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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0359**

State of Minnesota,
Respondent,

vs.

Jamahl Lorenzo Climmons,
Appellant.

**Filed February 3, 2020
Affirmed
Bratvold, Judge**

Dakota County District Court
File No. 19HA-CR-17-1265

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

James C. Backstrom, Dakota County Attorney, Heather Pipenhagen, Assistant County Attorney, Hastings, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sara J. Euteneuer, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cleary, Chief Judge; Worke, Judge; and Bratvold, Judge.

UNPUBLISHED OPINION

BRATVOLD, Judge

Appellant challenges his sentence, arguing the district court abused its discretion when it denied his motion for a downward dispositional departure and imposed an executed

sentence within the recommended guidelines. Appellant pleaded guilty to and was convicted of one count of dissemination of pornographic works involving minors and five counts of possession of pornographic works involving minors. We affirm.

FACTS

Appellant Jamahl Lorenzo Climmons lived with his father in South St. Paul in September 2016. Law enforcement executed a search warrant at his home and seized multiple electronic devices used by 18-year-old Climmons. Climmons later admitted that his electronic devices contained child pornography and that he had used the electronic devices to disseminate child pornography through a peer-to-peer file-sharing program.

In March 2017, the state charged Climmons by complaint with dissemination of pornographic works involving minors under Minn. Stat. § 617.247, subd. 3(a) (2014) (count one) and possession of pornographic works involving minors under Minn. Stat. § 617.247, subd. 4(a) (2014) (counts two-ten).¹ The district court released Climmons without bail and imposed conditions. For example, Climmons was to have no contact with persons under 18 years old without approval, keep the court informed of his current address, have no access to or use of the internet without approval, and have no use of electronic devices that have internet access.

On September 13, 2018, the district court issued an arrest warrant alleging that Climmons had violated the conditions of his release because he used the internet to post

¹ About one month later, the state filed an amended complaint that changed the offense dates for counts two through ten, but otherwise alleged the same criminal charges.

comments about sexual contact with children and did not report a change in address.² Police investigated a “cyber tip” that a “Reddit” user had encouraged a 13-year-old female to have sexual intercourse with a 30-year-old male.³ Police executed a search warrant for Reddit that yielded evidence that the username in the cyber tip was associated with Climmons. The same username made multiple Reddit posts in March, June, and July 2018; many posts were of a sexual nature and mentioned sexual contact with children. After Climmons’s arrest, the district court held a bail hearing. Climmons denied the warrant allegations and the district court asked if he wanted an evidentiary hearing. He declined to present evidence.⁴ The district court set bail, which Climmons did not post, and he remained in custody.

Ten days later, the parties reached a plea agreement in which Climmons would plead guilty to one count of dissemination and five counts of possession; the parties agreed to

² In its brief to this court, the state notes that Climmons changed his address when he “moved to Crystal and [lived] with his father’s girlfriend and the girlfriend’s children, which was a violation of his conditions of release.” The state’s warrant application filed in September 2018 alleged that Climmons’s failure to report his change of address was a violation of his release conditions. The warrant application did not allege that Climmons violated the condition to have no contact with minors, nor did the application state that minors were living at his residence. Yet, at the sentencing hearing, Climmons’s therapist testified that Climmons told her that children were living at his residence. The district court did not discuss this issue or make any relevant findings so we do not consider it in our opinion.

³ Reddit is a social-media website that aggregates content posted by registered members.

⁴ At the bail hearing, Climmons asserted that the no-internet release condition was unconstitutional because it prevented him from having internet access without approval; he repeated this argument at sentencing. The district court rejected the constitutional challenge, and Climmons does not raise this issue on appeal.

cap his sentence at 60 months with a five-year conditional-release period, and to allow the defense to move for a sentencing departure. Climmons pleaded guilty to count one (dissemination) and counts four, six, seven, eight, and ten (possession); the state dismissed counts two, three, five, and nine. In his sworn testimony, Climmons agreed that he transmitted child pornography to someone else through a file-sharing program in August 2016. Climmons also agreed that he knowingly possessed child pornography on his electronic devices while living at his father's home in July, August, and September 2016, and that the pornographic images for each possession count depicted different child victims. The district court accepted Climmons's plea and found him guilty on counts one, four, six, seven, eight and ten.

