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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1457**

State of Minnesota,
Respondent,

vs.

Corey Edward Fisherman,
Appellant.

**Filed July 16, 2018
Affirmed
Reilly, Judge**

Ramsey County District Court
File No. 62-CR-17-1420

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

John Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, John Donovan, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Larkin, Judge; and Reilly, Judge.

UNPUBLISHED OPINION

REILLY, Judge

Appellant Corey Edward Fisherman challenges the district court's sentencing decision arising from his first-degree-aggravated-robbery conviction. The district court

declined to grant a downward dispositional departure and imposed the presumptive sentence of commitment to prison under the Minnesota Sentencing Guidelines. Because the district court did not abuse its discretion in sentencing, we affirm.

DECISION

Appellant contends that the district court abused its discretion by denying his motion for a downward dispositional departure. We review a district court's refusal to grant a dispositional departure from the sentencing guidelines for an abuse of discretion, *State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006), and we will affirm the imposition of a 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), *review denied* (Minn. Sept. 17, 2013) (quotation omitted).

The Minnesota Sentencing Guidelines prescribe a sentence or a range for the sentence that is “presumed to be appropriate.” *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014) (quoting Minn. Sent. Guidelines 2.D.1 (2014)). The district court “must pronounce a sentence within the applicable range unless there exist identifiable, substantial, and compelling circumstances” distinguishing the case and overcoming the presumption in favor of the guidelines sentence. *Id.* A defendant’s “particular amenability to individualized treatment in a probationary setting” may justify a downward dispositional departure from a presumptive commitment to prison. *Id.* (quoting *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982) (emphasis omitted)).

Minnesota courts are guided by several factors, known as *Trog* factors, to determine if a defendant is particularly amenable to individualized treatment in a probationary setting. *Trog*, 323 N.W.2d at 31. These factors include “the defendant’s age, his prior record, his remorse, his cooperation, his attitude while in court, and the support of [the defendant’s] friends and/or family.” *Id.* Offense-related factors may also be used to support a dispositional departure. *State v. Chaklos*, 528 N.W.2d 225, 228 (Minn. 1995); *see also Soto*, 855 N.W.2d at 313 (considering circumstances of offense when reviewing departure request). However, the presence of mitigating factors “[does] not obligate the court to place defendant on probation. . . .” *State v. Wall*, 343 N.W.2d 22, 25 (Minn. 1984).

Here, the state charged appellant with first-degree aggravated robbery, alleging that in February 2017 appellant engaged in a physical struggle with another man and stole his laptop. Appellant entered a plea of guilty to the charge and moved for a dispositional departure from the presumptive sentence under the Minnesota Sentencing Guidelines, arguing that he was particularly amenable to treatment in a probationary setting, based on his level of remorse, his cooperation and attitude in court, and his willingness to participate in a culturally specific treatment program. The district court denied the motion and imposed the presumptive sentence.

An analysis of the *Trog* factors supports the district court’s decision. Appellant was 32 years old at sentencing. His criminal history includes numerous convictions of violent offenses, including first-degree burglary, second-degree assault with a dangerous weapon, threats of violence, and second-degree assault with a dangerous weapon, as well as two escape-from-custody convictions and a number of gross misdemeanor and misdemeanor

convictions for domestic assault. The district court found that appellant had a “significant felony history” involving “a significant number of person offenses,” weighing against a dispositional departure because it showed he was not amenable to probation. While appellant argued that he accepted responsibility for his crime, showed remorse, and cooperated with the proceedings, appellant made no reference to remorse or acceptance of responsibility during his sentencing hearing. Lastly, while appellant claimed to have the support of family or friends, defense counsel conceded that they could not corroborate the claim because they could not reach any family members or friends to appear on defendant’s behalf in court. A review of these factors supports a conclusion that appellant is not particularly amenable to individualized treatment in a probationary setting. *Trog*, 323 N.W.2d at 31.

A consideration of these factors, taken together, demonstrates that the district court did not abuse its discretion by determining that a dispositional departure was not appropriate in this case. Moreover, even if appellant had presented evidence that he was particularly amenable to probation, the sentencing court was not required to grant a dispositional departure. *See Wall*, 343 N.W.2d at 25 (“The fact that a mitigating factor was clearly present did not obligate the court to place defendant on probation or impose a shorter term than the presumptive term.”); *see also Bertsch*, 707 N.W.2d at 668 (stating that appellate courts “will not ordinarily interfere with a [presumptive] sentence . . . even if there are grounds that would justify departure” (quotation omitted)).

The Minnesota Supreme Court recognized that only the “rare case” merits reversal based on the district court’s refusal to depart from the sentencing guidelines. *State v.*

Kindem, 313 N.W.2d 6, 7 (Minn. 1981). This is not the “rare case” compelling reversal. The district court considered the circumstances for and against departure and concluded that appellant was not entitled to a downward dispositional departure from the sentencing guidelines. Because the record supports the district court’s decision, we affirm.

Affirmed.