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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-2130**

State of Minnesota,
Respondent,

vs.

Jeffrey Varlyn Sharp,
Appellant.

**Filed December 16, 2019
Affirmed
Hooten, Judge**

St. Louis County District Court
File No. 69DU-CR-18-1574

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

Mark S. Rubin, St. Louis County Attorney, Gary W. Bjorklund, Assistant County Attorney,
Duluth, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Erik I. Withall, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Smith, Tracy M., Judge; and
Kirk, Judge.*

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

UNPUBLISHED OPINION

HOOTEN, Judge

In this direct appeal from the judgment of conviction for first-degree criminal sexual conduct, appellant argues that the district court erred by denying his motion for a downward dispositional departure because it failed to make specific findings on the mitigating factors presented by appellant in support of the motion. We affirm.

FACTS

On May 18, 2018, appellant Jeffrey Varlyn Sharp was charged with two counts of first-degree criminal sexual conduct in violation of Minn. Stat. § 609.342, subd. 1(b) (2018), and two counts of contributing to the delinquency of a minor in violation of Minn. Stat. § 260B.425, subd. 1(a) (2018). The complaint alleged that Sharp sexually abused his 14-year-old step daughter in August 2016 and in January 2017. The complaint further alleged that during both incidents Sharp had provided the victim with marijuana and digitally and orally penetrated her.

Sharp pleaded guilty to one count of first-degree criminal sexual conduct. In exchange, the state dismissed all remaining charges. Sharp's presumptive sentence for one count of first-degree criminal sexual conduct is 144 to 172 months. Minn. Sent. Guidelines 4.B. (2018).

Sharp filed a motion and supporting documents requesting a downward dispositional departure from the presumptive sentence range because of mitigating factors. The mitigating factors Sharp cited included his age (47), his lack of a prior record, his remorse, and cooperation during the proceedings.

A sentencing hearing was held on September 28, 2018. Prior to any testimony, the district court noted that it had reviewed all the prepared materials, including Sharp's motion for a downward dispositional departure. After hearing testimony from the victim and the victim's mother, who both requested that Sharp be sentenced to a prison term, the district court denied Sharp's motion for a downward dispositional departure and sentenced him to 144 months imprisonment. The district stated:

I can't. I'm going to send you to prison. I don't find substantial and compelling [circumstances]. I appreciate your cooperation. I appreciate everything you've done. But I think this is prison.

I'm going to go with the 144 [months] which is the recommended sentence. . . . If you take the insight and commitment that you're expressing today into the system and work the program you can have a good outcome, but it ain't going to be easy. . . . I'm not imposing a fine. I don't need . . . your money. I need you to do the time and figure out how to correct it through the . . . resources at the Commissioner.

This appeal follows.

DECISION

Sharp argues that the district court erred when it failed to make specific findings that addressed his offender-specific mitigating factors, including his age, his lack of a prior criminal record, his remorse, and his cooperation and attitude while in court.

A district court may pronounce a sentence that departs from the presumptive range established in the sentencing guidelines when substantial and compelling circumstances exist that justify the departure. Minn. Sent. Guidelines 2.D.1.c (2018); *see also State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014) (noting that a district court abuses its discretion when it departs from the sentencing guidelines unless it determines that “identifiable,

substantial and compelling circumstances” exist to justify a departure). “We will not generally review a district court’s exercise of its discretion to sentence a defendant when the sentence imposed is within the presumptive guidelines range.” *State v. Delk*, 781 N.W.2d 426, 428 (Minn. App. 2010), *review denied* (Minn. July 20, 2010). Only a rare case will cause an appellate court to reverse a district court’s refusal to depart from the presumptive sentencing guidelines. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

In *State v. Trog*, the supreme court outlined what factors a district court may consider when determining whether to depart from a presumptive sentence, which 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.” 323 N.W.2d 28, 31 (Minn. 1982). Sharp argues that the district court did not address all of his mitigating factors and instead merely acknowledged the factors when it denied his motion for a downward dispositional departure. Sharp asks us to reverse and remand to the district court because the district court failed to address all the factors, creating an allegedly insufficient record for us to review.

Sharp is correct that the district court did not specifically address all of the mitigating factors he presented when it denied his motion. But the district court is not required to provide a defendant with an explanation when it refuses to impose a downward dispositional departure. *State v. Johnson*, 831 N.W.2d 917, 925 (Minn. App. 2013), *review denied* (Minn. Sept. 17, 2013). “Although the trial court is required to give reasons for departure, an explanation is not required when the court considers reasons for departure but elects to impose the presumptive sentence.” *State v. Van Ruler*, 378 N.W.2d 77, 80

(Minn. App. 1985). “[A]s long as the record shows the sentencing court carefully evaluated all the testimony and information presented before making a determination,” a reviewing court must not interfere. *Id.* at 81; *see also State v. Curtiss*, 353 N.W.2d 262, 263 (Minn. App. 1984) (noting that no written explanation is needed when a district court elects to impose a presumptive sentence rather than a downward departure).

Here, the district court evaluated all of the evidence when it made its decision not to depart from the presumptive range. Prior to Sharp’s sentencing hearing, the district court noted that it had reviewed: (1) Sharp’s psychosexual report; (2) Sharp’s presentence investigation; (3) Sharp’s motion for a downward dispositional departure, which included a memorandum in support of the motion and a recidivism report; (4) the state’s brief; and (5) Sharp’s Chemical Use Assessment. The district court also considered the victim impact statements from the victim and the victim’s mother. Based on all of the information before it, the district court determined that there were no substantial or compelling circumstances that would warrant a downward dispositional departure and sentenced Sharp to 144 months imprisonment. Although the district court did not address each mitigating factor individually, we conclude that the district court did not abuse its discretion in weighing the factors and concluding that they did not support a downward dispositional departure.

We are not persuaded by Sharp’s contention that our review of the district court’s exercise of discretion is limited because of the district court’s silence on the motion for a downward departure. The district court was not required to explain its reasoning for imposing a presumptive sentence. *Van Ruler*, 378 N.W.2d at 80. Rather, all that is required is a showing that the district court carefully considered the circumstances and determined

that departure was not appropriate. *State v. Pegel*, 795 N.W.2d 251, 255 (Minn. App. 2011) (quotations omitted). The district court met this burden by noting that it had carefully reviewed all the materials submitted by both parties and determined that departure from the presumptive sentence was not warranted.

Because the district court was not required to explain its reasons for denying Sharp's motion for a downward dispositional departure, the district court did not abuse its discretion by imposing a presumptive sentence.

Affirmed.