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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A08-1740**

Ronena Shantel Walker, petitioner,  
Appellant,

vs.

State of Minnesota,  
Respondent.

**Filed August 4, 2009  
Affirmed  
Larkin, Judge**

Ramsey County District Court  
File No. 62-K3-06-004685

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and

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Considered and decided by Schellhas, Presiding Judge; Ross, Judge; and Larkin,  
Judge.

## **UNPUBLISHED OPINION**

**LARKIN**, Judge

Appellant challenges her conviction of second-degree unintentional murder, arguing that there was an insufficient factual basis for her guilty plea and for her sentence, which was imposed pursuant to a plea negotiation. Because (1) appellant waived any claim of self defense, (2) there is a sufficient factual basis for appellant's guilty plea, and (3) the record supports appellant's upward-durational sentencing departure, we affirm.

### **FACTS**

Appellant Ronena Shantel Walker pleaded guilty to one count of second-degree unintentional murder in violation of Minn. Stat. § 609.19, subd. 2(1) (2006) for the stabbing death of M.C. According to Walker's testimony at her plea hearing, she and the victim were drinking together at the victim's apartment when Walker became intoxicated and passed out on the victim's bed. Walker claims that she woke to find the victim sexually assaulting her and that she had previously been the victim of several sexual assaults. Walker "responded dramatically," grabbing a knife and stabbing the victim several times. Walker admitted that she made no attempt to push the victim away or to punch him and that she could have restrained the victim and extricated herself from the situation had she chosen to do so. A medical examiner found that more than one knife was used in the assault on the victim and that the victim's blood alcohol concentration was .35 at the time of his death. Walker did not challenge these findings. During her

plea hearing, Walker admitted that the victim was a “smaller, older man” and that she was 5 feet, 9 inches tall and weighed 190 pounds at the time of the offense, and she conceded that she would describe herself as a “physically strong person.” Walker admitted that she inflicted the injuries that caused the victim’s death and twice acknowledged that she waived any possible self-defense claim.

Pursuant to a plea agreement, Walker agreed to plead guilty as charged and to accept an upward-durational sentencing departure. Walker accepted this negotiation in order to avoid an amended charge of intentional murder in the second degree. The terms of the plea agreement called for Walker to accept a sentence halfway between the presumptive sentence for second-degree unintentional murder, a level X offense, and second-degree intentional murder, a level XI offense. Walker’s presumptive sentence for a level X offense was 165 months; her presumptive sentence for a level XI offense was 326 months. The district court sentenced Walker to 245 months in prison, the midpoint between the two presumptive sentences.

Walker filed a petition for postconviction relief in the district court, arguing that (1) her plea was not supported by a sufficient factual basis because she had asserted a claim of self-defense, and (2) the upward-durational departure in her sentence was unsupported because her conduct was not significantly more serious than typically involved in the commission of the same offense, she never admitted the presence of aggravating factors, her testimony invalidated the basis for the departure, and the district court failed to find the existence of aggravating factors to support the departure. Walker did not request a hearing on her petition. The district court denied Walker’s petition for

postconviction relief, finding that (1) there was a sufficient factual basis for her plea, (2) she waived any claim of self-defense, (3) the departure was supported by the record as Walker admitted to the existence of aggravating factors and provided testimony to support them, and (4) the district court complied with the sentencing guidelines by disclosing on the record the particular substantial and compelling circumstances that made the departure more appropriate than the presumptive sentence.

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

Appellate courts “review a postconviction court’s findings to determine whether there is sufficient evidentiary support in the record.” *Dukes v. State*, 621 N.W.2d 246, 251 (Minn. 2001). Appellate courts “afford great deference to a district court’s findings of fact and will not reverse the findings unless they are clearly erroneous. The decisions of a postconviction court will not be disturbed unless the court abused its discretion.” *Id.*

### **I. Walker’s guilty plea was supported by a sufficient factual basis.**

Walker challenges the sufficiency of the factual basis for her guilty plea, arguing that the factual basis was insufficient because she asserted a claim of self-defense. Walker asserts that this court should review her appeal de novo, arguing that her appeal concerns the enforceability and validity of her guilty plea. *See State v. Rhodes*, 675 N.W.2d 323, 326 (Minn. 2004) (“interpretation and enforcement of plea agreements involve issues of law that we review de novo”). The record establishes that both Walker and the state understood the plea agreement clearly and that Walker was sentenced according to the agreement. Thus, we are not called upon to determine the enforceability

or validity of Walker's plea agreement with the state. Instead, we are called upon to review the sufficiency of the factual basis for Walker's plea.

