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State of Minnesota
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STATE OF MINNESOTA **DISTRICT COURT**

COUNTY OF DAKOTA **FIRST JUDICIAL DISTRICT**
Case Type: Criminal

State of Minnesota,

Plaintiff,

v.

Caycee Lynn Bregel,

Defendant.

Memorandum in Support of Defendant's Motion for a Downward Durational Departure

Court File No. 19HA-CR-18-2183

Introduction

This memorandum of law is filed in support of Defendant Caycee Lynn Bregel's Motion for a Downward Durational Departure. When this matter is called for sentencing, Ms. Bregel respectfully requests a departure from the Minnesota Sentencing Guidelines to allow for a gross misdemeanor conviction of Count I.

Legal Standard

The Minnesota Sentencing Guidelines set forth the presumption duration and disposition for criminal offenses in violation of Minnesota Statutes. Once the presumptive sentence has been determined, the judge is afforded discretion to depart in "substantial and compelling circumstances," which distinguish the matter from the "typical" case. *State v. Pierson*, 368 N.W.2d 427 (Minn. Ct. App. 1985). Because the court is afforded "great discretion in the imposition of

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sentences," an appellate court will only overturn such a ruling if the court abuses its discretion. *State v. Spain*, 590 N.W.2d 85, 88 (Minn. 1999). And for that reason, a district court abuses its discretion only when its reasons for departure are improper or inadequate. *State v. Edwards*, 744 N.W.2d 596, 601 (Minn. 2009).

A court departs dispositionally, *see State v. Case*, 350 N.W.2d 473 (Minn. Ct. App. 1984); *State v. Trog*, 323 N.W.2d 28 (Minn. 1982), when it stays a presumptively executed sentence, and it departs durationaly when it sentences a defendant to a period of confinement that is less than that which is provided for in the sentencing guidelines. *State v. Bauerly*, 520 N.W.2d 760 (Minn.App. 1994). If a defendant is sentenced to 365 days in jail, or less, on what would otherwise be a felony-level offense, the conviction is deemed a gross misdemeanor by operation of law. Minn. Stat. § 609.13, subd. 1(1). With respect to a dispositional departure, the Court considers offender-based characteristics to determine whether a defendant is particularly amenable to probation. *Trog*, 323, N.W.2d at 28. A downward durational departure, however, is warranted when the defendant's conduct is less onerous than that which is typically charged under the same statute. *State v. Rund*, 896 N.W.2d 527 (Minn. 2017); *State v. Cox*, 343 N.W.2d 641. 643 (Minn. 1984).

Finally, although the judiciary is allowed deference in evaluating mitigating factors, it is not permitted mechanistic application of the sentencing

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guidelines and must consider each defendant's individual circumstances. *See State v. Lambert*, 388 N.W.2d 34 (Minn. Ct. App. 1986) (district court abused discretion by mechanistically imposing predetermined sentence based on guidelines without considering defendant's individual circumstances).

Argument

Ms. Bregel's conduct was less onerous than others, such that a downward durational departure is warranted, because only one allegation is charged as a felony, she has shown remorse, she faces significant mental health issues to relate back to her alleged conduct, and she did not act maliciously.

A. Ms. Bregel is accused of one felony, whereas others charged under this statute are often charged with numerous felony-level offenses, and those offenses often involved more egregious conduct.

Ms. Bregel feels tremendous remorse for all of the animals involved. She does not make this argument lightly, but it is absolutely worth noting that many people charged under this statute have committed multiple offenses that rise to the felony level. Ms. Bregel is charged with one. It's also worth noting that even in cases of conduct more egregious than Ms. Bregel's, individuals have received downward durational departures. Kathleen Mary Doenze, in Court File No. 58-K8-04-000292, was charged with 83 separate counts -- all related to failing to provide proper care to animals. Four of those counts were charged under the same statute as Count I in this case. The defendant was convicted of all four of

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those counts and received a gross misdemeanor conviction as a result of a downward durational departure.

In *State v. Swedin*, Court File No. 19-K8-04-3671, the district court granted a downward durational departure after the defendant pleaded guilty to shooting the family dog. The court noted the steps the defendant had taken to address chemical and mental health concerns as a basis for granting the departure. Despite the fact that the criminal conduct in that case involved an intentional shooting of an animal, the court of appeals still affirmed the district court's granting of the departure.

