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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0380**

State of Minnesota,
Respondent,

vs.

Myron Lynn Williams,
Appellant.

**Filed December 9, 2019
Affirmed
Larkin, Judge**

Hennepin County District Court
File No. 27-CR-17-27288

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

Michael O. Freeman, Hennepin County Attorney, Patrick R. Lofton, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Larkin, Presiding Judge; Slieter, Judge; and Randall,
Judge.*

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

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges his sentence for felony driving while impaired (DWI), arguing that the district court abused its discretion by denying his motion for a downward dispositional or durational sentencing departure. We affirm.

FACTS

In October 2017, respondent State of Minnesota charged appellant Myron Lynn Williams with one count of felony DWI—operating a motor vehicle under the influence of alcohol and one count of felony DWI—refusing to submit to chemical testing. Williams pleaded guilty as charged. As support for his guilty plea, Williams admitted that he parked his car in the parking lot of a liquor store and fell asleep, with a bottle of tequila, while the keys were in the car’s ignition. He agreed that he was in control of his car, that he was under the influence of alcohol at the time, and that he refused to take a breath test. The district court accepted Williams’s guilty plea and ordered a presentence investigation (PSI).

The PSI detailed Williams’s extensive criminal history, which included 13 prior felony convictions, one of which was for criminal vehicular operation. That conviction stemmed from a police chase in which Williams drove with an alcohol concentration greater than 0.20 and crashed into another vehicle, causing the driver of that vehicle to suffer several fractures and a traumatic brain injury. His prior convictions also include attempted murder, robbery, burglary, and controlled-substance crimes. The PSI noted that while Williams was on pretrial release for the current offense, he was ordered to abstain

from alcohol and controlled-substance use. His compliance was “subpar at best,” because he either tested positive for marijuana or failed to test as directed over half of the times he was tested. The PSI also noted that Williams had been charged with prohibited person in possession of a firearm and three counts of threats of violence in Ramsey County while awaiting sentencing for the underlying offense and that he was allegedly intoxicated at the time of the new offenses.

At sentencing, Williams moved for a downward dispositional or durational departure. During the sentencing hearing, his attorney acknowledged that despite going “to three [treatment] sessions,” Williams had a “relapse weekend” and was charged with new offenses. After hearing the parties’ arguments on the departure requests, the district court explained that it would rely on the PSI in making its determination, noting that the PSI was “extremely comprehensive, [and had] a lot of information in it that [gave] . . . some guidance in terms of what to do.” Based on the district court’s consideration of the record, it determined that Williams had failed to establish substantial and compelling reasons for a departure. It concluded that “[t]here really are no reasons . . . to do a dispositional departure,” and it was “going to follow the recommendations and the [PSI].”

The district court explained:

I don’t see this—I don’t see you as a person who would be amenable to probation. You have nine criminal history points, sir, and nine criminal history points makes you a career offender. So that’s—you’re in the big time now. And you made these decisions and [had] opportunities prior to getting before me today in which you could have addressed some of these issues had you wanted to. Saying that you didn’t have any—any opportunities to go through treatment, I just can’t believe that. . . . I mean, you’re here because of your own

decisions and because of your own behavior. And I think that had you had the wherewithal to stop drinking, to get some help, to go and ask for help instead of waiting for someone to hand you an opportunity to go through treatment, I don't think you'd be here right now.

The district court sentenced Williams to serve a presumptive 72-month prison term.

Williams appeals.

DECISION

“The sentences provided in the [Minnesota Sentencing Guidelines] Grids are presumed to be appropriate for the crimes to which they apply.” Minn. Sent. Guidelines 2.D.1 (Supp. 2017). Appellate courts “afford the [district] court great discretion in the imposition of sentences and reverse sentencing decisions only for an abuse of that discretion.” *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014) (quotation omitted).

“[A] sentencing court can exercise its discretion to depart from the guidelines only if aggravating or mitigating circumstances are present, and those circumstances provide a substantial and compelling reason not to impose a guidelines sentence.” *Id.* at 308 (citations and quotations omitted). “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), *review denied* (Minn. June 15, 2004). But “the presence of mitigating factors does not obligate the court to place a defendant on probation or impose a shorter term than the presumptive term.” *Wells v. State*, 839 N.W.2d 775, 781 (Minn. App. 2013) (quotation omitted), *review denied* (Minn. Feb. 18, 2014). “[A]s long as the record shows the [district] court carefully evaluated all the testimony and information presented [to it] before making a determination,” this court

will not interfere with the district court's decision to impose the presumptive sentence. *State v. Pegel*, 795 N.W.2d 251, 255 (Minn. App. 2011) (quotation omitted).

