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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0237**

State of Minnesota,
Respondent,

vs.

Rigoberto Rodriguez,
Appellant.

**Filed April 8, 2008
Affirmed
Connolly, Judge**

Hennepin County District Court
File No. 06044695

Lori Swanson, Attorney General, Bremer Tower, Suite 1800, 445 Minnesota Street,
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Considered and decided by Minge, Presiding Judge; Kalitowski, Judge; and
Connolly, Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant challenges the sentence imposed by the district court on two counts of first-degree criminal sexual conduct. He argues that the district court erred by sentencing him to 144 months on each count to run consecutively, because 144 months was neither the mandatory minimum nor the presumptive sentence based on his criminal history score of zero. We affirm.

FACTS

Appellant Rigoberto Rodriguez was living with a friend in Richfield between April and June 2006. Appellant's friend had six children, three of whom alleged that appellant had repeatedly touched them sexually. On July 6, 2006, appellant was charged with three counts of first-degree criminal sexual conduct pursuant to Minn. Stat. § 609.342, subd. 1(a) (2004). On October 3, 2006, he pleaded guilty to two counts involving two of the children pursuant to a plea agreement. He understood that he would be sentenced, in total, to between 144 and 288 months in prison. On October 31, 2006, appellant was sentenced to 144 months in prison on each count to be served consecutively. The third count was dismissed. This appeal follows.

DECISION

Appellant alleges that the district court erred in sentencing him to two 144-month prison terms to run consecutively when 144 months was neither the mandatory minimum sentence nor the presumptive sentence under the sentencing guidelines for a defendant who has a criminal-history score of zero. The state contends that the law supports this

sentence. This court conducts a de novo review of the district court's interpretation of the Minnesota Sentencing Guidelines. *State v. Rouland*, 685 N.W.2d 706, 708 (Minn. App. 2004), *review denied* (Minn. Nov. 23, 2004).

The district court sentenced appellant to two 144-month terms under Minnesota law.¹ The applicable statute provides:

Unless a longer mandatory minimum sentence is otherwise required by law or the Sentencing Guidelines provide for a longer presumptive executed sentence, the court *shall presume that an executed sentence of 144 months must be imposed on an offender convicted of violating this section.* Sentencing a person in a manner other than that described in this paragraph is a departure from the Sentencing Guidelines.

Minn. Stat. § 609.342, subd. 2(b) (2004) (emphasis added).

The parties agree on several points. First, they agree that the district court had the authority to impose permissive consecutive sentences on each count. Minn. Sent. Guidelines II.F.2 & VI. The parties further agree that if permissive consecutive sentences are imposed, then the duration for each offense is determined by the severity level appropriate to the convicted offense calculated with a zero criminal-history score or the mandatory minimum, whichever is greater. Minn. Sent. Guidelines cmt. II.F.02. Third, the parties are in agreement that the 144-month sentence set forth in Minn. Stat. § 609.342, subd. 2(b) is a mandatory presumptive sentence, not a mandatory minimum sentence. This is because the district court retains the authority to depart—downward (or upward)—*if* the procedural requirements for a departure are met. If it were a true

¹ The district court sentenced appellant to two 144-month terms because he pleaded guilty to two counts involving two individuals.

mandatory minimum, the court would be without discretion, and *no* downward sentencing departure would be permitted. *See State v. Bluhm*, 676 N.W.2d 649, 653 (Minn. 2004) (stating that the sentencing court does not have the discretion to place an individual on probation when the statute mandates jail time). The parties disagree on how to then apply the statute and the sentencing guidelines to arrive at a permissible sentence. Appellant argues that because a 144-month sentence is not a mandatory minimum, the district court must resort to the sentencing-guidelines grid to find the presumptive sentence for a generic severity-level-nine offense with a criminal-history score of zero. That would result in consecutive sentences of 144 months and 86 months. The state argues that the statute controls and provides for a mandatory presumptive sentence of 144 months for each count. We agree.

The clear statutory language requires that the presumptive sentence for criminal sexual conduct in the first degree be 144 months. Minn. Stat. § 609.342, subd. 2(b). The use of the words “shall” and “must” seems to necessitate a mandatory presumptive sentence of 144 months that cannot be ignored without complying with procedures for a departure under the sentencing guidelines. The district court correctly applied this mandatory presumptive sentence, choosing not to depart upward or downward.²

The sentencing guidelines grid does posit that for the offense of criminal sexual conduct in the first degree, calculated at a zero criminal-history score, an 86-month

² Appellant’s argument that this sentence was an upward departure is incorrect. The state explicitly stated at sentencing that it was not asking for an upward departure but rather was requesting the mandatory presumptive sentence of 144 months for each victim. The district court granted this request. And, as the parties agree, it was entirely permissible for the district court to apply the sentences consecutively.

sentence is presumptive. Therefore, the statute and a grid footnote³ directly conflict with the grid itself. According to statutory-construction principles, whenever a general provision is in direct conflict with a special provision, the special provision must prevail and shall be construed as an exception to the general provision. Minn. Stat. § 645.26, subd. 1 (2004). Stated in a different way, “[w]hen an irreconcilable conflict exists between two statutory provisions, the more particular provision controls over the general provision.” *Ford v. Emerson Elec. Co.*, 430 N.W.2d 198, 200 (Minn. App. 1988), *review denied* (Minn. Dec. 16, 1988). As the sentencing-guidelines grid is a general provision in direct conflict with the more specific statute regarding the presumptive sentence for these offenses, this court must give effect to the statute. The presumptive sentence on each count is 144 months.⁴

Therefore, the district court did not err in sentencing appellant to 144 months on each count to run consecutively.

Affirmed.

³ This footnote reads in part: “[p]ursuant to M.S. § 609.342, subd. 2 and 609.343, subd. 2, the presumptive sentence for Criminal Sexual Conduct in the First Degree is a minimum of 144 months”

⁴ It is telling that a new, separate sex-offender sentencing grid became effective on August 1, 2006, which confirms the presumptive sentence for first-degree criminal sexual conduct is 144 months for someone with a zero criminal-history score.