In *State v. Bell*, District Court File No. 19HA-CR-12-1294, the defendant was charged with drowning numerous newborn puppies, tying one to a cinder block and throwing the puppy into a pool of water, and snapping the neck of a dog that bit her. Despite the egregious conduct in that case, Ms. Bell received a stay of imposition and was only required to serve thirty jails in jail, forty-five days on electronic home monitoring, and one hundred hours of community work service. Although Ms. Bell's case involved a dispositional departure, it's mentioned here to show the types of conduct that are included in the charging statute in question. Ms. Bregel's one felony level of offense is markedly less egregious than all fourteen counts Ms. Bell faced.

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B. Ms. Bregel has shown remorse for her inaction.

Although remorse is typically an offender-based factor that weighs in favor of a dispositional departure, it can also be a factor used to justify a durational departure if it relates back to the offense. *State v. Solberg*, 882 N.W.2d 618, 626 (Minn. 2016). The Minnesota Supreme Court has noted that

> there may be cases in which the defendant's lack of remorse could relate back and be considered as evidence bearing on a determination of the cruelty or seriousness of the conduct on which the conviction was based.

State v. McGee, 347 N.W.2d 802, 806 (Minn.1984). In *Solberg*, the Supreme Court expanded on that notion and stated,

> "The logical inverse of such an acknowledgement is the possibility that cases may exist in which the defendant's remorse could relate back and be considered as evidence of remediation that makes the conduct significantly less serious than the typical conduct underlying the offense of conviction."

882 N.W.2d 618, 625-26 (Minn. 2016). Ms. Bregel expressed remorse and told the pre-plea investigator she hurt for the animals she was unable to help. There is no question that Ms. Bregel wishes things had turned out differently and that she would have been in a position to provide the appropriate level of care for the animals. If Ms. Bregel had acted with any level of malice, comparable to some of the more serious offenders charged under these statutes, she would not have this level of remorse.

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C. Ms. Bregel's mental health concerns are relevant to the charged offenses.

As part of the pre-plea investigation, Ms. Bregel underwent a psychological evaluation that provided insight into this offense. Ms. Bregel was diagnosed with the following:

> Major Depressive Disorder, Recurrent, Severe, Without Psychotic Features
> Posttraumatic Stress Disorder
> Compulsive and Dependent Personality Traits

The evaluator further noted that the symptoms were interrelated and acute. Most notably, however, is the evaluator's conclusions with respect to the early months of 2018.

> I have the impression that the defendant was contending with symptoms of her several psychiatric disturbances as of the early months of 2018 and had become increasingly emotionally depleted and less and less able to respond effectively to her life challenges. Having overestimated what she could realistically manage, and having taken on unrealistically heavy levels of responsibility for several taxing endeavors, she then experienced a cascade of stressors (her faltering marriage, abuse suffered at the hands of her ex-wife and subsequent partners) that resulted in her emotional capacities being further depleted. Finally, when her then wife withdrew her support in assisting with the fitness center and animal rescue operations, the defendant appears to have become totally overwhelmed to the point that she ceased responding to the needs of the animals in her care.

This one-paragraph synopsis by an expert provides the most accurate representation of what happened in this case, and highlights why Ms. Bregel's actions in this case were less serious than the typically-charged offense.

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Although mental health concerns would typically be a relevant factor only when seeking a dispositional departure, they are relevant in a request for a durational departure to the extent they speak to the seriousness of the offense.

D. Ms. Bregel did not act maliciously.

Although malice is not required under Minn. Stat. § 343.21, subd. 7, it is certainly a relevant consideration when analyzing the seriousness of the charged offense. Ms. Bregel is accused of getting in over her head and being unable to provide the proper level of care for this animal. During the pre-plea investigation, Ms. Bregel noted that she was trying to save and rescue animals who were already placed on hospice lists. No one has disputed that contention. Ms. Bregel spent a significant amount of money caring for animals and had been successful in placing some animals in foster care.

The charging statute here encompasses individuals who act with malice towards animals as well as individuals in Ms. Bregel's position who had good intentions but lacked the ability to provide the proper level of care. Ms. Bregel's prior work in animal rescue, coupled with her intentions make this offense less serious than others who have been similarly charged.

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Conclusion

For the reasons discussed above, Ms. Bregel respectfully requests that this Court grant her request for a downward durational departure.

Dated: April 1, 2019

LEVERSON BUDKE, PLLP



Steven K. Budke
Attorneys for Defendant
3435 Washington Drive
Suite 203
Eagan, MN 55122
(651) 829-3572
Atty ID No. 396402

Dated: April 1, 2019

LEVERSON BUDKE, PLLP



Nicholas R. Leverson
Attorneys for Defendant
3435 Washington Drive
Suite 203
Eagan, MN 55122
(651) 829-3572
Atty ID No. 396578

MINNESOTA JUDICIAL BRANCH