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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0344**

State of Minnesota,
Respondent,

vs.

Abdurahman Abdella Mama,
Appellant.

**Filed January 14, 2019
Affirmed
Reilly, Judge**

Hennepin County District Court
File No. 27-CR-16-8327

Keith M. Ellison, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Jean Burdorf, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Charles F. Clippert, St. Paul, Minnesota (for appellant)

Considered and decided by Florey, Presiding Judge; Schellhas, Judge; and Reilly, Judge.

UNPUBLISHED OPINION

REILLY, Judge

Appellant challenges the district court's decision not to grant a downward dispositional departure. Because the district court did not abuse its discretion, we affirm.

DECISION

I. Standard of Review

The decision whether to depart from the sentencing guidelines rests within the discretion of the trial court and will not be disturbed absent a clear abuse of that discretion. *See State v. Hicks*, 864 N.W.2d 153, 156 (Minn. 2005); *State v. Pegel*, 795 N.W.2d 251, 253 (Minn. App. 2011). 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). We will reverse a district court’s refusal to depart only in a “rare” case. *State v. Walker*, 913 N.W.2d 463, 468 (Minn. App. 2018).

II. Downward Dispositional Departure

Appellant Abdurahman Mama (Mama) argues that the district court abused its discretion by sentencing him to the presumptive sentence because he was particularly amenable to probation. The Minnesota Sentencing Guidelines promote uniformity, proportionality, and predictability in sentencing. *See* Minn. Stat. § 244.09, subd. 5(2) (2016). A district court must impose a presumptive sentence unless “identifiable, substantial, and compelling circumstances” justify a departure. Minn. Sent. Guidelines 2.D.1 (2016). The guidelines permit departures from the presumptive sentence, but a court departing from the guidelines must articulate “substantial and compelling” circumstances justifying the departure. *Hicks*, 864 N.W.2d at 156. “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.” *State v. Soto*, 855 N.W.2d 303, 309 (Minn. 2014). A court may consider a defendant’s age, prior record, remorse, cooperation, attitude in court, and the support of friends and family in determining whether he is particularly amenable to probation. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). 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.”).

Mama was charged with one count of identity theft in violation of Minn. Stat. § 609.527, subd. 2 (2016) for his role in a credit card fraud scheme.¹ At sentencing, Mama’s attorney argued that he was particularly amenable to probation because he is 26 years of age, does not have a prior criminal history, has family support, and is remorseful. However, the presentence investigation (PSI) report prepared by probation provided:

Before the Court is a 26 year old male appearing on his first known felony level conviction. The facts of the case include the defendant and his five co-defendants obtaining and creating fraudulent credit cards. The defendant denies partaking in the offense and noted, “I do not think I did anything wrong.” On top of denying his role in the offense, he provided little insight to why he was in the hotel room or why there were credit cards made with his name.

¹ On March 23, 2016, officers conducted a search on a hotel room and found multiple credit cards in various names, a card embossing machine, a laptop computer, and multiple bags of new merchandise. Out of the approximately 80 credit cards recovered, 16 had Mama’s name embossed on the front and contained other individuals’ credit card information on the cards’ magnetic-strip. Ultimately, investigators identified 83 victims of this credit card fraud scheme.

The defendant presented as a closed-off interview subject, responding to lines of questioning with one word answers or failing to respond at all. Much of the defendant's reporting was found to be varying from previous statements he made within the interview and when presented with his inconsistencies, he would remain silent. For example, the defendant first claimed he was visiting Minnesota for an outdoor soccer tournament. When questioned regarding the whereabouts or name of this tournament, the defendant declined to respond.

While it is notable that the defendant has a limited criminal history, his inability to take ownership over his role in the offense is cause for concern and leads to questions regarding his amenability to probation. Further, the defendant lacks many conventional ties to the community. He has not maintained any form of employment for the past year and a half, is not financially stable, he has no recent participation in organized activities or groups of prosocial peers he spends time with.

The PSI recommended imposing a sentence of 48 months and committing Mama to the commissioner of corrections, which is within the presumptive guidelines range. The state did not agree to the departure motion because of Mama's "lack of candor with the court, lack of remorse, and lack of acceptance of responsibility."

The district court thoughtfully considered the reasons for and against departure, and "took seriously into consideration all of [the] letters of support." Ultimately, the district court did not believe Mama to be particularly amenable to probation because Mama did not accept responsibility or show remorse. Because there were no "substantial and compelling reasons" for a departure, the district court judge denied Mama's motion and imposed and executed a sentence of 41 months to the commissioner of corrections—the lowest presumptive sentence in the range.

The record shows that the district court reviewed the factors for and against departure. Accordingly, the district court did not abuse its broad discretion in its determination that a departure was not warranted in this case.

Affirmed.