To be valid, a guilty plea must be intelligent, voluntary, and accurate. *State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983). "The rule is that a [district] court may not accept a guilty plea unless it is first satisfied that, among other things, the plea is supported by an adequate factual basis." *Kelsey v. State*, 298 Minn. 531, 532, 214 N.W.2d 236, 237 (1974). "The factual-basis requirement is satisfied if the record contains a showing that there is credible evidence available which would support a jury verdict that defendant is guilty of at least as great a crime as that to which he pled guilty." *State v. Genereux*, 272 N.W.2d 33, 34 (Minn. 1978). "The factual basis of a plea is inadequate when the defendant makes statements that negate an essential element of the charged crime because such statements are inconsistent with a plea of guilty." *State v. Iverson*, 664 N.W.2d 346, 350 (Minn. 2003).

Walker argues that the factual basis for her plea was insufficient because she stated that, prior to the killing, she woke to find the victim sexually assaulting her. Walker argues that these statements were akin to an assertion that she had acted in self-defense, and that once she asserted such a defense, it was the state's burden to prove, beyond a reasonable doubt, that her actions were not in self-defense. *See State v. Boitnott*, 443 N.W.2d 527, 532 (Minn. 1989) (stating that in Minnesota it is the state's burden to disprove a self-defense claim beyond a reasonable doubt).

But the record demonstrates that Walker unequivocally waived any claim of self-defense she may have had.

DEFENSE COUNSEL: [W]e have talked about the defense of self-defense, and especially in this case that is a difficult one that you are choosing to give up here today, is that correct?

APPELLANT: Yes.

DEFENSE COUNSEL: You and I have discussed self-defense and the limits of self-defense extensively, haven't we?

APPELLANT: Yes, we have.

DEFENSE COUNSEL: In fact, you've been given an opportunity to review and discuss what would be the jury instructions for justifiable taking of a life, correct?

APPELLANT: Yes, I have.

DEFENSE COUNSEL: Do you understand that by pleading guilty, you're giving up the right to have a trial where the prosecution would need to prove beyond all reasonable doubt that you are not justified on taking [the victim's] life?

APPELLANT: Yes, I do.

DEFENSE COUNSEL: Is that your choice here today?

APPELLANT: Yes, it is.

Walker notes that despite this waiver, she continued to make statements regarding the victim's alleged sexual assault. In an apparent attempt to clarify that Walker was waiving a claim of self-defense, the district court inquired directly of Walker: "Earlier [defense counsel] asked you about self-defense. You had indicated you are waiving that. I want to be clear that you are in fact waiving self-defense. Are you waiving self-defense here?" Walker stated that she was. Walker now contends that these waivers were pro forma and as a result, insufficient. But Walker fails to support this contention with legal authority or argument, and we therefore reject it.

Walker pleaded guilty as charged to one count of second-degree unintentional murder. That statute provides, in relevant part, that a person who "causes the death of a human being, without intent to effect the death of any person, while committing or

attempting to commit a felony offense other than criminal sexual conduct in the first or second degree with force or violence or a drive-by shooting” is guilty of unintentional murder in the second degree. Minn. Stat. § 609.19, subd. 2(1). In her testimony, Walker admitted that she (1) woke to find the victim sexually assaulting her, (2) made no attempt to push the victim away or punch him, (3) grabbed a knife and stabbed the victim, (4) was the only one who inflicted the injuries that caused the victim’s death, (5) did not intend to kill the victim, and (6) could have restrained the victim and safely extricated herself from the situation.

The record supports the district court’s findings that Walker’s statements at the plea hearing were sufficient to support her plea and that Walker waived any claim of self defense. The district court did not abuse its discretion when it denied Walker’s postconviction petition asking the court to vacate her plea.

## **II. The upward-durational sentencing departure was adequately supported by the record.**

Walker claims that the upward-durational sentencing departure was not adequately supported by the record. The postconviction court found that the basis for the departure was sufficient.