When considering a dispositional departure, the district court focuses “more on the defendant as an individual and on whether the [guidelines] sentence would be best for him and for society.” *State v. Heywood*, 338 N.W.2d 243, 244 (Minn. 1983). “[A] defendant’s *particular* amenability to individualized treatment in a probationary setting will justify departure” from a guidelines sentence. *Soto*, 855 N.W.2d at 308 (quotation omitted). The particular-amenability requirement “ensure[s] that the defendant’s amenability to probation distinguishes the defendant from most others and truly presents the substantial and compelling circumstances that are necessary to justify a departure.” *Id.* at 309 (quotation omitted).

“Numerous factors, including the defendant’s age, his prior record, his remorse, his cooperation, his attitude while in court, and the support of friends and/or family, are relevant to a determination whether a defendant is particularly suitable to individualized treatment in a probationary setting.” *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). However, a district court does not abuse its discretion by refusing 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).

Williams contends that the district court abused its discretion by denying a downward dispositional departure because he is particularly amenable to probation and treatment. As support, he points to his “demonstrated motivation for treatment,” his

remorse, cooperation, attitude while in court, and his steady employment.¹ The record refutes Williams’s argument. As the PSI notes, Williams failed to comply with the terms of pretrial release on this offense. He failed to report for chemical testing, and when he did report, he often tested positive for marijuana. Although Williams attended three outpatient chemical-dependency treatment sessions while on conditional release, he had a “relapse weekend” during which he allegedly committed new offenses. This record does not establish a “demonstrated motivation for treatment.” Moreover, it falls far short of establishing that Williams is *particularly* amenable to treatment, as is required for a dispositional departure. *See Soto*, 855 N.W.2d at 309.

Williams complains that “the district court appeared to pay particular attention to [his] criminal history and nine criminal history points,” “did not weigh the factors for a departure,” and “did not give full and due consideration to Williams’s motivation for sobriety and amenability to treatment.” Those complaints are unpersuasive. First, as indicated above, a departure requires *particular* amenability to treatment, and Williams does not meet that standard. Second, the district court’s comments at sentencing indicate that it considered Williams’s proffered reasons for departure. And third, Williams does not provide, and we fail to discern, a reason why the district court should not have weighed his criminal-history score of nine heavily against him. A high criminal-history score

¹ We note that the Minnesota Sentencing Guidelines prohibit the district court from considering “occupation or impact of sentence on profession or occupation,” “employment history,” “employment at time of offense,” “employment at time of sentencing,” and other “[e]mployment factors” as reasons for departure. Minn. Sent. Guidelines 2.D.2.c.(1)-(4) (Supp. 2017).

reasonably indicates that the offender cannot be counted on to avoid antisocial activity, which is a basis for favoring imprisonment over probation. *Cf. State v. Austin*, 295 N.W.2d 246, 251 (Minn. 1980) (stating that the decision to revoke probation “cannot be a reflexive reaction to an accumulation of technical violations but requires a showing that the offender’s behavior demonstrates that he or she cannot be counted on to avoid antisocial activity” (quotations omitted)).

In sum, the record supports the district court’s conclusion that “[t]here really [were] no reasons for . . . a dispositional departure.”

Unlike a dispositional departure, “[d]urational departures may be justified by offense-related reasons only.” *State v. Rund*, 896 N.W.2d 527, 533 (Minn. 2017). “Substantial and compelling circumstances are those demonstrating that the defendant’s conduct in the offense of conviction was *significantly* more or less serious than that typically involved in the commission of the crime in question.” *State v. Jones*, 745 N.W.2d 845, 848 (Minn. 2008) (quotation omitted).

Williams contends that the district court abused its discretion by denying a durational departure because “[his] conduct was significantly less serious than the typical DWI.” Williams notes that he “was found sleeping in a vehicle parked in a parking lot,” which is “substantially less serious than . . . a person actually driving a vehicle and putting others at risk.”

Williams’s argument is unavailing because, as the state counters, the law treats driving and being in control of a motor vehicle the same for purposes of DWI. *See* Minn. Stat. § 169A.20, subd. 1 (2016) (“It is a crime for any person to drive, operate, or be in

physical control of any motor vehicle . . . when: (1) the person is under the influence of alcohol[.]”); *State v. Starfield*, 481 N.W.2d 834, 836 (Minn. 1992) (stating that “physical control” is more comprehensive than either “drive” or “operate” and that the term is to be given the broadest possible effect to deter inebriated persons from getting into vehicles except as passengers).

Also unavailing is Williams’s argument that his conduct was “substantially less serious than other DWI offenders who received even shorter sentences.” He relies on caselaw examples of sentences in other DWI cases. *See State v. Rasinski*, 472 N.W.2d 645, 647-51 (Minn. 1991) (reviewing stayed sentences for an offender who was placed on probation after convictions for criminal vehicular operation resulting in death); *State v. Williams*, 414 N.W.2d 781, 782-83 (Minn. App. 1987) (reviewing sentence of 36 months imprisonment, an upward durational departure), *review denied* (Minn. Jan. 15, 1988). But there is no indication that those offenders had criminal-history scores as high as Williams’s.

On this record, we are not persuaded that the district court abused its discretion by denying a durational departure.

Affirmed.