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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0453**

State of Minnesota,
Respondent,

vs.

Karla Jean Winterfeld,
Appellant.

**Filed December 30, 2019
Affirmed
Connolly, Judge**

St. Louis County District Court
File No. 69DU-CR-18-1617

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

Mark S. Rubin, St. Louis County Attorney, Jonathan D. Holets, Assistant County Attorney,
Duluth, Minnesota (for respondent)

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

Considered and decided by Connolly, Presiding Judge; Worke, Judge; and Bratvold,
Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

In this sentencing appeal, appellant argues that the district court's denial of her motion for a downward dispositional departure constitutes an abuse of discretion. Because the district court did not abuse its discretion by imposing the presumptive sentence, we affirm.

FACTS

Appellant Karla Winterfeld and the victim, F.A.R., first met when F.A.R. entered appellant's special education class during his eighth-grade year. Appellant sought to help F.A.R. with his schoolwork and eventually became better acquainted with him and his family. Appellant also allowed F.A.R. to stay at her home with her family during some weekdays.

F.A.R. moved permanently into appellant's home in December 2017, while appellant and her husband worked to obtain their foster parent licenses. Over the following months, appellant's husband noticed that she spent more time with F.A.R. at night, becoming distant from their biological children. Through an audio recording, appellant's husband discovered that appellant engaged in sexual activity with F.A.R. inside their home.

Appellant's husband reported this conduct to police. As a result, respondent State of Minnesota charged appellant in May 2018 with one count of first-degree criminal sexual conduct in violation of Minn. Stat. § 609.342, subd. 1(b) (2016). In October 2018,

appellant entered a straight plea¹ to the sole charge, admitting that she engaged in sexual penetration more than once with the 15-year-old victim. After this plea, the district court ordered a presentence investigation (PSI).

Before sentencing, appellant participated in two psychosexual evaluations: one with A.S. and L.P. of the Duluth Institute; and the other with Dr. G.H.-J. of Northland Human Resources Consultants. Both evaluations discussed appellant's history of being sexually abused and prostituted as a young child. G.H.-J. concluded that appellant did not meet the criteria for classification as a sexual predator, while A.S. and L.P. noted that appellant blamed the victim and that her behavior exhibited signs of scheming and planning. The parties submitted sentencing memoranda; appellant attached numerous letters in support of her motion for a downward dispositional departure. The PSI presented the district court with two options. First, the PSI recommended imposing the presumptive 144-month executed prison sentence. Alternatively, the PSI recommended granting a departure and placing appellant on probation for ten years.

At appellant's sentencing hearing, her attorneys called two witnesses, J.M. and G.H.-J. J.M. testified first that she worked with appellant as her individual therapist from July 2018 until sentencing. She explained that it was unusual for a person to enter group therapy prior to sentencing, as appellant did. In J.M.'s opinion, appellant did not present a risk to the community.

¹ An individual who enters a "straight plea," is pleading guilty without a sentencing agreement with the state. See *State v. Sanchez-Sanchez*, 879 N.W.2d 324, 327 (Minn. 2016).

Then G.H-J testified at sentencing that he met with appellant twice and had her perform a battery of psychological tests. He noted that appellant showed accountability and remorse for her offense. Both J.M. and G.H.-J. explained that female sex offenders generally possess low recidivism rates, and specifically stated their respective beliefs that appellant would successfully engage in the treatment recommended in the PSI and her first psychosexual evaluation.

Following this testimony and the parties' arguments, the district court recessed for a short period. The district court then addressed appellant and imposed the presumptive 144-month prison sentence. This appeal follows.

D E C I S I O N

Appellant argues that the district court improperly denied her motion for a downward dispositional departure. District courts retain broad discretion when imposing sentences and their sentencing decisions will not be reversed absent an abuse of that discretion. *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014). However, the Minnesota Sentencing Guidelines limit this discretion by requiring district courts to impose the presumptive sentence “unless there exist identifiable, substantial, and compelling circumstances to support a departure.” Minn. Sent. Guidelines 2.D.1 (2016). Only in “rare” situations will an appellate court reverse a district court’s refusal to depart. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

In urging this court to reverse the district court’s imposition of the presumptive sentence, appellant asserts that she possessed particular amenability to treatment in a probationary setting. Appellant points to (1) her role in the Duluth community, (2) the

numerous letters of support she received, (3) the recommendations from J.M. and G.H.-J., and (4) the past trauma and sexual abuse she suffered as a young girl, which she sees as unique circumstances justifying a departure.

