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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A18-0901**

State of Minnesota,  
Respondent,

vs.

Brandon Lee Boyum,  
Appellant.

**Filed March 4, 2019  
Affirmed  
Ross, Judge**

Freeborn County District Court  
File No. 24-CR-16-1520

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

David J. Walker, Freeborn County Attorney, Albert Lea, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Abigail H. Rankin, Assistant  
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Ross, Judge; and  
Johnson, Judge.

**UNPUBLISHED OPINION**

**ROSS, Judge**

Brandon Boyum undressed a sleeping 11-year-old girl, inserted his finger into her  
vagina, and put her hand on his penis. Boyum pleaded guilty to one count of first-degree  
criminal sexual conduct. The district court noted its concern about Boyum's pedophilia,

denied his motion for a downward dispositional departure, and sentenced him to the presumptive 12-year prison term after learning that Boyum had collected more than a thousand images of child pornography. Boyum appeals his sentence, but we affirm because imposing the presumptive sentence was within the district court's discretion.

## **FACTS**

Brandon Boyum was at a friend's house in Freeborn County after a night of drinking. He entered an 11-year-old sleeping girl's bedroom and pulled her pants down. Then he took pictures of her exposed buttocks and penetrated her vagina with his finger. He grasped her hand and put it on his penis. The girl woke up and ran crying from the room.

The state charged Boyum with first- and second-degree criminal sexual conduct and interfering with privacy against a minor. Boyum agreed to plead guilty to first-degree criminal sexual conduct in exchange for the state's dropping the other charges.

Three experts assessed Boyum before his sentencing. Psychologist Charles Dawley diagnosed him with pedophilia and recommended sex-offender treatment. Dawley opined that, "should the Court decide to allow Mr. Boyum to remain in the community, such treatment could be accomplished on an outpatient basis." Therapists Marie Grace and Katherine Farrington jointly submitted a report in which they saw Boyum's conduct as similarly consistent with pedophilia. They opined that Boyum fell in the low-to-moderate-risk category "for being charged or convicted for another sexual offense" based on an actuarial-risk-assessment tool. They recommended community-based treatment in a probationary setting rather than prison, citing Boyum's family support, acceptance of

responsibility, “desire to gain insight into why he committed his offense,” and “low priority level of risk.”

Boyum moved for a dispositional departure. He asserted that he was remorseful, respectful in court and in jail, had a minimal criminal history, posed a low to moderate risk to reoffend, was amenable to community-based treatment, and had community support.

At Boyum’s sentencing hearing, the state presented evidence indicating that Boyum’s computer contained thousands of pornographic images, many of which were “[h]ard core child pornography.” The sentencing judge announced, “I can either send the Defendant to prison for a minimum of 12 years . . . or place him on probation with community-based treatment. I have no middle ground. There was not a durational departure motion filed here, so I have very diverse options.” The district court decided to impose a sentence of 144 months in prison, which falls within the presumptive range. It denied Boyum’s departure motion, explaining that, although it had initially supposed Boyum’s crime was an isolated, drunken, “stupid act,” the “thousands of images of porn, a fair number of them child pornography,” persuaded the court that it was instead “the act of a pedophile” and “not a one-time incident.”

Boyum appeals his sentence.

## **D E C I S I O N**

Boyum argues that the district court should have granted his motion for a downward dispositional departure and stayed his sentence, which would have resulted in probation and community-based treatment rather than prison. We afford the district court great

discretion in sentencing, and we will reverse only if the sentence reflects a clear abuse of that discretion. *State v. Soto*, 855 N.W.2d 303, 307–08 (Minn. 2014).

Minnesota strongly favors presumptive sentences. *See id.* at 308–09. The district court must issue sentences within the assigned presumptive range unless substantial and compelling circumstances exist to warrant a departure. Minn. Sent. Guidelines 2.D.1 (2016). Dispositional departures must rest on the defendant’s characteristics, like, for example, his age, criminal record, remorse, motivation to change, cooperation, attitude in court, and unamenability to incarceration. *Soto*, 855 N.W.2d at 309–310; *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982).

Boyum argues that the district court ignored these factors, ignored the therapists’ opinions, and based its decision on clearly erroneous facts and a flawed understanding of pedophilia. The record belies the argument.

We are satisfied that the district court did not ignore the factors relevant to a dispositional departure motion. The district court stated that it read all the material presented to it more than once, including the presentence reports provided by the therapists and the probation office. These documents detail all of the characteristics appropriate for the court’s assessment, leading the district court to state on the record how difficult a decision it faced as a result. The district court also received live testimony, and the transcript demonstrates the court’s attentiveness to the arguments made on all the factors offered to justify the departure. The record demonstrates that, far from ignoring the relevant factors, the district court weighed them carefully.

Boyum contends that the district court improperly ignored expert opinions that he is suitable for community-based treatment in a probationary setting. But mere suitability for community-based treatment does not satisfy the standard for a downward dispositional departure. Dispositional departures may rest on the defendant's characteristics that show he is "*particularly* suitable for individualized treatment in a probationary setting." *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016) (emphasis added) (*quoting State v. Wright*, 310 N.W.2d 461, 462 (Minn. 1981); *see also Soto*, 855 N.W.2d at 308–09 (emphasizing the need for *particular* amenability to probation, not just amenability to probation, to establish a substantial and compelling reason to depart). Equally fatal to Boyum's contention is the long-settled precept that the district court sitting as factfinder need not accept the opinion of any expert, even if the opinion is not contradicted. *See Costello v. Johnson*, 121 N.W.2d 70, 76 (Minn. 1963). Our review of the record reveals that the district court scrupulously considered the opinions of the evaluators and accepted many, but not all, of their opinions. The district court did not find Boyum particularly amenable to probation or particularly amenable to individualized treatment in a probationary setting, and Boyum cites nothing in the record that would compel either finding.

Boyum's protest about the district court's factual findings also does not require reversal. Boyum complains that the district court had no basis on which to question whether Boyum's crime was a mere isolated incident. But the district court did not suggest that it was basing its sentencing decision on the idea that Boyum had engaged in other molestation acts. It implied instead that Boyum's possession of child pornography revealed that his conduct was not merely an anomalous, alcohol-induced act of indiscretion; it was instead

a deliberate deed resulting from Boyum's sexual fixation on children. This was an appropriate consideration of Boyum's characteristics in relation to his motion for a dispositional departure.

We are similarly unpersuaded by Boyum's contention that the district court should have rejected the child-pornography evidence because the detective who testified about it offered only "vague hearsay unsupported by any physical or electronic evidence in the record." Boyum maintains that the detective testified "[w]ithout providing any specific numbers" and he quotes the detective as having said only that "[s]ome of it was child pornography." Boyum misrepresents the record. The testifying detective stated precisely that "[t]here were 1,083 images" among the photographs on Boyum's computer that were "known to [the National Center for Missing and Exploited Children] as child pornography," based on victim-matching database technology. This testimony was not vague. And we will not consider Boyum's tardy contention that the testimony was inadmissible hearsay, as he made no hearsay objection at the time, forfeiting the challenge. *See State v. Fields*, 679 N.W.2d 341, 348 (Minn. 2004) (holding that a defendant who fails to object on hearsay grounds forfeits an appellate challenge on the issue). The district court did not clearly err by finding that Boyum's computer contained evidence of extensive child pornography or abuse its discretion by reasoning that this evidence bore on Boyum's attempt to establish a substantial and compelling reason to depart.

**Affirmed.**