Before the sentencing hearing, Climmons participated in a court-ordered psychosexual evaluation and completed a court-ordered targeted presentence investigation. The district court received reports from both to use at sentencing. The guidelines sentence was a presumptive prison commitment on the dissemination conviction with a range of 51 to 72 months.⁵ Climmons moved for a downward dispositional departure, asking the district court to stay all sentences and require him to participate in outpatient treatment.

At the sentencing hearing, Climmons called three witnesses, including himself. His therapist testified that Climmons attended therapy starting in November 2017, about two to three times a month for ten months. The therapist testified that Climmons had been

⁵ Before pleading guilty, Climmons participated in a preplea investigation report. The preplea sentencing worksheet stated Climmons's criminal-history score was zero before he was convicted of the March 2017 charges.

diagnosed with Asperger's, anxiety, and attention-deficit hyperactivity disorder (ADHD). The therapist agreed that Climmons did not require a residential inpatient sex-offender treatment program and stated that he is amenable to treatment in a supervised living situation with a high-intensity outpatient setting.

The psychotherapist testified that she had diagnosed Climmons with autism-spectrum disorder, pedophilic disorder, and traits of antisocial personality disorder, and that he had a prior ADHD diagnosis. She also testified that Climmons had disclosed that he was sexually abused as a child. The psychotherapist testified that Climmons did not use alcohol or drugs, he had dated a same-age female and had not had sexual intercourse. The psychotherapist testified about her report, which stated that Climmons is "highly conflicted about his sexual interests and desires and, as such, likely feels remorseful and ashamed." She testified that Climmons "showed no remorse for the individuals that he viewed in the pornography."

The psychotherapist also testified that Climmons admitted "he was not following all probation guidelines during the time that [she] was interviewing him." The psychotherapist concluded that Climmons "likely would be prone to be outwardly compliant to please others, but he may not actually be internally compliant." The psychotherapist recommended that Climmons be placed "in a setting where there's accountability and monitoring" because he needs "intensive treatment"; Climmons "does need to be in a supervised living situation, but it does not have to be residential treatment."

Lastly, Climmons testified that he lived with his father, was single, had a job before being taken into custody, had a driver's license, and denied using alcohol or illegal drugs.

During cross-examination, Climmons admitted that he made comments of a sexual nature on Reddit in March of 2018. In response to another user's post that stated she had been raped by her uncle when she was eight years old, Climmons admitted that he wrote this response: "I know I'm going to get a lot of flak for this, but I just want to say this: nice." Climmons also admitted to writing a Reddit post stating that the actresses in pornography are "18-year-old hags" and he needs to see "something younger." The state read victim-impact statements from the parents of children in the pornography images found on Climmons's electronic devices.

The district court denied Climmons's motion for a downward dispositional departure and stated:

I find that there are no substantial or compelling reasons at this point for me to put you on probation and depart. Despite what your lawyer has said, it's not because you spend money on video games, and it's certainly not because of your employment history or because of the victim-impact statements.

Your own behavior is what has you in this position. You are not in a place where, when you knew so much was on the line, that you could conform with, quite frankly, lesser conditions that would be placed on you when you're on probation. You could not do that. And that makes you a danger not only for yourself but for everybody else, and so it is an executed sentence. Thank you.

The district court imposed concurrent executed sentences of 60 months on count one, 51 months on count four, 39 months on count ten, and stayed concurrent sentences of 25 months on count six, 15 months on count seven, and 20 months on count eight. Climmons executed the stayed sentences.

This appeal follows.

DECISION

We review sentencing decisions for abuse of discretion. *State v. Kangbateh*, 868 N.W.2d 10, 14 (Minn. 2015). We “generally will not interfere with a sentencing court’s decision to impose a term within the presumptive sentence range.” *Id.* “A district court must order the presumptive sentence provided in the sentencing guidelines unless the case involves substantial and compelling circumstances that warrant a downward departure.” *Wells v. State*, 839 N.W.2d 775, 778 (Minn. App. 2013) (quotation omitted), *review denied* (Minn. Feb. 18, 2014). “A departure is not mandatory, and an appellate court will reverse a sentencing court’s refusal to depart only in a ‘rare’ case.” *State v. Walker*, 913 N.W.2d 463, 468 (Minn. App. 2018) (citation omitted).

