

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1387**

State of Minnesota,
Respondent,

vs.

Scott David Quall,
Appellant.

**Filed June 24, 2019
Affirmed
Hooten, Judge**

Scott County District Court
File No. 70-CR-16-16616

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

Ronald Hocesvar, Scott County Attorney, Todd P. Zettler, Assistant County Attorney,
Shakopee, Minnesota (for respondent)

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

Considered and decided by Hooten, Presiding Judge; Johnson, Judge; and Reilly,
Judge.

UNPUBLISHED OPINION

HOOTEN, Judge

In this direct appeal from final judgment of conviction and sentence for being an
ineligible person in possession of a firearm, appellant argues that he must be permitted to

withdraw his guilty plea because his plea was not intelligently made when he did not understand why he was ineligible to possess a firearm. Appellant alternatively argues that the district court abused its discretion by denying his motion for a downward dispositional departure. We affirm.

FACTS

In September 2016, appellant Scott David Quall had three active warrants for his arrest. Police officers contacted Mystic Lake Casino, where they knew Quall frequented, to help them locate Quall. That month, when casino employees reported to the police that Quall was at the casino, officers arrived and arrested Quall.

Officers conducted an inventory search of Quall's vehicle and found methamphetamine, drug paraphernalia, and a stolen, loaded firearm. Quall waived his *Miranda* rights and told officers that he knew the gun was in the vehicle, but stated that it did not belong to him. He also stated that the drugs and paraphernalia were his and that he had used a few hours earlier.

The state charged Quall with one count possession of a firearm by an ineligible person for committing a crime of violence under Minn. Stat. § 624.713, subd. 1(2) (2016), and two counts fifth-degree possession of drugs under Minn. Stat. § 152.025, subd. 2(1) (2016). In 2017, the state amended the complaint to add a second count of possessing a firearm or ammunition as an ineligible person, and one count of receiving stolen property under Minn. Stat. § 609.53, subd. 1 (2016).

In November 2017, on the date set for a jury trial, Quall pleaded guilty to possession of a firearm as an ineligible person in exchange for dismissal of the other four charges.

The district court found his plea to be knowing, voluntary, and intelligent, but stated it would wait to accept the plea following a presentence investigation. Quall failed to appear for sentencing in February 2018. Two months later, the district court denied Quall's motion for a downward dispositional departure and sentenced him to the presumptive 60 months in prison. This appeal follows.

DECISION

Quall first argues that his guilty plea is invalid because it was unintelligent. A defendant does not have an absolute right to withdraw a guilty plea. *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010). But a defendant may challenge the validity of a guilty plea for the first time on direct appeal. *Brown v. State*, 449 N.W.2d 180, 182 (Minn. 1989); *State v. Newcombe*, 412 N.W.2d 427, 430 (Minn. App. 1987), *review denied* (Minn. Nov. 13, 1987). To be valid, a plea must be accurate, voluntary, and intelligent. *Raleigh*, 778 N.W.2d at 94. We review the validity of a guilty plea de novo. *State v. Johnson*, 867 N.W.2d 210, 214–15 (Minn. App. 2015), *review denied* (Minn. Sept. 29, 2015).

Quall argues that his plea was unintelligent because he did not understand the charge against him. “[T]he intelligent requirement insures that the defendant understands the charges, his or her rights under the law, and the consequences of pleading guilty.” *State v. Wukawitz*, 662 N.W.2d 517, 522 (Minn. 2003) (quotation omitted).

Quall pleaded guilty to possession of a firearm as an ineligible person. Minn. Stat. § 624.713, subd. 1(2) (prohibiting “a person who has been convicted of . . . a crime of violence” from possessing a firearm). He argues on appeal that his plea was unintelligent because he “did not understand that [this] charge against him did not require a felony

conviction on his record.” We note that at the time Quall pleaded guilty, he stated that he understood the charge against him. He stated that he understood that his prior conviction of terroristic threats made him ineligible to possess a firearm. But months later, at his sentencing hearing, Quall argued to the district court that he could not be convicted because he was not ineligible to possess a firearm. On appeal, Quall does not argue that his terroristic-threats conviction does not qualify as a crime of violence under Minn. Stat. § 624.713, subd. 1(2), but he argues that he did not *understand* that he was ineligible to possess a firearm when he pleaded guilty, therefore rendering his plea unintelligent.

Quall’s argument fails for two reasons. First, the record demonstrates that Quall understood his plea when he pleaded guilty. “Whether a plea is intelligent depends on what the defendant knew at the time he entered the plea.” *Dikken v. State*, 896 N.W.2d 873, 877 (Minn. 2017). The *Dikken* court held that because the defendant “understood (and confirmed on the record) each of the characteristics of an intelligent guilty plea,” his plea was valid. *Id.* at 878. And even though “other irregularities arose during the course of the proceedings,” the supreme court upheld Dikken’s plea as valid. *Id.* at 877.

Similarly, Quall confirmed on the record that he understood that his previous terroristic-threats conviction was a crime of violence and that it made him ineligible to possess a firearm. He confirmed that he possessed a firearm following his terroristic-threats conviction. Quall confirmed that he understood his current charge carried a 60-month sentence. Months later, contrary to what he had stated at the time of his plea, he asserted that he did not understand why he was charged with ineligible possession of a

firearm based on his prior crime. But because he understood the charges against him when he pleaded guilty, we conclude that his plea was intelligent.

