

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1531**

State of Minnesota,
Respondent,

vs.

James Francis Muelken,
Appellant.

**Filed June 19, 2017
Affirmed
Cleary, Chief Judge**

Scott County District Court
File Nos. 70-CR-15-24114 and 70-CR-16-4791

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

Ronald Hocesvar, Scott County Attorney, Todd P. Zettler, First Assistant County Attorney,
Shakopee, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sharon E. Jacks, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cleary, Chief Judge; Bjorkman, Judge; and Toussaint,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

CLEARY, Chief Judge

On appeal from his convictions of failing to register as a predatory offender and financial transaction card fraud, appellant James Francis Muelken argues that he is particularly amenable to probation and that the district court abused its discretion by denying his motion for a downward dispositional departure. We affirm.

FACTS

In April 2016, Muelken pleaded guilty to one count of failing to register as a predatory offender and one count of financial transaction card fraud without any agreement with the state regarding sentencing. After the plea hearing, a presentencing investigation (PSI) report was prepared, which recommended that the district court sentence Muelken to 39 months for the failure-to-register offense and 24 months for the financial-transaction-card-fraud offense.

Muelken moved for a dispositional or durational departure. The district court denied Muelken's motion for a dispositional departure, noting that the PSI characterized Muelken as a high-risk individual and citing Muelken's substantial criminal history. The district court also denied Muelken's motion for a durational departure. Adopting the recommendation of the PSI, the district court imposed a sentence of 39 months for the failure-to-register offense and a concurrent sentence of 24 months for the financial-transaction-card-fraud offense, sentences within the presumptive range for individuals with Muelken's criminal history. This appeal followed.

DECISION

Muelken argues that the district court abused its discretion by denying his motion for a downward dispositional departure. Muelken argues that he is particularly amenable to probation because he accepted responsibility for the offenses, is remorseful, has family support, is committed to changing his life, and is amenable to chemical dependency treatment.

“The Minnesota Sentencing Guidelines establish presumptive sentences for felony offenses.” *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016). The district court must impose a presumptive sentence under the guidelines “unless substantial and compelling circumstances warrant a departure.” *State v. Pegel*, 795 N.W.2d 251, 253 (Minn. App. 2011) (quotation omitted); *see also* Minn. Sent. Guidelines 2.D.1 (Supp. 2015). We review the district court’s decision whether to depart from the sentencing guidelines for an abuse of discretion. *Pegel*, 795 N.W.2d at 253. “We will affirm the imposition of a presumptive guidelines sentence when the record shows [that] the sentencing court carefully evaluated all the testimony and information presented before making a determination.” *State v. Johnson*, 831 N.W.2d 917, 925 (Minn. App. 2013) (alteration in original) (quotation omitted), *review denied* (Minn. Sept. 17, 2013).

Substantial and compelling circumstances are those that make a case atypical. *Taylor v. State*, 670 N.W.2d 584, 587 (Minn. 2003). In determining whether to depart dispositionally, the district court should focus “on the defendant as an individual and on whether the presumptive sentence would be best for him and for society.” *State v.*

Heywood, 338 N.W.2d 243, 244 (Minn. 1983). A defendant’s “*particular* amenability to probation” may support a downward dispositional departure. *State v. Soto*, 855 N.W.2d 303, 314 (Minn. 2014) (emphasis added). In *State v. Trog*, the Minnesota Supreme Court established a number of factors for a district court to consider in deciding whether an individual is particularly amenable to probation, including the defendant’s age, criminal history, remorse, cooperation, attitude while in court, and support of family or friends. 323 N.W.2d 28, 31 (Minn. 1982).

If the district court departs from the sentencing guidelines, it is required to state the reason or reasons for departure. Minn. Sent. Guidelines 2.D.1.c. But, if a district court does not depart, the district court is not required to state its reasons for imposing a presumptive sentence. *Johnson*, 831 N.W.2d at 925.

In this case, the district court stated on the record that it had reviewed the memoranda submitted in connection with Muelken’s motion for a downward dispositional departure, two letters submitted by Muelken in connection with the motion, and the PSI. The district court acknowledged that Muelken had been accepted into a chemical dependency treatment program, but noted that the PSI characterized Muelken as a high-risk individual and that Muelken had a lengthy criminal history. The district court stated that it could not find a reason to depart dispositionally in this case and denied Muelken’s motion.

Muelken argues that the district court abused its discretion because he presented substantial and compelling reasons supporting a downward dispositional departure,

including evidence regarding his acceptance of responsibility, remorse, cooperation, attitude while in court, family support, and amenability to chemical dependency treatment. But, the fact that mitigating factors are present does not obligate the district court to grant a defendant's motion for a dispositional departure. *State v. Wall*, 343 N.W.2d 22, 25 (Minn. 1984). The record reflects that the district court acknowledged that Muelken had taken responsibility for his actions, stated that he appeared to be sincere and honest in expressing his commitment to change his life, and noted that he had been admitted to treatment. However, the district court weighed these factors against Muelken's extensive criminal history, which it characterized as "awful," and the PSI's characterization of him as a high-risk individual, and declined to depart from the guidelines sentence.

Because the district court deliberately considered the circumstances for and against departure, we conclude that the district court did not abuse its discretion by denying Muelken's motion for a downward dispositional departure.

Affirmed.