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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A18-1479**

State of Minnesota,  
Respondent,

vs.

Johnson Bankole Oluwalowo,  
Appellant.

**Filed July 15, 2019  
Affirmed  
Slieter, Judge**

Hennepin County District Court  
File No. 27-CR-17-27266

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

Michael O. Freeman, Hennepin County Attorney, Nicole Cornale, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Christopher Mishek, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Bratvold, Judge; and Slieter, Judge.

## **UNPUBLISHED OPINION**

**SLIETER**, Judge

Appellant Johnson Bankole Oluwalowo argues the district court abused its discretion in denying his motion for a downward dispositional departure because he demonstrated he is particularly amenable to treatment. We affirm.

### **FACTS**

On October 30, 2017, the state charged appellant with one count of first-degree criminal sexual conduct in violation of Minn. Stat. § 609.342, subd. 1(g) (2016). The complaint alleged that over the past several years, appellant sexually penetrated his fifteen-year-old daughter E.O. on numerous occasions.

After being charged, appellant obtained a private psychosexual evaluation with Dr. Mary Kenning. Dr. Kenning opined that appellant had a below average risk for recidivism and concluded that he posed less risk to the community than average offenders.

On April 9, 2018, appellant entered a guilty plea to the sole count of first-degree criminal sexual conduct. Appellant admitted to digitally penetrating his daughter on one occasion. The district court accepted the plea and ordered a psychosexual evaluation and presentence investigation (PSI).

Dr. Mary Marth performed the court-ordered psychosexual evaluation. Dr. Marth noted that appellant stated he took responsibility for his conduct, although it was unclear if appellant was accepting more responsibility than he had in the private psychosexual evaluation, or if appellant was avoiding discussing it. Dr. Marth opined that appellant

presented a below average risk for reoffending but that the risk was higher if he had access to a child and power over the child.

The PSI found that appellant minimized his conduct towards his daughter. The PSI also noted that appellant was defensive and did not understand how his conduct led to the charge against him.

On June 11, 2018, the district court sentenced appellant. Several members of appellant's family and community submitted letters of support. E.O. also read a statement to the court.

The state argued that a presumptive guidelines sentence of 144 months was appropriate. Appellant requested a downward dispositional departure. The district court denied the motion and sentenced appellant to 144 months. This appeal follows.

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

Appellant argues that the district court abused its discretion because it failed to consider the mitigating factors offered by appellant. We review 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). “A district court’s departure decision will not be reversed absent a clear abuse of discretion.” *State v. Abrahamson*, 758 N.W.2d 332, 337 (Minn. App. 2008), *review denied* (Minn. Mar. 31, 2009).

“A district court must impose the presumptive guidelines sentence absent identifiable, substantial, and compelling circumstances justifying departure.” *State v.*

*Johnson*, 831 N.W.2d 917, 925 (Minn. App. 2013) (quotation omitted), *review denied* (Minn. Sept. 17, 2013). “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). In considering whether to grant a dispositional departure, the district court may 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 available support network of friends or family. *See id.* A district court, however, 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).

If “the record demonstrates that an exercise of discretion has not occurred, the case must be remanded for a hearing on sentencing and for consideration of the departure issue.” *State v. Pegel*, 795 N.W.2d 251, 253 (Minn. App. 2011). This court affirms a presumptive sentence when “the record shows [that] the sentencing court carefully evaluated all the testimony and information presented before making a determination.” *Johnson*, 831 N.W.2d at 925 (alteration in original) (quoting *State v. Van Ruler*, 378 N.W.2d 77, 81 (Minn. App. 1985)). A “district court is not required to explain its reasons for imposing a presumptive sentence.” *Id.*

Appellant asserts that the district court failed to consider the *Trog* factors, contending that many of the factors weigh in his favor because he has no criminal record,

he has support from his family and community, he demonstrated cooperation and respect for the court by completing two psychosexual evaluations, he enrolled in sex-offender treatment, and he was remorseful. Appellant argues that the district court simply ignored these factors that weigh in favor of departure.

This argument is unfounded. First, the district court is not required to explain its reasons for imposing a presumptive sentence. *Id.* The district court need only exercise its discretion and evaluate the evidence and testimony presented to it. *Id.* Prior to imposing sentence, the district court remarked: “I did review the letters from family members, church members. I also reviewed the presentence investigation report. I also reviewed the psychosexual reports from both psychologists and the memorandum of law from both parties regarding sentencing.” In addition, the district court heard arguments from counsel. The record shows that the district court properly evaluated the evidence and testimony.

Second, although not required because it imposed the presumptive sentence, the district court did address relevant *Trog* factors. It found that appellant minimized his conduct and refused to accept responsibility. It also discussed appellant’s lack of criminal history.

Thus, in sum, the record shows that the district court properly exercised its discretion. A “reviewing court may not interfere with the sentencing court’s exercise of discretion, as long as the record shows the sentencing court carefully evaluated all the testimony and information presented before making a determination.” *Van Ruler*, 378 N.W.2d at 80-81.

Appellant also argues that the district court misconstrued Dr. Marth's psychosexual report "as recommending prison." At sentencing, the district court stated: "[Prison] was recommended by both the presentence investigation author and by — and sort of intimidated by Ms. Marth in her [psychosexual] evaluation." The district court also noted that "two out of three" of the reports reviewed by the court recommended prison and "that's not a good — those aren't good stats." Citing *State v. Curtiss*, appellant contends that this risked making the hearing a "mechanical or callous" exercise. 353 N.W.2d 262, 264 (Minn. App. 1984) ("Consideration of compelling circumstances is central to the scheme of the sentencing guidelines, and the practice will avoid sentencing that is either mechanical or callous.").

In light of the entire sentencing hearing, the district court's comment did not turn the sentencing hearing into a "mechanical or callous" exercise. Before making its statement about the reports, the district court explained its reasoning for denying the departure request. This reasoning was not based on the number of reports recommending appellant be imprisoned.

Because the court carefully considered all the evidence that may have supported appellant's purported reasons for a dispositional departure, we affirm the district court's presumptive sentence.

**Affirmed.**