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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1760**

State of Minnesota,
Appellant,

vs.

Adam Ryan Lagred,
Respondent

**Filed May 21, 2018
Affirmed
Worke, Judge**

Renville County District Court
File No. 65-CR-17-176

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

David Torgelson, Renville County Attorney, Olivia, Minnesota; and

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Cathryn Middlebrook, Chief Appellate Public Defender, Michael McLaughlin, Assistant
Public Defender, St. Paul, Minnesota (for respondent)

Considered and decided by Halbrooks, Presiding Judge; Worke, Judge; and
Connolly, Judge.

U N P U B L I S H E D O P I N I O N

WORKE, Judge

The state challenges the district court’s decision to grant respondent’s request for a downward dispositional departure from the presumptive prison sentence for his aggravated-robbery conviction. We affirm.

F A C T S

On May 15, 2017, as J.H. walked from an apartment building to his vehicle, he was approached by respondent Adam Ryan Lagred, someone he knew. Lagred was carrying an aluminum bat and stated that he was going to “beat the sh-t” out of J.H. and “bust him wide open.” Lagred hit J.H. in the head with the bat and yelled at him to empty his pockets. J.H. retrieved a pocket knife and gave it to Lagred. A passerby intervened and prevented further interaction. J.H. later felt a bump on his head.

Lagred was charged with aggravated robbery, second-degree assault with a dangerous weapon, and terroristic threats. A jury found Lagred guilty as charged. Lagred moved for a downward dispositional sentencing departure. Following a presentence investigation (PSI) and a sentencing hearing, the district court granted Lagred’s motion. The district court stayed execution of the presumptive 68-month prison sentence and placed Lagred on probation for up to seven years. The state’s appeal followed.

D E C I S I O N

The Minnesota Sentencing Guidelines provide a sentencing range for many offenses, which is “presumed to be appropriate.” Minn. Sent. Guidelines 2.D.1 (2016). A district court may depart from a presumptive sentence only when “identifiable, substantial,

and compelling circumstances [exist] that distinguish a case and overcome the presumption in favor of the guidelines sentence.” *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014) (quotation omitted). A district court is afforded “great discretion in the imposition of sentences” and this court will “reverse sentencing decisions only for an abuse of that discretion.” *Id.* at 307-08 (quotation omitted). A district court abuses its discretion when it does not “deliberately consider[] circumstances for and against departure.” *State v. Pegel*, 795 N.W.2d 251, 253 (Minn. App. 2011) (quotation omitted). A district court also abuses its discretion when a sentence is “inconsistent with statutory requirements, unreasonable, inappropriate, excessive, unjustifiably disparate, or not warranted by the findings of fact issued by the district court.” Minn. Stat. § 244.11, subd. 2(b) (2016).

A district court grants a downward dispositional departure when the guidelines presume a prison commitment but the district court stays the commitment and orders probation. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). A downward dispositional departure is based on “offender-related” factors and focuses on the defendant as an individual. *State v. Behl*, 573 N.W.2d 711, 713 (Minn. App. 1998) (emphasis and quotation omitted), *review denied* (Minn. Mar. 19, 1998). The sentencing guidelines contain a “nonexclusive list” of factors that can justify a downward dispositional departure, including when “substantial grounds exist that tend to excuse or mitigate the offender’s culpability,” or when the offender is “particularly amenable to probation.” Minn. Sent. Guidelines 2.D.3.a.(5), (7) (2016). A finding of particular amenability to probation is sufficient to support a departure. *State v. Gebeck*, 635 N.W.2d 385, 389 (Minn. App. 2001).

Determining whether a defendant is particularly amenable to probation allows the district court to consider “the defendant’s age, his prior record, his remorse, his cooperation, his attitude while in court, and the support of friends and/or family.” *Trog*, 323 N.W.2d at 31. “These factors are not to be applied mechanically, but must be evaluated within the individual facts of each case.” *State v. Sejnoha*, 512 N.W.2d 597, 600 (Minn. App. 1994), *review denied* (Minn. Apr. 21, 1994).

Here, Lagred reported during his PSI interview that he had attended sober-support meetings, completed an outpatient chemical-dependency program following a 2015 driving-while-impaired (DWI) conviction, and then reentered the program after violating his probation. At the sentencing hearing, Lagred’s attorney claimed that while Lagred was in jail awaiting trial, he completed the jail treatment program, earned his GED, completed 150 hours of community service, and attended AA meetings.