“In weighing whether to grant a downward dispositional departure from the presumptive sentence, a district court considers the defendant as an individual and focuses on whether the presumptive sentence would be best for [her] and for society.” *Wells v. State*, 839 N.W.2d 775, 778 (Minn. App. 2013) (quotation omitted) (emphasis omitted), *review denied* (Minn. Feb. 18, 2014). The sentencing guidelines recognize a criminal defendant’s particular amenability to probation as a mitigating factor that can support a downward departure from the presumptive sentence. Minn. Sent. Guidelines 2.D.3.a.7 (2016). Relevant factors that a district court can consider include a defendant’s age, prior record, remorse, cooperation, courtroom attitude, and support from family and friends. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). “[T]he district court has discretion to impose a downward dispositional departure if a defendant is particularly amenable to probation, but it is not required to do so.” *State v. Olson*, 765 N.W.2d 662, 664-65 (Minn. App. 2009). Indeed, the presence of a mitigating factor does not obligate the district court to place the defendant on probation or impose a shorter sentence. *State v. Wall*, 343 N.W.2d 22, 25 (Minn. 1984).

When a district court has discretion to depart from the presumptive sentence, our caselaw requires it to exercise that discretion by scrutinizing the reasons for and against a departure. *See, e.g., State v. Pegel*, 795 N.W.2d 251, 253 (Minn. App. 2011). But our caselaw does not mandate that the district court make specific findings on each *Trog* factor

regarding a defendant's particular amenability to probation. *Id.* In fact, the district court need not explain its reasoning for imposing the presumptive sentence. *State v. Johnson*, 831 N.W.2d 917, 925 (Minn. App. 2013), *review denied* (Minn. Sept. 17, 2013).

Here, two aspects of the record reveal that the district court considered the reasons for and against a departure. First, the district court heard testimony at sentencing from two of appellant's witnesses supporting a downward departure. It was free to give this testimony whatever weight it deemed appropriate. *See State v. McCoy*, 631 N.W.2d 446, 452 (Minn. App. 2001) (noting that the sentencing judge makes weight and credibility determinations).

Second, the district court's statement to appellant at the sentencing hearing reveals that it analyzed the reasons for and against a departure. The district court stated:

[The] Legislature tells me that the sentence in this case should be 144 months to the Commissioner of Corrections. You have asked that I depart from the guidelines. The [s]tate opposes that departure. And the guidelines tell me that I may depart from those – that sentence, if I find substantial and compelling reasons to do so. . . .

I will be honest. This case probably has weighed on my mind more than any other case I have ever had. And I've been a [j]udge for a long time. I have lost sleep over this. I have thought about it consistently since the day you entered your plea, because I knew what the presumed sentence was upon the day of your plea. I've read. I have reread. And then I've read again everything that's been submitted to me in this matter. And I've struggled with what the right sentence is in this case. I've listened to the testimony that came before me today. I've heard that you need treatment and that you have taken – and begun treatment and that you're taking that very seriously.

I've also reviewed the evidence in this case. I've observed the grooming behavior, and I've reviewed the multiple acts that you committed against this child. And I keep coming back, in this case – I keep coming back to the victim.

I keep coming back to how . . . it appears that this was a child who didn't have much in the way of a home life. He didn't have much going for him. And he came to your home and apparently it helped. And it gave him something that he'd probably never had in his short life, which was hope. He had hope for a better future. And then you, by your actions, destroyed that. And you destroyed that young man. . . .

You were his teacher, his mentor, [and] his mother. And you raped him. And I just can't get past that. And, therefore, I cannot find that there are substantial and compelling reasons to depart from the Minnesota Sentencing Guidelines.

This statement shows that the district court reviewed the appropriate sentence for appellant. What is more, although the district court's statement did not list the *Trog* factors, it did explain why the district court denied appellant's departure motion. Accordingly, this appeal does not present the "rare case" necessitating reversal of a district court's decision to deny a downward departure and impose the presumptive sentence. *See Kindem*, 313 N.W.2d at 7. In sum, we discern no abuse of discretion here.

Affirmed.