

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF DAKOTA

FIRST JUDICIAL DISTRICT

State of Minnesota,

Court File No. 19HA-CR-22-2172

Plaintiff,

v.

**DEFENDANT'S MOTION FOR
DOWNWARD DEPARTURE**

Bruce Douglas Konold,

Defendant.

TO: THE STATE OF MINNESOTA AND THE PROSECUTING ATTORNEY IN THE
ABOVE-NAMED CASE:**MOTION**

The Defendant, Bruce Douglas Konold, through his undersigned counsel, respectfully moves this Court for a downward durational departure pursuant to Minn. Stat. §§ 244 Appendix Sec. 2.D.1-3. Mr. Konold seeks a downward durational departure as this act was significantly less serious than a typical fourth degree criminal sexual conduct case.

DOWNWARD DEPARTURE

The court may depart from the presumptive disposition or duration provided in the Guidelines and stay or impose a sentence that is deemed to be more appropriate. Minn. Sent. Guidelines. 2.D.1. A pronounced sentence for a felony conviction that is outside the appropriate range on the applicable Grid is a departure from the Guidelines. *Id.* The court must pronounce a sentence of the applicable disposition and within the applicable range unless there exist identifiable, substantial, and compelling circumstances to support a departure. *Id.*; *State v. Jackson*, 749 N.W.2d 353, 360 (Minn. 2008) (finding the district court must impose a sentence

within the presumptive range unless “substantial and compelling circumstances” warrant a departure). A departure is not controlled by the Guidelines, but rather, is an exercise of judicial discretion constrained by statute or case law. *Id.*

A downward “mitigated” dispositional departure occurs when the presumptive guidelines sentence calls for imprisonment, but the district court instead stays execution or imposition of the sentence. Minn. Sent. Guidelines 1.B.5.a.(2). A dispositional departure typically focuses on characteristics of the defendant that show whether the defendant is “particularly suitable for individualized treatment in a probationary setting.” *State v. Wright*, 310 N.W.2d 461, 462 (Minn. 1981); *see also State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982) (citing the “defendant's age, his prior record, his remorse, his cooperation, his attitude while in court, and the support of friends and/or family” as relevant factors that may justify a dispositional departure).

By contrast, a durational departure is a sentence that departs in length from the presumptive guidelines range. Minn. Sent. Guidelines 1.B.5.b. A durational departure must be based on factors that reflect the seriousness of the offense, not the characteristics of the offender. *State v. Chaklos*, 528 N.W.2d 225, 228 (Minn. 1995). A downward durational departure is justified only if the defendant's conduct was “significantly less serious than that typically involved in the commission of the offense.” *State v. Mattson*, 376 N.W.2d 413, 415 (Minn. 1985). The requirement that aggravating or mitigating factors must relate to the seriousness of the offense—and not to the characteristics of the offender—narrows the range of factors that may justify a durational departure. *State v. Solberg*, 882 N.W.2d 618, 623-24 (Minn. 2016). However, a single mitigating factor, standing alone, may justify a downward durational departure. *Id.* at 624-25.

Durational Departure

Mr. Konold moves for a downward durational departure and asks the Court to impose a gross misdemeanor sentence. A downward durational departure is justified if the defendant's conduct was "significantly less serious than that typically involved in the commission of the offense." In the instant case, we have a situation where Mr. Konold was in an occupational position that prohibited any sexual contact with A.S. However, A.S. and Mr. Konold had engaged in some exchanges of feelings and thoughts and even physical contact (i.e., hugs) prior to the March 10, 2022, date of offense for which he was convicted.

By law, this sexual conduct is illegal because of Mr. Konold's occupation. But for his occupation, this same conduct would not have been a violation of the law or ever charged. The touching that occurred on March 10th was minimal and Mr. Konold stopped when A.S. asked him to. A reasonable analysis supports a finding that this was a significantly less serious act than is typically involved in the commission of this type of offense. Accordingly, this Court has the full authority to justify a downward durational departure and impose a gross misdemeanor sentence.

CONCLUSION

Mr. Konold urges the Court to find that his conduct was significantly less serious than the typical fourth degree criminal sexual conduct and grant his motion for a downward durational

departure. Mr. Konold respectfully asks this Court to impose a gross misdemeanor sentence.

Respectfully submitted,

DEVORE LAW OFFICE, P.A.

Dated: November 21, 2024

s/Kevin W. DeVore

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