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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0897**

State of Minnesota,
Respondent,

vs.

Pierce Gerald Heston,
Appellant.

**Filed February 16, 2021
Affirmed
Bratvold, Judge**

Ramsey County District Court
File No. 62-CR-17-5343

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

John J. Choi, Ramsey County Attorney, Alexandra Meyer, Assistant County Attorney,
St. Paul, Minnesota (for respondent)

Daniel P. Repka, Repka Law, LLC, South St. Paul, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Bratvold, Judge; and Cleary,
Judge.*

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

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

In this direct appeal from the judgments of conviction for first- and third-degree criminal sexual conduct, and from the district court's order denying appellant's petition for postconviction relief, appellant raises two issues. First, he argues the district court abused its discretion by denying his request for a postconviction evidentiary hearing on his claim of ineffective assistance of counsel. Second, he contends the district court erred by denying his motion for a downward dispositional departure at sentencing. We affirm.

FACTS

The respondent State of Minnesota charged appellant Pierce Gerald Heston with first- and third-degree criminal sexual conduct, Minn. Stat. § 609.342, subd. 1(e)(i) (2014) (causes injury and uses force or coercion) (count one), and Minn. Stat. § 609.344, subd. 1(c) (2014) (uses force or coercion) (count two). The following summarizes the evidence received during the jury trial.

In May 2016, T.O. was an 18-year-old college freshman in St. Paul living in a campus dormitory. On the evening of May 14, 2016, T.O. and two friends drank alcohol in T.O.'s dorm room before going a few blocks away to a house party. At the party, T.O. consumed more alcohol. The party included T.O.'s older sister, who was a senior at the same college and who lived with three other students, including Heston, who was also at the house party. Sometime around 1:00 a.m. or 2:00 a.m., Heston offered to walk T.O. home, saying that T.O.'s older sister had asked him to "make sure [T.O.] got home all right." Heston and T.O. walked back to T.O.'s dormitory.

T.O. testified that Heston followed her to her room. Once inside her room, Heston told T.O. that her sister “didn’t ask him to walk [her] home.” Heston then put his hands on T.O.’s hips and started kissing her. T.O. “told him no and that . . . [she] didn’t want to do it.” T.O.’s testimony described how she raised her arms up in front of her chest, hands fisted, and was “pushing a little bit back.” T.O. testified she did not remember how she ended up on the bed, but that Heston “had unzipped his pants and then he had grabbed [her] head,” and “put his penis in [her] mouth.” T.O. testified that Heston was “[f]orceful,” and she felt pain in the back of her throat. She started having a panic attack and had trouble breathing. T.O. testified that she has “blocked it out,” but recalls that Heston removed her clothes and put his penis in her vagina. She also testified that it was “really painful and there was a lot of blood.” T.O. testified that she left the room to go to the bathroom where she contacted three friends.

One of the friends, I.M., was in a nearby dormitory, walked over to T.O.’s dormitory, and found T.O. at the exterior door slouched over and crying. I.M. noticed that, as Heston was leaving, T.O. stiffened up and hid behind her. They returned to T.O.’s room where I.M. “noticed that there was blood on the mattress.” T.O. asked I.M. to leave. I.M. left, but contacted another friend, M.S., and told her something was wrong with T.O.

M.S. went to T.O.’s room, and, shortly afterwards, T.O. went to the bathroom to shower. M.S. heard crying, entered the bathroom, and saw “a trail of blood through the whole bathroom.” M.S. found T.O. “covered in blood” and crying. M.S. helped T.O., who said, “it was her sister’s roommate who had done it.” They called campus security, who

responded, and M.S. accompanied T.O. to the emergency room, where T.O. was treated for sexual assault.

A sexual-assault nurse examined T.O. and later testified, “The thing that I remember the most was the amount of blood that was on the ER bed, because I’ve never seen that before.” The nurse explained that T.O.’s blood “soaked through her clothing” and onto the bed. The nurse photographed T.O.’s bruises and abrasions, which the district court received as exhibits. The nurse’s testimony described injuries to T.O.’s shins, knees, buttocks, left arm, vagina, mouth, and throat.

