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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-601**

State of Minnesota,
Respondent,

vs.

Alfonzo McGee,
Appellant.

**Filed January 26, 2010
Affirmed
Kalitowski, Judge**

St. Louis County District Court
File No. 69-DU-CR-08-6096

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

Melanie Sue Ford, St. Louis County Attorney, Duluth, Minnesota (for respondent)

Marie L. Wolf, Interim Chief Appellate Public Defender, Benjamin J. Butler, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Lansing, Presiding Judge; Kalitowski, Judge; and
Johnson, Judge.

UNPUBLISHED OPINION

KALITOWSKI, Judge

Appellant Alfonso McGee challenges his sentence following his conviction of
second-degree controlled-substance sale, arguing that the district court did not properly

consider all of the factors he asserted for a downward departure, and abused its discretion by imposing the presumptive sentence. We affirm.

DECISION

The range provided by the Minnesota Sentencing Guidelines is presumed to be appropriate unless “identifiable, substantial, and compelling circumstances” support departure. Minn. Sent. Guidelines II.D. (2008); *see also State v. Givens*, 544 N.W.2d 774, 776 (Minn. 1996). The district court has broad discretion to decide whether departure from the guidelines is called for, but it should do so only “in a small number of cases.” *State v. Cook*, 351 N.W.2d 385, 386 (Minn. App. 1984). On appeal, this court reviews to determine whether a district court’s sentence is “inconsistent with statutory requirements, unreasonable, inappropriate, excessive, unjustifiably disparate, or not warranted by the findings of fact issued by the district court.” Minn. Stat. § 244.11, subd. 2(b) (2008). We will overturn a sentencing decision only if there is a clear abuse of discretion. *State v. Schmit*, 601 N.W.2d 896, 898 (Minn. 1999). Reversal for refusal to depart is rarely warranted. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

Although the sentencing guidelines require the district court to make written findings for an upward or downward departure, “an explanation is not required when the court considers reasons for departure but elects to impose the presumptive sentence.” *State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985); *accord State v. Curtiss*, 353 N.W.2d 262, 263 (Minn. App. 1984); *see generally* Minn. Sent. Guidelines II.D. (stating that reasons for departures must be disclosed in writing on the record). Factors relevant to dispositional departures include a defendant’s amenability to probation, age, prior

record, remorse, cooperation, attitude in court, and friends and family support. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982).

Appellant relies on *State v. Curtiss*, where this court reversed the district court's denial of a downward departure, finding that the district court had not "exercised its broad discretion, comparing reasons for and against departure." 353 N.W.2d at 263. In *Curtiss*, "the record suggest[ed] factors for departure which should be deliberately considered," and this court remanded the case for consideration of those factors. *Id.* at 264.

But here, unlike *Curtiss*, the district court did not ignore compelling and significant reasons for departure. McGee argues that the district court abused its discretion by failing to consider all of the factors he put forth for departure, including his age, his "negligible" prior criminal record, his remorse in admitting that he "did wrong," his cooperation, his support by friends and family and his religious community, and his previous success on probation. We disagree.

The record indicates that the district court made a measured decision not to depart from the presumptive sentence. The court did not find compelling mitigating factors that warranted departure, determining that appellant's record of probation violations made him unamenable to probation, and that appellant had already received "a break" by having his charge reduced from first to second-degree controlled-substance sale. The court rejected appellant's arguments that his crime was less serious than the typical drug sale offense, and that he played a minor or passive role, because the complaint alleged,

and appellant admitted, that he had arranged for “10 or 15 people” to purchase crack cocaine.

Because the record supports imposition of the presumptive sentence, the district court did not abuse its discretion in denying appellant’s motion for a dispositional departure.

Affirmed.