The state argues that the district court abused its discretion by finding Lagred “amenable to treatment” but not particularly amenable. But at the sentencing hearing, the district court stated that it was going to depart dispositionally after finding Lagred “amenab[le] to treatment” and “*particular[ly] amenab[le] to probation.*” (Emphasis added.) The district court concluded that both amenability to treatment and amenability to probation justified the departure, noting that Lagred successfully completed treatment prior to sentencing. This court stated in *Gebeck* that an offender’s investment in treatment indicates that the offender is “observably yielding, easily managed, and has an apparent motive to reform[,] [which are] characteristics also suggest[ing] amenability to probation.” 635 N.W.2d at 389-90 (quotation marks omitted).

The state asserts that while the district court's decision seems to be based on the fact that Lagred completed treatment, there was no allegation that Lagred was under the influence at the time of the offense. The district court stated:

Obviously the [PSI] did recommend treatment [and] so found [Lagred] chemically dependent. . . . I don't recall either that chemical dependency was specifically an explanation or even was present during this particular offense. However, we do know from our own experiences that certainly that's probably the predominating factor in most offenses. So, [to] some extent the [c]ourt does presume the [criminal] history has a lot to do with the chemical dependency. My guess is that Mr. Lagred may have minimized a little bit when he said [he's had chemical-dependency issues] the last couple of years, I don't know that for sure, but . . . seldom does that seem to be the case for the offenders with a history that [Lagred has] and . . . the [seriousness of the] offenses . . . that a chemical dependency issue is only a couple of years.

Thus, while acknowledging that Lagred did not raise the issue of chemical use during the offense, the district court considered Lagred's chemical dependency to the extent that it resulted in the PSI reporter recommending treatment and its overall impact on Lagred.

Further, the record supports the district court's decision to consider Lagred's chemical dependency. The record shows that Lagred completed an outpatient chemical-dependency program after his DWI conviction and reentered the program after violating his probation. Lagred reported that when he is using chemicals he is a "two hundred and ten percent different person." The PSI reporter recommended that the district court impose several probation conditions if the district court granted Lagred's departure motion, including: no use of mood-altering chemicals, random drug and alcohol testing, compliance with treatment aftercare recommendations, and weekly sober-support meetings. And

Lagred's attorney stated that if the district court granted Lagred's motion, Lagred was accepted to The Fortress program in Willmar and could begin attending the following day.

The state argues that even though the district court specifically considered (1) the issue of treatment, (2) Lagred's accomplishments during his incarceration, (3) Lagred's plan to follow sober living, (4) Lagred's admission that what he did was "stupid," and (5) the possibility that Lagred would enter a cognitive thinking program, it abused its discretion because the sentence was disproportionate to the severity of the offense and Lagred has an extensive criminal history.

The district court considered several factors relevant to Lagred and to the offense. The PSI presented Lagred's version of the offense. Lagred reported knowing J.H. "since [he] was little" and knowing him as "a thief and a bad guy." Lagred had unpleasant encounters with J.H., including an incident when J.H. put "a gun in [Lagred's] face." When Lagred saw J.H. on May 15, he believed that J.H. was engaged in criminal behavior because he had heard that J.H. had been involved in robberies. Lagred admitted that he "should have" called the police, but instead, confronted J.H. with a bat because he believed that J.H. had a gun. He stated that he thought he was "being the good guy by running [J.H.] off," but instead, he "became the bad guy, or just as bad."

The district court stated that it was aware of J.H.'s criminal history and the history between Lagred and J.H. The district court also recalled testimony from trial in which J.H. admitted to holding a gun to Lagred's head. Additionally, the district court categorized the offense as nontraditional because most aggravated robberies are armed robberies with the

purpose of robbery, but Lagred's purpose, other than being described as "stupid," was unclear.

The district court also considered Lagred's criminal history. The PSI showed a felony terroristic-threats conviction, two domestic-assault convictions, a DWI conviction, a fifth-degree assault conviction, and a receiving-stolen-property conviction. The district court stated that Lagred's criminal history itself "certainly does not suggest particular amenability to probation." The district court appropriately considered Lagred's criminal history and concluded that it did not support a finding of particular amenability. *See Pegel*, 795 N.W.2d at 253 (stating that a district court appropriately exercises its discretion "by deliberately considering circumstances for and against departure"); *see also Sejnoha*, 512 N.W.2d at 600 (stating that consideration of a departure must be "evaluated within the individual facts of each case").

Here, although Lagred's criminal history weighed against a departure, the district court found that Lagred addressing his chemical dependency, using his incarceration productively, being accepted in a sober-living house, and expressing remorse in the sense that he acknowledged that what he did was stupid supported a conclusion that he was particularly amenable to probation. Based on the record, the district court did not abuse its discretion by granting Lagred's request for a downward dispositional departure.

Affirmed.