The nurse also testified that she observed broken blood vessels in T.O.’s mouth and throat which “was consistent with what [T.O.] reported of an oral assault.” The nurse testified that she observed a tear extending through the labia and into the vaginal opening, but given “the amount of blood that was inside” T.O.’s vaginal cavity, she “wasn’t able to visualize if there was anything internally” injured. Lastly, a forensic scientist testified about other physical evidence, including T.O.’s blood test, which showed an alcohol concentration of 0.089 at 7:45 a.m.

During the jury trial, the state offered testimony from T.O., her older sister, I.M., M.S., other campus witnesses, the sexual-assault nurse, two police officers, and a Bureau of Criminal Apprehension forensic scientist. Heston offered testimony by a sexual-assault-investigation consultant, an emergency-room physician, and, after waiving his right to remain silent, Heston testified on his own behalf.

Heston testified that T.O. invited him to her room. Heston also testified that, after they had a drink, they began making out, which progressed into groping, removing their

clothes, and having consensual sex. Heston testified that T.O. “was a full participant and that she was enjoying it,” they did not have “rough sex,” and he did not notice any evidence of injuries to T.O. Heston also testified that he was a member of the college’s track and football teams, weighs 310 pounds, and is 6 feet, 1 inch tall. Heston acknowledged that he outweighs T.O. and is bigger than she is.

The jury returned a guilty verdict on both counts and answered special verdict questions where they found Heston did not use force, found he used coercion, and found he did not use both force and coercion in committing the offense. The district court referred Heston for a presentence investigation (PSI) and a psychosexual evaluation.

The PSI report summarized Heston’s interview and stated that his “callousness and lack of emotion were notable when describing the offense. He demonstrated a complete lack of empathy for the victim.” The report also stated that Heston “minimized his actions by describing a consensual sexual encounter,” “denied having any knowledge of hurting the victim and denied seeing any blood,” and “presented absolutely no empathy for the victim.” The report concluded that Heston “clearly does not comprehend the severity of his actions or how they have affected the victim.” The Minnesota Sentencing Guidelines recommended a sentence of 144-172 months, and the report recommended that the district court sentence Heston at “the high end of the box” to serve 172 months in prison.

During the sentencing hearing, the district court told the parties that it had received the PSI report, Heston’s motion for a dispositional departure, and asked for corrections to the PSI report. Heston’s attorney relied on a memorandum previously filed with the court, and also argued that the district court should grant a downward dispositional departure by

staying execution of the sentence, along with a jail sentence, probation, and treatment. The state disagreed and asked the district court to impose an executed sentence of 156 months. The district court heard a statement by T.O.'s sister, Heston read a statement and apologized, and the district court said it had read other letters submitted by the parties.

The district court denied Heston's motion and sentenced him to 150 months in prison. Heston appealed, and the court of appeals stayed the appeal to permit Heston to seek postconviction relief. Heston's postconviction petition argued that his trial attorney did not provide him with effective assistance of counsel because the attorney did not prepare a complete defense. Heston's petition included his affidavit and an email exchange in which his trial attorney discussed the state's evidence of force, stated that she did not "think there's really a good coercion argument in the facts," and explained that she expected the state "will lean more on 'force.'" Heston argued that his trial attorney failed to consider or prepare him for the state's alternative claim that Heston coerced T.O.

The district court denied the postconviction petition without an evidentiary hearing: "[n]othing" in the trial attorney's email "or in any of her representation of [Heston] before, during, or after trial, evidences a lack of legal understanding or suggests that she put forth anything less than a vigorous defense." This court then reinstated the appeal and dissolved the stay.

DECISION

I. The district court did not abuse its discretion by denying Heston’s petition for postconviction relief without an evidentiary hearing.

Heston argues that the district court erred in denying his postconviction petition without an evidentiary hearing because his claim of ineffective assistance of counsel turned on disputed material facts. The state responds that, even if the facts alleged in the postconviction petition and Heston’s affidavit are taken as true, he failed to sufficiently allege that his trial attorney’s representation was objectively unreasonable or that the trial outcome would have been different absent his attorney’s deficiencies.

