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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0898**

State of Minnesota,
Respondent,

vs.

Raymond Victor Mouchka,
Appellant.

**Filed June 10, 2019
Affirmed
Schellhas, Judge**

Washington County District Court
File No. 82-CR-17-551

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

Pete Orput, Washington County Attorney, Nicholas A. Hydukovich, Assistant County
Attorney, Stillwater, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Suzanne M. Senecal-Hill,
Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Schellhas, Presiding Judge; Jesson, Judge; and Tracy M.
Smith, Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges the denial of his motion for a downward dispositional
departure. We affirm.

FACTS

Appellant Raymond Mouchka pleaded guilty to one count of second-degree criminal sexual conduct in violation of Minn. Stat. § 609.343, subd. 1(h)(iii) (2014), in connection with an offense against his granddaughter when she was 12 or 13 years old. At his plea hearing, Mouchka waived his right to a *Blakely* trial on the existence of aggravating factors and admitted the existence of two aggravating factors: vulnerability of the victim due to a trust relationship, and emotional or psychological harm to the victim. Before sentencing, Mouchka moved for a downward dispositional departure. The district court denied the motion and, relying on the aggravating factors admitted by Mouchka, sentenced him to an upward durational departure of 120 months in prison.

This appeal follows.

DECISION

Mouchka challenges the denial of his request for a downward dispositional departure.¹ “District courts are most often in the best position to evaluate whether a sentencing departure is appropriate based on their unique perspective on all stages of a case.” *State v. Stempfley*, 900 N.W.2d 412, 420 (Minn. 2017) (quotations omitted). On appeal, we afford the district court “great discretion in the imposition of sentences and reverse sentencing decisions only for an abuse of that discretion.” *State v. Soto*, 855 N.W.2d 303, 307–08 (Minn. 2014) (quotation and footnote omitted).

¹ Mouchka does not challenge the validity of his *Blakely* waiver or his admission to the aggravating factors upon which the district court based its upward durational departure.

A sentencing court's discretion is limited by the Minnesota Sentencing Guidelines, which prescribe "a sentence or range of sentences that is presumed to be appropriate." *Id.* at 308 (quotation omitted). "A sentencing court must pronounce a sentence within the applicable range unless there exist identifiable, substantial, and compelling circumstances that distinguish a case and overcome the presumption in favor of the guidelines sentence." *Id.* (quotation omitted). "Accordingly, a sentencing court can exercise its discretion to depart from the guidelines *only if* aggravating or mitigating circumstances are present." *Id.* (quotation omitted). The aggravating or mitigating circumstances must provide a substantial and compelling reason not to impose a guidelines sentence. *Id.*

A district court departs dispositionally if it "orders a disposition other than that recommended in the Guidelines." Minn. Sent. Guidelines 1.B.5.a. (2017). "[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." *Soto*, 855 N.W.2d at 308 (emphasis added and quotation omitted). When determining if a defendant is particularly amenable to probation, relevant factors to consider 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." *Id.* at 310 (quoting *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982)).

Mouchka argues that "he is particularly amenable to individualized treatment in a probationary setting and that imposing a downward departure would be best for him and for society." To support his claim that probation is appropriate, Mouchka points out that "he is a prime candidate for individualized treatment in a probationary setting," and that

“because of his age, health problems, and low risk of reoffending,” he likely would “not receive sex offender treatment in prison.” He claims that his age, his lack of a prior criminal record, and his education support his position that he can be successful with treatment in a probationary setting. And he also claims that he “is committed to seeking treatment to gain insight into his behavior and to address his drug and alcohol use,” that he has been “cooperative and respectful” throughout the court proceedings, that he “took advantage of every chemical treatment option available to him while in jail,” and that he “has the support of his wife of over 50 years.” Mouchka argues that the district court therefore abused its discretion by denying his request for a downward dispositional departure. We disagree.

In rejecting Mouchka’s claim that he was remorseful, the district court found that “[Mouchka] might be remorseful, but it might more adequately be described as [he’s] remorseful because of being caught.” Moreover, the court was troubled by the following statement made by Mouchka at the sentencing hearing: “If I need treatment, then I need treatment.” In referencing this statement, the court found that “[Mouchka was] not really still acknowledging that [he was] in need of treatment.” And the court was “trouble[d]” by the “secretive” nature of Mouchka’s offenses, one of which “happened in front of [Mouchka’s] wife.” The court found that the fact that he was “capable of doing what [he] did . . . in front of [his] wife” suggests that Mouchka is “an unreasonably risky person not to send to prison.”

In addition, the presentence investigation (PSI), as well as a probation officer’s testimony at the sentencing hearing, belie Mouchka’s claim that probation is appropriate. In recommending the presumptive sentence, the PSI notes Mouchka’s lack of insight into

his actions, which is reflected by his version of the events that tends to minimize his behavior as well as shift blame toward the victim. Moreover, the probation officer testified that Mouchka's "social influences" have "collapsed" because his "family has abandoned him, due to the impact of the offense." And the probation officer further testified that Mouchka's wife "was not convinced that any offending happened," which would negatively affect the rehabilitative process.

Finally, "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) (quotation omitted). Thus, even if the record supported Mouchka's claim that he was particularly amenable to probation, the district court was not obligated to grant his request for a downward dispositional departure. *See State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981) ("[T]he Guidelines state that when substantial and compelling circumstances are present, the judge may depart. This means that the [district] court has broad discretion and that we generally will not interfere with the exercise of that discretion." (quotation omitted)). The record reflects that the district court "weigh[ed]" the appropriate factors but stated that "not sending [Mouchka] to prison actually unduly depreciates the gravity of [his] offenses." On this record, we conclude that the district court did not abuse its broad discretion when it denied Mouchka's motion for a downward dispositional departure.

Affirmed.