only under one part of a statute to use conduct that they could have charged under another part to argue for an aggravated sentence. But the state charged Haukom with two felonies and two gross misdemeanors, though he only pleaded guilty to one felony. Thus, while Haukom's argument may have merit, it is not meritorious here given the charges Haukom faced when he chose to plead guilty.