Sentencing courts have no discretion to depart from the sentencing guidelines unless substantial and compelling reasons exist that justify the departure. *State v. Schmit*, 601 N.W.2d 896, 898 (Minn. 1999). If substantial and compelling reasons exist, a district court has broad discretion to depart from the presumptive sentence under the sentencing guidelines. *State v. Gassler*, 505 N.W.2d 62, 69 (Minn. 1993). “We review a sentencing

court's departure from the sentencing guidelines for abuse of discretion.” *State v. Geller*, 665 N.W.2d 514, 516 (Minn. 2003). “If the record supports findings that substantial and compelling circumstances exist, this court will not modify the departure unless it has a ‘strong feeling’ that the sentence is disproportional to the offense.” *State v. Anderson*, 356 N.W.2d 453, 454 (Minn. App. 1984).

The district court's stated reasons for the upward-duration sentencing departure were the agreement of the parties and Walker's admission of aggravating factors, including the vulnerability of the victim and the violation of the zone of privacy. In the postconviction proceedings, the state conceded that the violation of the zone of privacy was not a legitimate basis for the departure.<sup>1</sup> Therefore, the only remaining basis for the departure is the district court's finding that the victim was particularly vulnerable. A single aggravating factor is sufficient to support an upward departure. *State v. Dominguez*, 663 N.W.2d 563, 567 (Minn. App. 2003).

“[W]hen reviewing a plea agreement that includes a sentencing departure, the court must determine whether the offense of conviction reflects any aggravating or mitigating circumstances that warrant a departure.” *State v. Misquadace*, 644 N.W.2d 65, 71 (Minn. 2002). “[T]he grounds for departure must reflect whether the offense is any more or less serious than the typical offense of conviction, mindful that uncharged or dismissed offenses are not to be considered and that departures are intended to apply in a small number of cases.” *Id.*

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<sup>1</sup> See *State v. Volk*, 421 N.W.2d 360, 366 (Minn. App. 1988) (stating that a victim's zone of privacy cannot be invaded if the defendant was invited into the victim's home), *review denied* (Minn. May 18, 1988).



The district court found that the departure was supported by the record because Walker knew the victim was particularly vulnerable due to his reduced physical capacity, a fact Walker admitted on the record on more than one occasion. Specifically, the district court found that Walker acknowledged (1) the disparity between her physical size and the victim's, that he was a "smaller, older man" and that she was a "physically strong person," and (2) that the victim had a blood alcohol concentration of .35 at the time of his death.

Walker argues that her testimony that both she and the victim were intoxicated actually repudiates the basis for this aggravating factor. But Walker fails to explain how her alleged intoxication would negate the victim's vulnerability due to his own intoxication. *See State v. Gettel*, 404 N.W.2d 902, 906 (Minn. App. 1987) ("A victim's vulnerability due to intoxication may be considered as a reason for departure."), *review denied* (Minn. June 26, 1987).

Walker also argues that the victim's act of sexually assaulting her when she was passed out belies any finding that he was particularly vulnerable, but Walker offers no analysis to support this argument. Walker does not dispute that disparity in size or physical ability is a valid basis for an upward departure.<sup>2</sup> It is unclear how the victim's act of sexually assaulting an allegedly unresponsive woman negates the victim's own vulnerability, which resulted from his age, size, and .35 blood alcohol concentration.

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<sup>2</sup> Appellant admitted that the victim was a 56-year-old male; 5 feet, 8 inches in height; and weighing less than 150 pounds. Appellant testified that at the time of the offense, she stood 5 feet, 9 inches tall, and weighed 190 pounds and was a "physically strong person."

Finally, Walker argues that the district court failed to make findings regarding the existence of aggravating factors supporting the upward departure in Walker's sentence. "[I]n exercising the discretion to depart from a presumptive sentence, the judge must disclose in writing or on the record the particular substantial and compelling circumstances that make the departure more appropriate than the presumptive sentence." Minn. Sent. Guidelines II.D. Walker argues that the district court failed to provide a factual foundation for the propriety of the departure. At sentencing, the district court stated:

The departure is being done pursuant to the agreement of the parties as well as your admission of aggravating factors, including the vulnerability of the victim . . . . I do note as well that he was left there for 10 days . . . . One could argue that . . . the victim was treated by particular cruelty, the number of stab wounds and being left there for that length of time.

The district court found that Walker admitted factors supporting the departure and specifically noted the aggravating factor upon which it relied. The guidelines require only that the district court disclose on the record the particular substantial and compelling circumstances that justify the departure. *Id.* Walker's own testimony established the victim's particular vulnerability due to his intoxication, age, and size. The district court did not abuse its discretion by imposing an upward-durational sentencing departure.

**Affirmed.**

Date:

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The Honorable Michelle A. Larkin