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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0359**

State of Minnesota,
Respondent,

vs.

Eli Jermel Anderson,
Appellant.

**Filed January 7, 2019
Affirmed
Kalitowski, Judge***

Hennepin County District Court
File No. 27-CR-17-1713

Lori Swanson, 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, Jessica Merz Godes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

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

UNPUBLISHED OPINION

KALITOWSKI, Judge

On appeal from his convictions of ineligible person in possession of a firearm and fifth-degree possession of a controlled substance, appellant argues that the district court abused its discretion by denying his motion for a downward dispositional departure. We affirm.

DECISION

A district court is afforded “great discretion in the imposition of sentences.” *State v. Rund*, 896 N.W.2d 527, 532 (Minn. 2017) (quotation omitted). This court reviews a district court’s decision not to depart from the sentencing guidelines for an abuse of discretion. *State v. Stempfley*, 900 N.W.2d 412, 417-18 (Minn. 2017). A district court abuses its discretion when its decision is premised on legal errors or clearly erroneous facts. *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016).

The Minnesota Sentencing Guidelines “prescribe[e] a sentence or range of sentences that is presumed to be appropriate.” *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014) (quotation omitted). A district court may depart from the presumptive sentencing guidelines only if substantial and compelling circumstances warrant doing so. *Solberg*, 882 N.W.2d at 623. Substantial and compelling circumstances are those that make a case atypical. *Taylor v. State*, 670 N.W.2d 584, 589 (Minn. 2003). “The substantial and compelling circumstances justifying departure by staying a sentence include a finding that a defendant is particularly amenable to correction on probation and unamenable to correction by imprisonment.” *State v. Malinski*, 353 N.W.2d 207, 209 (Minn. App. 1984)

(citing *State v. Heywood*, 338 N.W.2d 243 (Minn. 1983)), *review denied* (Minn. Oct. 16, 1984). Factors relevant in determining if a defendant is particularly amenable to treatment in a probationary setting include “the defendant’s age, his prior record, his remorse, his cooperation, his attitude while in court, and the support of friends and/or family.” *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982).

Appellant Eli Jermel Anderson pleaded guilty to ineligible person in possession of a firearm and fifth-degree possession of a controlled substance after police discovered a loaded 9mm pistol and 289.1 grams of marijuana during the execution of a search warrant at Anderson’s residence. Prior to sentencing, Anderson moved for a downward dispositional departure, arguing that a departure was warranted because he was particularly amenable to probation. The district court denied the motion.

Anderson argues that the district court abused its discretion by denying his motion for a downward dispositional departure because “the probation officer determined,” and “the record demonstrates,” that he is particularly amenable to probation. We disagree. The recommendations of a probation officer are “not determinative.” *State v. Halverson*, 373 N.W.2d 618, 621 (Minn. App. 1985) (“Sentencing is a judicial function, not a probation officer’s function.”). And although the probation officer recommended “a dispositional departure,” the presentence investigation “was more equivocal” than Anderson acknowledges, which was demonstrated by the probation officer’s determination that “the mitigating factors in this case appear limited.” Moreover, it is well settled that a district court is not required to depart even if substantial and compelling circumstances are present. *State v. Walker*, 913 N.W.2d 463, 468 (Minn. App. 2018); *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 is not required to do so.”).

Here, in denying Anderson’s departure motion, the district court found:

I would have to find that you’re particularly amenable to probation, and the problem with that is you’ve been on probation before and you had multiple violations on your third-degree case, and then you’ve probation violations as recently as a couple years ago on your DWI case.

And, you know, here we’ve got the drug and gun combo, which is a really bad combination. And you got kids in the house, and you got a gun that was loaded in the house. So again, I’ve reviewed the whole thing, and I just don’t think this is a departure case.

The record supports the district court’s findings. The record reflects that after being convicted of a third-degree controlled substance crime in 2006, Anderson had five probation violations for using drugs and failing in treatment. The record also reflects that after being convicted of DWI in 2014 and placed under court supervision, Anderson had two more probation violations. And the record reflects that Anderson admitted to using marijuana even after he pleaded guilty to the current offense. The district court considered Anderson’s motion and determined that based upon the facts and circumstances presented, a departure was not warranted. Therefore, the district court did not abuse its discretion by denying Anderson’s motion for a downward dispositional departure.

Affirmed.