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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1334**

State of Minnesota,
Respondent,

vs.

Claudio Palacios-Salinas,
Appellant.

**Filed April 29, 2013
Affirmed
Halbrooks, Judge**

Hennepin County District Court
File No. 27-CR-11-24425

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

Michael O. Freeman, Hennepin County Attorney, Linda K. Jenny, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Sharon E. Jacks, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Halbrooks, Judge; and
Rodenberg, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

In this sentencing appeal following his conviction of two counts of first-degree criminal sexual conduct, appellant Claudio Palacios-Salinas argues that the district court

abused its discretion by denying his motion for a downward dispositional departure. We affirm.

FACTS

Palacios-Salinas was charged with two counts of first-degree criminal sexual conduct for engaging in multiple instances of sexual intercourse with the 13-year-old daughter of a family with whom he was living. Palacios-Salinas pleaded guilty to both charges.

After Palacios-Salinas entered his plea, the district court referred the matter to probation for a presentence investigation (PSI), including a psychosexual evaluation. During the PSI, Palacios-Salinas initially denied sexually assaulting the victim but eventually confessed. The psychosexual evaluator concluded that Palacios-Salinas was amenable to treatment despite his failure to demonstrate full accountability for his offenses. Probation reported that it did not find any substantial and compelling reasons to support a sentencing departure.

Palacios-Salinas moved the district court for a downward dispositional or durational departure, noting his amenability to sex-offender treatment, lack of criminal history, acceptance of responsibility, and the best interests of society as grounds for a departure. At sentencing, each party presented information and arguments concerning whether a departure was warranted in this case. Citing the “heinous” nature of the crime and the age of the victim, the state opposed a departure and requested that the presumptive sentence be imposed. Defense counsel advocated for a departure, reiterating the points made in his memorandum to the district court and raising two additional

factors: the difficulty of receiving sex-offender treatment in prison for a Spanish-only speaker and the adverse immigration consequences that Palacios-Salinas already faced for having reentered the country illegally. At the hearing, Palacios-Salinas apologized for his crimes.

After counsels' arguments and Palacios-Salinas's allocution, the district court denied appellant's motion for a departure, explaining:

In the pre-sentence interview, I don't know that you gave this the gravi[ty] that I think it needs to have. I've had an opportunity to speak with counsel on a couple of occasions. Initially, we had a long conversation about what the right response was, what the right sentence was in this case. Your lawyer stated pretty clearly what he thought was the appropriate response. . . . I'm going to decline to do that. I'm going to deny the motion for departure.

The district court adjudicated Palacios-Salinas guilty and imposed the presumptive sentences for his offenses. This appeal follows.

D E C I S I O N

A departure from a presumptive sentence under the sentencing guidelines may be imposed only if "substantial and compelling" circumstances are present. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). A decision to depart from the sentencing guidelines rests within the district court's broad discretion and will not be reversed absent an abuse of discretion. *State v. Misquadace*, 644 N.W.2d 65, 68 (Minn. 2002).

"If the district court has discretion to depart from a presumptive sentence, it must exercise that 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). Although the district court is required to give reasons for a departure, no explanation is required when it decides to impose the presumptive sentence. *State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985). So long as the sentencing court “carefully evaluated all the testimony and information presented before making a [sentencing] determination,” we will not interfere with the district court’s exercise of discretion. *State v. Pegel*, 795 N.W.2d 251, 255 (Minn. App. 2011). The district court may stay the imposition or execution of a sentence for first-degree criminal sexual conduct if it finds that (1) a stay is in the best interests of the victim or the family and (2) a professional evaluation shows that the offender is amenable to treatment and has been accepted into a treatment program. Minn. Stat. § 609.342, subd. 3 (2010).

Palacios-Salinas asserts that the district court “did not explain its ruling” and failed to deliberately consider the circumstances for and against departure that show that the factors enumerated in Minn. Stat. § 609.342, subd. 3, have been met. But the record belies both assertions. Defense counsel submitted a lengthy memorandum in support of the motion for a departure. The district court then heard arguments from both counsel concerning the appropriate sentence and whether a departure was warranted. And in explaining its decision to deny Palacios-Salinas’s motion, the district court referenced Palacios-Salinas’s behavior during the PSI, his “position” as to punishment for those crimes, and several prior conversations between the district court and the attorneys as to the appropriate sentence. On this record, we have no difficulty concluding that the district court considered the information and arguments that the parties submitted both for and against a departure.

Contrary to Palacios-Salinas's implied assertion, the governing law does not require the district court to conduct an on-the-record, side-by-side comparison of the evidence for and against departure. And although the district court provided some explanation as to why it denied the departure request, it was not required to give any such explanation. See *Van Ruler*, 378 N.W.2d at 80. The district court was required to carefully consider the information and arguments presented by the parties, with respect to the departure request, before making its sentencing decision. That is what the district court did. Based on the record before us and the controlling law, we conclude that the district court acted within its discretion by imposing the presumptive sentence.

Affirmed.