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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0452**

State of Minnesota,
Respondent,

vs.

Lawrence Frank Herron,
Appellant.

**Filed February 18, 2020
Affirmed
Reyes, Judge**

Stearns County District Court
File No. 73-CR-17-4779

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

Janelle P. Kendall, Stearns County Attorney, Michael J. Lieberg, Chief Deputy County Attorney, St. Cloud, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Lydia Maria Villalva Lijó, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

UNPUBLISHED OPINION

REYES, Judge

In this direct appeal from his judgment of conviction of third-degree criminal sexual conduct, appellant argues that the district court abused its discretion by imposing a

presumptive sentence and denying his motion for a dispositional departure because he is particularly amenable to probation. We affirm.

FACTS

Appellant Lawrence Frank Herron's conviction arises from an altercation the night of May 23, 2017, between him and his significant other at the time, victim T.A. While the two were arguing, T.A. attempted to end their relationship and leave their residence with her child. Appellant prevented her from leaving and physically assaulted her for more than an hour, putting his arm against her throat, hitting her repeatedly, and grabbing her by her hair and pulling her to the ground. Appellant then told T.A. she needed to get in the shower with him so he could calm down. Fearing appellant's continued assault, T.A. believed she had no choice but to get in the shower with him. Appellant proceeded to sexually assault T.A. in the shower. T.A. had sent text messages to her mother for help and ultimately left the residence when her parents arrived. She disclosed the sexual assault to her mother immediately and to a nurse who examined her later that day. The nurse noted many bruises on T.A.'s arms, breasts, and inner thighs.

Respondent State of Minnesota charged appellant in an amended complaint with third-degree criminal sexual conduct (count I), two counts of felony domestic assault (counts II and III), domestic assault by strangulation (count IV), and false imprisonment (count V).

Appellant entered an *Alford* plea¹ on the third-degree criminal-sexual-conduct charge (count I). He did not dispute that he and T.A. had intercourse, but he maintained that he thought at the time that it was consensual. In exchange for his guilty plea, the state dropped the remaining charges and waived its motion for an upward durational departure. The state would instead seek a presumptive sentence, and appellant would be able to argue for a downward dispositional or durational departure. The district court accepted appellant's plea.

Before sentencing, appellant filed a motion for a downward dispositional departure. At his sentencing hearing in December 2018, T.A. gave a victim-impact statement, and appellant also testified. The state asked for a 48-month presumptive sentence. The district court denied appellant's motion and sentenced appellant to 48 months in prison. This appeal follows.

D E C I S I O N

Appellant argues that he was particularly amenable to probation and that the district court improperly focused on his *Alford* plea in finding that he did not take responsibility for his actions. We disagree.

We give “great discretion” to a district court's sentencing decision. *See State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014) (quotation omitted). A district court abuses

¹ In an *Alford* plea, a defendant maintains his claim of innocence, but agrees that the state has sufficient evidence for a jury to find him guilty and wishes to accept the state's plea offer. *See North Carolina v. Alford*, 400 U.S. 25, 37-38, 91 S. Ct. 160, 167-68 (1970); *see also State v. Goulette*, 258 N.W.2d 758, 761 (Minn. 1977) (recognizing *Alford* pleas in Minnesota).

that discretion “when its decision is based on an erroneous view of the law or is against logic and the facts in the record.” *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019) (quotation omitted).

A district court must impose a presumptive sentence unless there are substantial and compelling circumstances warranting a downward dispositional departure. Minn. Sent. Guidelines 2.D.1. Such circumstances include when the defendant is “particularly amenable” to probation and to treatment. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). Particular amenability is based on offender-related 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.” *Id.*; see also *State v. Chaklos*, 528 N.W.2d 225, 228 (Minn. 1995). A district court need not address every *Trog* factor in considering a dispositional departure. *State v. Pegel*, 795 N.W.2d 251, 252, 254 (Minn. App. 2011).

Even if a defendant is particularly amenable to probation, a district court need not depart, *State v. Olson*, 765 N.W.2d 662, 664-65 (Minn. App. 2009), and it need not provide reasons for imposing a presumptive sentence, *State v. Johnson*, 831 N.W.2d 917, 925 (Minn. App. 2013), *review denied* (Minn. Sept. 17, 2013). As long as the district court “carefully evaluated all the testimony and information presented” before imposing a presumptive sentence, we must affirm. *Id.* (quotation omitted).

Here, the district court credited appellant’s young age and support from his family and employer. It also considered his remorse, including his apology at the end of his sentencing-hearing testimony, which his trial attorney prompted, that “I’m truly and honestly sorry for what has happened. I just want you to know that I do realize that it was

wrong.” The district court weighed the evidence against appellant’s statements of what occurred and stated that “factually speaking, I have a problem with exactly what it is that you’re sorry for.” We give great deference to the district court’s credibility determinations. *See State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992). The district court then considered what would serve justice in the case and described it as a “close call.” It ultimately denied the departure, concluding that “[e]ven though you’re amenable, and I believe there’s a record of that, I’m not going to use my discretion to depart.” The record shows that the district court carefully considered the circumstances for and against departure before making this determination.

Appellant nonetheless claims that the district court improperly focused on his failure to take responsibility for his actions, including by entering an *Alford* plea. He argues that if his plea could have foreclosed the possibility of the district court granting a departure, it should have informed him of this.

Appellant’s argument ignores the record regarding how the district court reached its decision and what factors it considered. The district court did not focus exclusively on appellant’s *Alford* plea. It discussed his *Alford* plea, presentence-investigation report, and psychosexual evaluation, each of which appellant challenged. In response, the district court instead focused on the evidence about T.A.’s physical condition after the offense and whether it supported appellant’s version of what happened. It also considered appellant’s statements at the sentencing hearing. Rather than relying solely on appellant’s *Alford* plea, the record shows that the district court carefully evaluated all of the testimony and information before it. *See State v. Van Ruler*, 378 N.W.2d 77, 81 (Minn. App. 1985). This

is not the “rare case” in which we will reverse a presumptive sentence. *See Johnson*, 831 N.W.2d at 925 (quotation omitted). The district court did not abuse its discretion by imposing an executed sentence of 48 months.

Affirmed.