A downward dispositional departure is a departure from the presumptive disposition—probation or prison—as recommended in the Minnesota Sentencing Guidelines. *See* Minn. Sent. Guidelines 2.D.1.a (2015). In 2015, the sentencing guidelines enumerated seven non-exclusive mitigating factors that may justify a dispositional departure if there are “identifiable, substantial, and compelling circumstances to support a departure.” Minn. Sent. Guidelines 2.D.1 (2015), 2.D.3.a.1-7 (2015) (listing factors). One factor is whether the offender is “*particularly* amenable to probation.” *See State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014); *see also* Minn. Sent. Guidelines 2.D.3.a.7. The sentencing guidelines state that amenability to probation “may, but need not, be supported by the fact that the offender is particularly amenable to a relevant program of individualized treatment in a probationary setting.” Minn. Sent. Guidelines 2.D.3.a.7. *State v. Trog* identified additional factors that a district court may consider when determining whether a

defendant is particularly amenable to individualized treatment in a probationary setting, such as, “the defendant’s age, his prior record, his remorse, his cooperation, his attitude while in court, and the support of friends and/or family.”⁶ 323 N.W.2d 28, 31 (Minn. 1982).

Climmons argues that the district court abused its discretion by denying his motion for a downward dispositional departure, contending that his “particular amenability to probation provided the compelling and substantial circumstances to justify the departure.” Climmons addresses the *Trog* factors, and argues that he is particularly amenable to probation because of his youth, community support, history of being sexually abused and mental-health diagnoses, his remorse, and his motivation to change. Climmons also argues that he is particularly amenable to treatment in a probationary setting because of his regular attendance at therapy, and because his therapist’s and psychotherapist’s testimony supported his claim that he “could be successful in an intensive out[]patient treatment program.” Climmons fails to mention his release-condition violations in his brief to this court.

The state responds that “[t]here were no[t] substantial and compelling reasons in this case to support a dispositional departure” and that Climmons is not “exceptional,

⁶ Climmons argues that other factors bearing on amenability to probation include a defendant’s demonstrated motivation to change and his “unamenability to prison coupled with amenability to probation.” Climmons is correct that these other factors have some support in our caselaw. *See State v. Hennessy*, 328 N.W.2d 442, 443 (Minn. 1983) (discussing motivation to change); *State v. Wright*, 310 N.W.2d 461, 462 (Minn. 1981) (discussing unamenability to prison). Regarding the application of these factors to Climmons’s case, the district court received record evidence on both factors and nonetheless found that Climmons is a “danger not only for [him]self but for everybody else.”

atypical, much less *particularly* amenable to probation.” The state argues that, although Climmons is young, he is particularly unamenable to treatment in a probationary setting because of his release-condition violations and the therapist’s and psychotherapist’s opinions that he needs a supervised living environment and intensive treatment with monitoring.

The district court focused on Climmons’s release-condition violations and decided not to depart because Climmons failed to obey “lesser conditions” than would be required by probation. Climmons admitted that he violated his release conditions by using the internet without approval and posting comments about sexual contact with children. The release-condition violations occurred while he was in outpatient therapy.

We conclude the district court did not abuse its discretion when it denied Climmons’s departure motion and imposed executed guidelines sentences. Even assuming that Climmons is correct and that he may be amenable to treatment in a probationary setting, this does not establish an abuse of discretion. *See State v. Olson*, 765 N.W.2d 662, 665 (Minn. App. 2009) (holding the district court’s decision to impose presumptive sentence was not an abuse of discretion even when “[t]here [was] evidence in the record that appellant was amenable to probation”).

Soto held that a defendant must be “particularly” amenable to probation to support a dispositional departure. 855 N.W.2d at 308. And a district court must identify substantial and compelling circumstances to support any departure from the sentencing guidelines. *Wells*, 839 N.W.2d at 778. The district court did not find that Climmons was particularly amenable to probation, nor did it find substantial and compelling reasons to depart. The

district court's sentencing decision is supported by record evidence and lies within its broad discretion. Thus, we affirm.

Affirmed.