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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-2058**

State of Minnesota,
Respondent,

vs.

Aaron Michael Anderson,
Appellant.

**Filed October 8, 2018
Affirmed
Smith, Tracy M., Judge**

Olmsted County District Court
File No. 55-CR-16-8543

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

Mark A. Ostrem, Olmsted County Attorney, Jennifer D. Plante, Senior Assistant County Attorney, Rochester, Minnesota (for respondent)

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

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

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

SMITH, TRACY M., Judge

In this appeal from a 92-month presumptive sentence for second-degree controlled-substance possession, appellant argues that the district court abused its discretion in denying his motion for a dispositional departure. We affirm.

FACTS

In the middle of the night on December 10, 2016, appellant Aaron Anderson, driving an ATV, stole a trailer with two snowmobiles on it. By the time the police arrived, Anderson had crashed the ATV in a ditch. After Anderson was taken into custody, police found 27.02 grams of methamphetamine in his jacket pocket.

Anderson posted bail and did not appear at a hearing in March 2017. Consequently, the district court issued a bench warrant. Police arrested Anderson about a month later. He pleaded guilty to second-degree controlled-substance possession, one count of motor-vehicle theft, and one count of possession of stolen property. In exchange, the state dismissed other charges and agreed not to seek an upward sentencing departure.

At sentencing, Anderson moved for a downward dispositional departure. The district court rejected this request, sentencing Anderson to 92 months' imprisonment, the low end of the presumptive range for his drug offense. The court also imposed concurrent 20-month sentences for the two other offenses.

This appeal follows.

DECISION

Anderson argues that the district court abused its discretion by refusing to grant a dispositional departure from the presumptive executed sentence. He argues that the district court should have found that he was particularly amenable to probation.

We review a district court's decision to grant or deny a departure from the presumptive sentence for an abuse of discretion. *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014). We will reverse a district court's refusal to depart from the presumptive sentence only in a "rare case." *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

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 are intended to "maintain uniformity, proportionality, rationality, and predictability in sentencing." Minn. Stat. § 244.09, subd. 5 (2016). Therefore, departures 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 from the presumptive guidelines sentence if the defendant is "particularly amenable to probation." *Soto*, 855 N.W.2d at 309; see Minn. Sent. Guidelines 2.D.3.a.(7) (2016) (including "particularly amenable to probation" as a mitigating factor). A finding that a defendant is particularly amenable to probation may be supported "by the fact that the offender is particularly

amenable to a relevant program of individualized treatment in a probationary setting.” Minn. Sent. Guidelines 2.D.3.a.(7). “[A] defendant’s particular amenability to individualized treatment in a probationary setting will justify departure in the form of a stay of execution of a presumptively executed sentence.” *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). When considering whether to grant a dispositional departure, the district court may consider factors such as “the defendant’s age, his prior record, his remorse, his cooperation, his attitude while in court, and the support of friends and/or family.” *Id.*

Anderson argues that he is particularly amenable to probation, and thereby entitled to a dispositional departure, because he was “cooperative with police and displayed a good attitude while in court,” “recognized his need for treatment and took responsibility for his actions,” and had community support and “steady employment.” Anderson also cites to the presentence investigation report, which stated that he was “taking full ownership of his actions in [the] offense, along with his behaviors related to chemical addiction.”

An examination of the record does not indicate that this is a “rare case” requiring reversal of the district court’s imposition of the presumptive sentence. *See Kindem*, 313 N.W.2d at 7. The record indicates that the district court considered the reasons for and against departure. The district court considered Anderson’s sincere interest in obtaining treatment, his prior treatment opportunities, the nature of his crimes, and his extensive criminal history. Ultimately, the district court concluded there were not substantial and compelling reasons to depart on the basis of his amenability to probation. Based on the record, that conclusion was not an abuse of discretion.

Further, even if the record did support a finding that Anderson is particularly amenable to probation, “the mere fact that a mitigating factor is present in a particular case does ‘not obligate the court to place defendant on probation or impose a shorter term than the presumptive term.’” *State v. Pegel*, 795 N.W.2d 251, 253-54 (Minn. App. 2011) (quoting *State v. Wall*, 343 N.W.2d 22, 25 (Minn. 1984)); *see also 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.”); *State v. Evenson*, 554 N.W.2d 409, 412 (Minn. App. 1996) (“Even assuming [a defendant] is exceptionally amenable to treatment, his amenability does not dictate the result.”), *review denied* (Minn. Oct. 29, 1996). The district court did not abuse its discretion by imposing the presumptive guidelines sentence.

Affirmed.