“[A] person convicted of a crime” may seek postconviction relief by filing a petition claiming that the conviction “violated the person’s rights under the Constitution or laws of the United States or of the state.” Minn. Stat. § 590.01, subd. 1(1) (2018). “Unless the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief,” a district court must hold an evidentiary hearing on postconviction relief. Minn. Stat. § 590.04, subd. 1 (2018); *see also Reed v. State*, 925 N.W.2d 11, 18 (Minn. 2019). An appellate court reviews a district court’s denial of a petition for postconviction relief for abuse of discretion. *Id.* “A postconviction court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record.” *Brown v. State*, 895 N.W.2d 612, 617 (Minn. 2017) (quotation omitted).

To determine whether an evidentiary hearing is required, “a postconviction court considers the facts alleged in the petition as true and construes them in the light most

favorable to the petitioner.” *Andersen v. State*, 913 N.W.2d 417, 422–23 (Minn. 2018) (quotation omitted). If there are material facts in dispute and “the allegations in the petition, if true, would entitle the petitioner to relief, then the court must schedule an evidentiary hearing.” *Martin v. State*, 825 N.W.2d 734, 740 (Minn. 2013). But the postconviction court need not hold an evidentiary hearing “if the petitioner fails to allege facts that are sufficient to entitle him or her to the relief requested.” *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007).

For Heston to obtain relief on his claim of ineffective assistance of counsel, his petition must allege facts showing that (1) his trial attorney’s representation fell below an objective standard of reasonableness and (2) the trial outcome would have been different absent counsel’s deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687-88, 694, 104 S. Ct. 2052, 2064, 2068 (1984). “We need not address both the performance and prejudice prongs if one is determinative.” *State v. Rhodes*, 657 N.W.2d 823, 842 (Minn. 2003).

As to the first step of the *Strickland* analysis, “[t]he objective standard of reasonableness is defined as representation by an attorney exercising the customary skills and diligence that a reasonably competent attorney would perform under similar circumstances.” *State v. Hokanson*, 821 N.W.2d 340, 358 (Minn. 2012) (quotation omitted). “[T]here is a strong presumption that counsel’s performance was reasonable.” *Andersen v. State*, 830 N.W.2d 1, 10 (Minn. 2013).

Heston’s claim of ineffective assistance of counsel relies on an email exchange with his trial attorney, which Heston contends shows that his attorney did not prepare a defense

to the coercion component of the state’s two charges. As for count one, first-degree criminal sexual conduct requires the state to prove beyond a reasonable doubt that Heston (1) engaged in sexual penetration with another person, (2) used force or coercion to accomplish sexual penetration, and (3) caused personal injury to the victim. Minn. Stat. § 609.342, subd. 1(e)(i). As for count two, third-degree criminal sexual conduct requires the state to prove beyond a reasonable doubt that Heston (1) engaged in sexual penetration with another person and (2) used force or coercion to accomplish the penetration. Minn. Stat. § 609.344, subd. 1(c). Statutes define force and coercion.¹

In the email exchange, Heston asked whether the prosecution is “more than likely . . . using the injury aspect to help their force case? Or do you think they are going to push more coercion based on what I ‘said’?” Heston’s trial attorney responded:

“Force” under the statute can include things that don’t result in an injury, like pinning someone down, pushing them, pulling their hair, things like that. My guess is that they are trying to say “force” because she’s claimed that you “threw her onto the

¹ Force is defined as

the infliction, attempted infliction, or threatened infliction by the actor of bodily harm or commission or threat of any other crime by the actor against the complainant or another, which (a) causes the complainant to reasonably believe that the actor has the present ability to execute the threat and (b) . . . also causes the complainant to submit.

Minn. Stat. § 609.341, subd. 3 (2014). Coercion is defined as

the use by the actor of words or circumstances that cause the complainant reasonably to fear that the actor will inflict bodily harm upon the complainant or another, or the use by the actor of confinement, or superior size or strength, against the complainant that causes the complainant to submit to sexual penetration or contact against the complainant’s will. Proof of coercion does not require proof of a specific act or threat.

Minn. Stat. § 609.341, subd. 14 (2014).

bed” and then “forced” her to perform oral sex—so, pushing someone can be use of force, grabbing someone’s head/face can be use of force, etc. I don’t think there’s really a good coercion argument in the facts (but I could be wrong—prosecutors can come up with weird, nonsense arguments) since usually coercion involves things like threatening to harm someone if they don’t cooperate, displaying a weapon to get them to cooperate, trying to convince them to cooperate by saying they’ll lose their job/housing/etc. if they don’t, that sort of stuff. I don’t see anything like that in the allegations so I think they will lean more on “force” and her claims that you pushed her/grabbed her head/etc.

