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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A13-1070**

State of Minnesota,  
Respondent,

vs.

Michael Benjamin Goodman,  
Appellant.

**Filed May 12, 2014  
Reversed and remanded  
Klaphake, Judge\***

Hubbard County District Court  
File No. 29-CR-12-1135

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

Donovan D. Dearstyne, Hubbard County Attorney, Park Rapids, Minnesota (for  
respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Minnesota (for  
appellant)

Considered and decided by Schellhas, Presiding Judge; Halbrooks, 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## UNPUBLISHED OPINION

**KLAPHAKE**, Judge

On appeal from his conviction of one count of second-degree burglary under Minn. Stat. § 609.582, subd. 2(a)(1) (2012), appellant Michael Goodman argues that (1) the district court abused its discretion by sentencing him as a career offender under Minn. Stat. § 609.1095, subd. 4 (2012), because he does not have the “five or more prior felony convictions” required by the statute and (2) the district court erred by denying his motion to dismiss for violating his speedy-trial right. We reverse and remand.

### FACTS

In September 2012, respondent State of Minnesota charged Goodman with a variety of charges, including second-degree burglary under Minn. Stat. §§ 609.582, subd. 2(a) and 609.05, subd. 1 (2012). At the omnibus hearing on October 8, 2012, Goodman’s attorney demanded a speedy trial. At an October 12 hearing, Goodman’s attorney repeated the speedy trial demand. On December 10, 2012, Goodman filed a motion to dismiss for violation of his right to a speedy trial. At a January 2013 hearing, the district court heard arguments and denied Goodman’s motion.

In February 2013, Goodman pleaded guilty to second-degree burglary. The parties agreed to a disposition of 90 months, representing an upward departure supported by the career-criminal-offender statute. The state agreed to dismiss all other charges. Goodman waived his right to a *Blakely* hearing, thereby waiving his right to a jury determining

the existence of aggravating factors. In March 2013, the district court accepted Goodman's plea and sentenced him to 90 months' in prison.

This appeal followed.

## **DECISION**

### ***Right to speedy trial***

Goodman alleges in his pro se supplemental brief that the state violated his constitutional right to a speedy trial. The United States and Minnesota Constitutions guarantee the right to a speedy trial. U.S. Const. amend. VI; Minn. Const. art I, § 6; *State v. DeRosier*, 695 N.W.2d 97, 108 (Minn. 2005). Goodman's guilty plea waived his speedy-trial challenge. *See State v. Jeffries*, 806 N.W.2d 56, 64 (Minn. 2011) ("A guilty plea by a counseled defendant has traditionally operated, in Minnesota and in other jurisdictions, as a waiver of all non-jurisdictional defects arising prior to the entry of the plea." (quotation omitted)).

### ***Upward departure***

Goodman argues that he does not have the "five or more prior felony convictions" required by Minn. Stat. § 609.1095, subd. 4; the state concedes that Goodman does not have the required convictions. The parties agree that Goodman should be resentenced to 60 months. *See generally State v. Misquadace*, 644 N.W.2d 65, 71 (Minn. 2002) ("[W]e conclude that negotiated plea agreements that include a sentencing departure are justified under the guidelines in cases where substantial and compelling circumstances exist. A plea agreement standing alone, however, does not create such circumstances in its own right.").

Appellate courts “review a district court’s decision to depart from the presumptive guidelines sentence for an abuse of discretion.” *Vickla v. State*, 793 N.W.2d 265, 266, 269 (Minn. 2011) (reviewing a departure under Minn. Stat. § 609.1095, subd. 4 (2010)). But appellate courts “review de novo the interpretation of criminal statutes.” *State v. Anderson*, 733 N.W.2d 128, 135 (Minn. 2007).

Under the career-offender statute, the district court may impose an aggravated durational departure up to the statutory maximum if it determines that (1) “the offender has five or more prior felony convictions” and (2) “the present offense is a felony that was committed as part of a pattern of criminal conduct.” Minn. Stat. § 609.1095, subd. 4. To be counted toward the first requirement, a prior conviction must have “occurred before the offender committed the next felony resulting in a conviction and before the offense for which the offender is being sentenced.” *Id.*, subd. 1(c) (2012); *State v. Huston*, 616 N.W.2d 282, 284 (Minn. App. 2000) (holding that the definition of “prior conviction” in Minn. Stat. § 609.1095, subd. 1(c) (1998), also applies to the phrase “prior felony conviction” in Minn. Stat. § 609.1095, subd. 4 (1998)). Consequently, the career-offender statute requires “five sequential felony offenses and convictions . . . (i.e., offense/conviction, offense/conviction, offense/conviction, etc.).” *Huston*, 616 N.W.2d at 283.

The record shows that Goodman has the following qualifying convictions:

<b>Date</b>	<b>Event</b>	<b>Qualifying conviction</b>
July 2006	<b>Offense:</b> MV Theft	
August 2006	<b>Offense:</b> (1) Theft; (2) Burglary 3rd	
February 2007	<b>Conviction:</b> for August, 2006 Burglary 3rd	1
May 2007	<b>Conviction:</b> for August, 2006 Theft	
August 2007	<b>Conviction:</b> for July, 2006 MV Theft	
December 2007	<b>Offenses:</b> (1) Burglary 3rd; (2) Assault 3rd	
April 2008	<b>Convictions:</b> for December, 2007 Burglary 3rd and Assault 3rd	2
February 2010	<b>Offense:</b> Fleeing PO	
May 2010	<b>Conviction:</b> for February, 2010 Fleeing PO	3
July 2011	<b>Offense:</b> Fleeing PO	
August 2011	<b>Offense:</b> Fleeing PO	
November 2011	<b>Convictions:</b> (1) for July, 2011 Fleeing PO; (2) for August, 2011 Fleeing PO	4

We conclude that Goodman does not have the necessary five prior convictions.

We therefore reverse and remand with instructions to impose the presumptive guidelines sentence 60 months.

**Reversed and remanded.**