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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A17-1756**

State of Minnesota,  
Respondent,

vs.

Pakaykeo Phetsomphou,  
Appellant.

**Filed August 13, 2018  
Affirmed  
Cleary, Chief Judge**

Scott County District Court  
File No. 70-CR-16-23393

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

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

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

Considered and decided by Bratvold, Presiding Judge; Cleary, Chief Judge; and  
Smith, Tracy M., Judge.

**UNPUBLISHED OPINION**

**CLEARY**, Chief Judge

In this sentencing appeal, appellant argues that the district court abused its discretion  
when it denied his motion for a downward-dispositional departure because appellant is

particularly amenable to probation and had enrolled in chemical-dependency treatment. Because the district court did not abuse its discretion, we affirm.

### **FACTS**

In December 2016, appellant Pakaykeo Phetsomphou was charged with one count of first-degree aggravated robbery in violation of Minn. Stat. § 609.245, subd. 1 (2016), and one count of third-degree assault in violation of Minn. Stat. § 609.223, subd. 1 (2016), based on an incident that occurred earlier that month. Appellant later pleaded guilty to first-degree aggravated robbery. Pursuant to a plea agreement, the state dismissed the assault charge and agreed not to seek an aggravated sentence.

Appellant moved for a downward-dispositional departure arguing that he was amenable to treatment and probation, and had accepted responsibility for his crime. At the time of the motion, appellant had completed an anger-management class, chemical-dependency treatment, individual counseling, and was enrolled in treatment aftercare. Appellant had also returned the stolen property and it appeared that he had not engaged in further criminal activity.

A presentence investigation (PSI) was completed, which confirmed that appellant had completed chemical-dependency treatment. The PSI author was “unable to identify any mitigating factors that would support a downward departure” and concluded that appellant’s risk of recidivism was high. The PSI recommended a guidelines sentence of 58 months.

The district court denied appellant’s motion, stating that it was “not convinced that this was an impetuous act.” The district court noted that appellant was on probation at the

time of the offense and had been instructed not to consume alcohol, but was under the influence at the time of the offense. The district court concluded that appellant was “at high risk based on the assessments that we have done and the history that we see.” The district court sentenced appellant to 58 months in prison, and imposed \$18,147.17 in fines, fees, and restitution. This appeal follows.

## D E C I S I O N

Appellate courts afford “the [district] court great discretion in the imposition of sentences’ and reverse sentencing decisions only for an abuse of that discretion.” *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014) (quoting *State v. Spain*, 590 N.W.2d 85, 88 (Minn. 1999)). Our review of a district court’s decision whether to impose a sentencing departure is “extremely deferential.” *Dillon v. State*, 781 N.W.2d 588, 596 (Minn. App. 2010), *review denied* (Minn. July 20, 2010). Appellant argues that the district court abused its discretion because he was particularly amenable to probation and had enrolled in chemical-dependency treatment. We disagree.

The Minnesota Sentencing Guidelines “prescrib[e] a sentence or range of sentences that is presumed to be appropriate.” *Soto*, 855 N.W.2d at 308 (quotation omitted). The guidelines “maintain uniformity, proportionality, rationality, and predictability in sentencing.” Minn. Stat. § 244.09, subd. 5(2) (2016). Therefore, departures from the guidelines are discouraged unless “there are identifiable, substantial, and compelling circumstances to support a departure.” *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016) (quotation omitted). “Substantial and compelling circumstances are those

circumstances that make the facts of a particular case different from a typical case.” *State v. Peake*, 366 N.W.2d 299, 301 (Minn. 1985).

A district court may grant a downward-dispositional departure if a defendant is “particularly amenable to probation.” *Soto*, 855 N.W.2d at 309. However, a district court is not required to depart even when it finds that a defendant is particularly amenable to probation. *State v. Olson*, 765 N.W.2d 662, 664-65 (Minn. App. 2009) (“[T]he district court has discretion to impose a downward dispositional departure if a defendant is particularly amenable to probation, but it is not required to do so.”).

The record shows that the district court reviewed the factors for and against a downward-dispositional departure and relied on the PSI in concluding that a departure was not warranted. The district court did not abuse its broad discretion in denying appellant’s motion.

**Affirmed.**