Heston’s affidavit stated that he “interpreted” this email “to mean that the state could not argue for a conviction based on coercion.”² Heston also attested that, when they met to prepare the day before Heston testified, his trial attorney “did not cover any questions relating to [Heston’s] purported use of coercion to engage in sexual penetration with the victim.” In the same paragraph, Heston’s affidavit added, however, that his trial attorney “did discuss counterarguments to coercion.” Heston’s affidavit also stated that he was “in disbelief when the jury returned its ‘guilty’ verdicts on the basis that I coerced the victim.”

The district court denied postconviction relief, in part, because it found that Heston’s trial attorney’s decision to “prepare a defense focused [] primarily on ‘force’ was a tactical decision that was not unreasonable given the facts alleged in the criminal

² The district court rejected this averment because it found that, in the email, Heston’s trial attorney “explained what she believed the state’s focus would be at trial, without making promises or guarantees.” The district court also determined that Heston’s “interpretation of [his trial attorney’s] legal advice does not prove that her performance fell below the standard of objective reasonableness.” We agree with the district court and note that Heston’s brief to this court alludes to this averment without making a cogent argument.

complaint and the information disclosed by the state before trial.” Heston contends that the district court erred by characterizing this as a tactical decision.

Appellate courts “will not typically disturb the strategic or tactical decisions of trial counsel.” *State v. Beecroft*, 813 N.W.2d 814, 845 (Minn. 2012). Trial strategy includes the extent of trial counsel’s investigation and her selection of evidence presented to the jury. *Andersen*, 830 N.W.2d at 10. The supreme court has held that “[t]he determination of which defenses to raise represents an attorney’s trial strategy.” *State v. Vang*, 847 N.W.2d 248, 267 (Minn. 2014). Indeed, “[w]hat evidence to present and which witnesses to call at trial are tactical decisions properly left to the discretion of trial counsel.” *State v. Mems*, 708 N.W.2d 526, 534 (Minn. 2006).

Heston argues that his trial attorney’s performance fell below the objective standard of reasonableness because her “decision to not prepare a complete defense in itself” was unreasonable and “resulted from inattention, not reasoned, strategic judgements.” Heston cites *Wiggins v. Smith*, which states that an attorney’s conduct is unreasonable if “their failure to investigate thoroughly resulted from inattention, not reasoned strategic judgment.” 539 U.S. 510, 526, 123 S. Ct. 2527, 2537 (2003).

We are not persuaded for five reasons. First, Heston’s affidavit alleged no facts suggesting that his trial attorney’s failure to focus on the state’s alternative theory of coercion resulted from inattention. To the contrary, Heston’s affidavit included an email exchange that was five pages long and covered force and coercion in some detail. Heston’s affidavit also averred that his attorney “always answered my questions timely, completely, and thoughtfully.”

Second, Heston's argument rests on a mischaracterization of his own affidavit. His brief to this court asserts that "his trial attorney did *not* discuss any counterarguments to a claim that he coerced the victim into engaging in sexual penetration." (Emphasis added.) But Heston's affidavit says the opposite: "To the best of my recollection, [Heston's trial attorney] *did discuss* counterarguments to coercion." (Emphasis added.)

Third, Heston's argument rests on a mischaracterization of the district court's decision. His brief to this court asserts that "[t]he district court further reasoned that *appellant's petition* 'evidences a lack of legal understanding or suggests that his trial attorney put forth anything less than a vigorous defense of appellant.'" (Emphasis added.) The district court actually found that "[n]othing in [the trial attorney's] email to [Heston], or in any of her representation of [Heston] before, during, or after trial, evidences a lack of legal understanding or suggests that she put forth anything less than a vigorous defense of [Heston]."