Second, Quall's argument also fails because he misconstrues the law. By asserting that his guilty plea is unintelligent based on what he knew about his eligibility resulting from his prior "crime of violence," he implicitly also argues that he had to know he was ineligible at the time he possessed the firearm. But Minn. Stat. § 624.713 does not require that the defendant know he is ineligible *when he possesses* a firearm. See 10A *Minnesota Practice*, CRIMJIG 32.17 (2018) (providing the elements of ineligible possession of a firearm as: (1) knowingly possessing a firearm and (2) having a crime-of-violence conviction as defined in Minn. Stat. § 624.712, subd. 5 (2018)). A person is guilty of this offense even if he does not know that his prior charge attaches the consequence of being ineligible to possess a firearm. *C.f. Sames v. State*, 805 N.W.2d 565, 568 (Minn. App. 2011) (holding that ineligibility to possess a firearm is a collateral consequence of a conviction because it is civil and regulatory in nature and a defendant need not be aware of this consequence to plead guilty to an offense), *review denied* (Minn. Dec. 21, 2011). Because Quall's plea was valid, no manifest injustice occurred that requires withdrawal of his guilty plea.

Quall also argues that the district court abused its discretion by denying his motion for a downward dispositional departure. This court reviews a sentence to "determine whether the sentence is inconsistent with statutory requirements, unreasonable, inappropriate, excessive, unjustifiably disparate, or not warranted by the findings of fact issued by the district court." Minn. Stat. § 244.11, subd. 2(b) (2016). This court will not

reverse a district court's sentencing decision absent a clear abuse of discretion. *State v. Oberg*, 627 N.W.2d 721, 723 (Minn. App. 2001), *review denied* (Minn. Aug. 22, 2001).

The district court must impose the presumptive sentence unless “substantial and compelling circumstances” justify departure. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). “When factors that may justify departing from the presumptive sentence are present, a court must exercise its discretion and consider the factors.” *State v. Kier*, 678 N.W.2d 672, 677 (Minn. App. 2004). But “the mere fact that a mitigating factor is present in a particular case does not obligate the court to place defendant on probation.” *State v. Pegel*, 795 N.W.2d 251, 253 (Minn. App. 2011) (quotation omitted). And a “district court is not required to explain its reasons for imposing a presumptive sentence.” *State v. Johnson*, 831 N.W.2d 917 (Minn. App. 2013), *review denied* (Minn. Sept. 17, 2013).

In considering whether to grant a dispositional departure, the district court must consider the defendant's “particular amenability to individualized treatment in a probationary setting.” *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). Relevant considerations, known as the *Trog* factors, may include the defendant's age, prior record, remorse, cooperation, attitude in court, and the available support network of friends or family. *Id.* A district court is not required to depart “from a presumptively executed prison sentence, even if there is evidence in the record that the defendant would be amenable to probation.” *State v. Olson*, 765 N.W.2d 662, 663 (Minn. App. 2009).

Quall argues that the district court relied on mistaken information in denying his motion for departure, asserting that his criminal history showed amenability to probation, and that the district court erroneously believed Quall was “intentionally misrepresenting

his past.” But, there is substantial support in the record supporting the district court’s determination that Quall is not amenable to probation. In *State v. Carter*, this court held that the defendant was not particularly amenable to probation because he had five criminal-history points from prior convictions, had been in treatment programs before but only completed one, and had two DWI convictions. 424 N.W.2d 821, 824–25 (Minn. App. 1988). Quall had a criminal-history score of three points, was assigned to probation in fourteen separate cases since 2000, and had three drug possession charges in the past five years. Although he was ordered to follow through with probation in order to finish the presentence investigation, he failed to do so. At the time of sentencing, he was charged with additional crimes and had warrants for his arrest. Quall’s extensive history with probation, his refusal to participate in the presentencing investigation as ordered, and his new charges, show that probation had not rehabilitated him. *But see State v. Hickman*, 666 N.W.2d 729, 732 (Minn. App. 2003) (noting that, when an offender is able to comply with probation conditions, probation affords offenders the benefit of rehabilitation). The district court was well within its discretion in denying Quall’s motion for departure and executing the presumptive sentence.

Further, the district court was properly concerned with whether Quall took responsibility for his criminal conduct. *Cf. id.* (“Admitting guilt, and taking responsibility for one’s criminal conduct, is a critical factor in an offender’s amenability to treatment.”). The district court stated that it was concerned with Quall’s criminal history and his arrest prior to sentencing on a separate charge. The district court noted that Quall did not disclose this arrest, even though it was the reason Quall appeared before the judge. After admitting

during his plea hearing that his terroristic-threats conviction rendered him ineligible to possess a firearm, he argued at sentencing that he did not know that the charge made him ineligible. At the sentencing hearing, the district court noted that it was concerned about the things Quall told him about his prior criminal history, as well as the things he was not telling the court. Because the offender's ability to take responsibility is a relevant factor in determining whether an offender is particularly amenable to probation, it was proper for the district court to comment on Quall's lack of forthrightness. When determining whether an offender is particularly amenable, "credibility determinations are crucial, [and] a reviewing court will give deference to the primary observations and trustworthiness assessments made by the district court." *State v. Aviles-Alvarez*, 561 N.W.2d 523, 527 (Minn. App. 1997), *review denied* (Minn. June 11, 1997).

Because of Quall's prior criminal history, lack of success with probation, lack of follow-through with probation during the presentence investigation, further criminal charges while awaiting sentencing, and failure to take responsibility for his conduct, the district court did not abuse its discretion in denying Quall's motion for a downward departure.

Affirmed.