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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0129**

State of Minnesota,
Respondent,

vs.

Emmanuel Jentzen,
Appellant.

**Filed November 26, 2018
Affirmed
Schellhas, Judge**

Hennepin County District Court
File No. 27-CR-15-32126

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

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sara J. Euteneuer, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Schellhas, Judge; and Randall, Judge.*

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

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges the district court's denial of his motion for a downward dispositional and, alternatively, durational sentencing departure. We affirm.

FACTS

Early in the morning of November 8, 2015, Brooklyn Park Police officers found appellant Emmanuel Jentzen asleep in the driver's seat of his still-running car, parked crookedly and blocking traffic. The officers performed two field sobriety tests, and, after Jentzen failed both, they arrested him for driving while intoxicated (DWI). At the police station, an officer read Jentzen the implied-consent advisory, afforded him time to contact an attorney, and asked him to submit to a breath test. Jentzen refused. Respondent State of Minnesota charged Jentzen with first-degree DWI test refusal and first-degree DWI driving under the influence.¹

Jentzen pleaded guilty to first-degree DWI test refusal and the court dismissed the other DWI charge. Jentzen moved for a downward dispositional and, in the alternative, a downward durational sentencing departure, citing his "minimal" criminal history, history as a torture victim in Liberia, amenability to probation, and arguing that his offense involved less-serious conduct than a typical DWI test-refusal offense. The district court denied Jentzen any downward sentencing departure and sentenced him to 46 months'

¹ The state charged Jentzen with first-degree DWI due to his prior first-degree DWI convictions in 2005 and 2007. See Minn. Stat. § 169A.24, subd. 1(2) (2014) ("A person who violates section 169A.20 ([DWI]) is guilty of first-degree [DWI] if the person . . . has previously been convicted of a felony under this section.")

imprisonment, a bottom-of-the-box presumptive sentence, based on Jentzen’s criminal-history score of three.

This appeal follows.

DECISION

Jentzen argues that the district court abused its discretion by denying his motion for a downward sentencing departure. District courts have “broad discretion” in sentencing decisions, and this court affords “great discretion in the imposition of sentences and cannot substitute [its] judgment for that of the district court.” *State v. Vang*, 847 N.W.2d 248, 264 (Minn. 2014) (quotation omitted). We therefore review a district court’s sentencing decision for an abuse of discretion and “generally will not interfere with a sentencing court’s decision to impose a term within the presumptive sentence range.” *State v. Kangbateh*, 868 N.W.2d 10, 14 (Minn. 2015). Reversal of a district court’s refusal to depart from a presumptive sentence should occur only in a “rare case.” *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

“The Minnesota Sentencing Guidelines establish presumptive sentences for felony offenses,” seeking to “maintain uniformity, proportionality, rationality, and predictability in sentencing of felony crimes.” *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016) (quotation omitted). District courts therefore do not depart from the guidelines unless “there are identifiable, substantial, and compelling circumstances to support a departure.” *Id.* (quotation omitted). “Consequently, departures from the guidelines are discouraged and are intended to apply to a small number of cases,” *id.*, that “overcome the presumption in

favor of the guidelines sentence.” *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014) (quotation omitted).

Jentzen argues that the district court abused its discretion in denying his motion for a downward dispositional and, alternatively, durational sentencing departure because substantial and compelling reasons support a departure. We disagree.

Downward dispositional sentencing departure

“A dispositional departure typically focuses on characteristics of the defendant that show whether the defendant is particularly suitable for individualized treatment in a probationary setting.” *Solberg*, 882 N.W.2d at 623 (quotation omitted); *see also State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982) (considering defendant’s age, prior record, remorse, cooperation, attitude while in court, and support of friends and family as relevant factors for dispositional departure).

Jentzen argues that his “personal history as a victim of torture and his particular amenability to probation and treatment established substantial and compelling circumstances to justify a departure,” and he cites his recent treatment with the Center for Victims of Torture, completion of chemical-dependency treatment, “minimal” criminal history, and acceptance of responsibility.² The district court denied Jentzen’s motion for a downward dispositional sentencing departure, stating:

I’m glad that you’ve been able to take advantage of . . . the Center [for Victims of Torture] . . . I’m not going to be able to keep you from the commitment because of the – this being the

² Jentzen also cites his unamenability to prison, but he raises this argument for the first time on appeal, and we therefore do not consider it. *See Andersen v. State*, 913 N.W.2d 417, 428 n.11 (Minn. 2018) (refusing to consider issue raised for first time on appeal).

third felony conviction . . . the sixth driving while impaired [offense]. . . . I am willing to go to the lowest end of the box, but I don't think that there are enough indicators that you are particularly amenable to merit probation. I don't think that the whole accumulation of your past is enough to outweigh the time period that I've had the chance to look at your life.

The record supports the district court's determination that Jentzen is not particularly amenable to probation. Jentzen's pre-plea investigation report, which recommends the presumptive sentence, reports that Jentzen was diagnosed with post-traumatic stress disorder in 2007; his failure to seek treatment caused the revocation of his probation; he previously received a referral to the Center for Victims of Torture and failed to avail himself of the center's services; and he was referred to "at least five chemical dependency treatment programs." The report states that Jentzen provided probation officers with "conflicting accounts of his alcohol use, seeming to vary his reports based on the need and wants met at the time," such that "the true depth of his addiction cannot be known." See *State v. Loitz*, 366 N.W.2d 744, 747 (Minn. App. 1985) (stating that "history of chemical abuse and disregard for its effects is a valid factor to consider" when sentencing), *review denied* (Minn. July 17, 1985).

Jentzen's circumstances do not present a "rare case" for reversal of a district court's denial of departure from the presumptive sentence. We conclude that the district court did not abuse its broad discretion by denying Jentzen's motion for a downward dispositional departure.

Downward durational sentencing departure

Jentzen argues that the district court abused its discretion in denying his alternative request for a downward durational sentencing departure because his offense consisted of less-serious conduct than a typical DWI test-refusal offense. Police found Jentzen sleeping in a car parked crookedly with the engine running, and blocking traffic. Jentzen's conviction mandated a minimum prison sentence of three years. *See* Minn. Stat. § 169A.276, subd. 1(a) (2014) (providing three-year mandatory minimum sentence).

“[A] durational departure is a sentence that departs in length from the presumptive guidelines range.” *Solberg*, 882 N.W.2d at 623. When deciding whether to grant a durational departure, a district court may only rely on factors bearing on the severity of the offense, and “not the characteristics of the offender.” *Id.* Only “significantly less serious [conduct] than that typically involved in the commission of the offense” justifies a durational departure. *Id.* at 624. The district court denied Jentzen's motion, stating: “I don't think that this [offense] was less onerous, so I don't think there's enough to durationally depart.” We agree with the district court that Jentzen failed to show how his test-refusal offense consisted of “significantly less serious” conduct than a typical test-refusal offense. The district court therefore did not abuse its broad discretion in denying his motion for a downward durational sentencing departure. *See id.* at 627 (affirming denial of downward durational departure where offender's conduct was not significantly less serious than typical offense conduct).

Affirmed.