Fourth, Heston points out that he attested his trial attorney did not prepare him to testify in response to questions about coercion and that this is unreasonable because coercion was the state's alternative theory. Even if Heston's affidavit is taken as true and we set aside that he also averred that his attorney discussed counterarguments to coercion, the district court found that Heston's trial attorney's decision to focus on force was reasonable. The district court reasoned that "the facts alleged in the criminal complaint and the information disclosed by the state before trial" supported the trial attorney's decision. Indeed, the complaint alleged that "Heston grabbed T.O. by her hips," "threw T.O. down" onto the bed, "forced his penis into [her] mouth," "forced her to have vaginal intercourse,"

and described various severe injuries to T.O.’s vagina and throat. Because the facts alleged against Heston reasonably suggested that the state was more likely to argue force than coercion, we conclude that Heston’s affidavit did not provide evidence that his trial attorney’s preparation of Heston fell below an objective standard of reasonableness.³

Finally, Heston’s petition, even when viewed favorably to him, at its heart challenged his trial attorney’s strategy and tactics because he claims she unreasonably focused on the force component of the state’s case. But precedent instructs that we rarely review ineffective-assistance-of-counsel claims based on trial strategy or tactics. *Vang*, 847 N.W.2d at 267-68; *Mems*, 708 N.W.2d at 534.

For all of these reasons, we conclude that Heston’s petition failed to allege facts showing that his trial attorney’s representation fell below an objective standard of reasonableness. Thus, the district court did not abuse its discretion by denying an evidentiary hearing and we affirm based on the first step in *Strickland* without considering the second step. *See Rhodes*, 657 N.W.2d at 842.

II. The district court did not abuse its discretion by imposing a guidelines sentence.

Heston argues that the district court abused its discretion by denying his motion for a downward dispositional departure because it failed to consider Heston’s reasons for the

³ This view of the state’s case is also supported by the trial record. Based on the state’s cross-examination and closing argument, the state’s case emphasized force. During Heston’s cross-examination, the prosecuting attorney asked “[h]ow much force do you think you used,” “[w]ere you having rough sex,” “[y]ou’re the one grabbing her,” “[y]ou’re the one picking her up,” “you were all over her body?” During closing arguments, the prosecuting attorney repeatedly referred to Heston’s use of “force” and only mentioned coercion when discussing the statute or providing a definition.

departure. The state responds that no abuse of discretion occurred because the district court thoroughly evaluated the information, evidence, and arguments presented during the sentencing hearing, and imposed a sentence within the Minnesota Sentencing Guidelines.

The district court must impose a presumptive sentence in accordance with the guidelines, “unless there exist identifiable, substantial, and compelling circumstances to support a departure.” Minn. Sent. Guidelines 2.D.1 (Supp. 2015). “Whether to depart from the guidelines rests within the district court’s discretion, and this court will not reverse the decision absent a clear abuse of that discretion.” *State v. Olson*, 765 N.W.2d 662, 664 (Minn. App. 2009) (quotation omitted). “Accordingly, 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.” *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014) (quotations and citations omitted). Only in a rare case, will we reverse the district court’s decision to impose a presumptive sentence. *State v. Pegel*, 795 N.W.2d 251, 253 (Minn. App. 2011).

The guidelines provide two types of sentencing departures: dispositional and durational.⁴ “A ‘dispositional departure’ occurs when the court orders a disposition other than that recommended in the Guidelines.” Minn. Sent. Guidelines 1.B.5.a (2014). In other

⁴ Heston sought a dispositional departure, so we note, but do not discuss, the district court’s discretion to impose a durational departure. A durational departure “is a sentence that departs in length from the presumptive guidelines range.” *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016) (citing Minn. Sent. Guidelines 1.B.5.b). A durational departure turns on factors that reflect the severity of the *offense*, not the characteristics of the defendant. *Id.* A downward durational departure is justified “if the defendant’s conduct was significantly less serious than that typically involved in the commission of the offense.” *Id.* at 624 (quotation omitted).

words, a “dispositional departure places the offender in a different setting than that called for by the presumptive guidelines sentence.” *Solberg*, 882 N.W.2d at 623. For example, a district court imposes a dispositional departure when the guidelines presume imprisonment, but the court stays execution and places the defendant on probation. *Id.* “A dispositional departure typically focuses on *characteristics of the defendant* that show whether the defendant is particularly suitable for individualized treatment in a probationary setting.” *Id.* (emphasis added) (quotation omitted).

Circumstances supporting a dispositional departure include whether the defendant is “particularly amenable” to probation or treatment. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). The supreme court in *Trog* provided a nonexclusive list of factors relevant to determining particular amenability: “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.* The district court need not consider all of the *Trog* factors before it imposes the presumptive sentence. *Pegel*, 795 N.W.2d at 254. Rather, the district court must consider the circumstances for and against departure and deliberately exercise its discretion. *Id.* at 255. Even if the defendant is particularly amenable to probation or treatment, the district court is not required to impose a downward dispositional departure. *Olson*, 765 N.W.2d at 664–65.

The district court must explain a decision to depart in writing, but a written explanation is not required when the court considers the reasons for a departure and decides to impose the presumptive sentence. *State v. Curtiss*, 353 N.W.2d 262, 263 (Minn. App. 1984). Indeed, we have consistently held that a district court need not explain its reasons

for imposing a presumptive sentence. *State v. Johnson*, 831 N.W.2d 917, 925 (Minn. App. 2013), *review denied* (Minn. Sept. 17, 2013).

Heston moved for a downward dispositional departure and filed a 21-page memorandum that contested the findings of the PSI report and the psychosexual evaluation, and argued the *Trog* factors weighed in his favor. During the sentencing hearing, the district court heard arguments from both parties about Heston's amenability to probation. Heston's attorney expanded on Heston's employment opportunities, his likelihood of recidivism, and his cooperation during the litigation process. The state argued that substantial and compelling reasons did not support a departure based on Heston's amenability because he had not accepted responsibility for his actions and still maintained his innocence. T.O.'s sister read a statement explaining the impact of Heston's offenses on T.O.

Heston read his own statement, which stated that "[t]hrough these reflections and self-analysis, I realize no matter how you roll the dice the woman left our experience together with the reality that I sexually assaulted her. And that is a reality she'll live with for the rest of her life." Heston repeated this sentiment after the court commented on his change of demeanor from the trial to the sentencing hearing. The district court then asked Heston whether he sexually assaulted T.O. and followed up with related questions.

Heston contends that the district court abused its discretion because, during the sentencing hearing, the court did not discuss Heston's age, his attitude while in court, or his prior record. The district court, however, explicitly addressed Heston's demeanor before trial, during trial, and at the sentencing hearing. The court also explicitly considered Heston's remorse and the support of Heston's friends and family. The only *Trog* factors

not explicitly addressed by the district court during the sentencing hearing—Heston’s age and his prior record—were addressed in Heston’s sentencing memorandum and the PSI report, both of which the court reviewed before the hearing and referenced during the hearing.

The state argues that the sentencing-hearing transcript evidences that the court “was fully aware of the arguments for and against a departure, carefully evaluated the information, and used that information to make [its] decision to deny the departure motion.” We agree and note that Heston’s argument fails to address the district court’s comments about Heston’s lack of remorse. As the district court announced the reasons for its decision, the district court commented: “[h]ow is [Heston] amenable when he stands before me now and can hardly admit that he committed criminal sexual conduct in the first degree . . . the language that Mr. Heston uses reveals kind of some questions in his mind about whether he did something wrong.”⁵

An offender’s remorse, or lack thereof, is a relevant consideration at sentencing. *See Trog*, 323 N.W.2d at 31 (clarifying that a defendant’s remorse and attitude in court are relevant factors in deciding whether to depart dispositionally); *see also Soto*, 855 N.W.2d at 311 (stating that defendant’s remorse is “just one” of several factors a court can consider when “determining whether the defendant is particularly amenable to probation”). A “district court is properly tasked with deciding whether a defendant’s actions express

⁵ The district court explained that Heston’s statements suggested that the victim “thought” she was sexually assaulted, to which Heston responded: “I coaxed her into bed. I apologize, Your Honor, I sexually assaulted her.” Heston later said he meant to say “coerced,” not “coaxed.”

genuine remorse and how much weight to give to that remorse.” *Solberg*, 882 N.W.2d at 626; *see Soto*, 855 N.W.2d at 311 (“[W]hether Sotos’ apology was genuine or should be given much weight were matters for the district court to decide.”).

Based on the record, we conclude that the district court did not abuse its discretion by denying Heston’s motion for a dispositional departure and imposing a guideline sentence.

Affirmed.