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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A19-1719**

State of Minnesota,  
Respondent,

vs.

Stephen Joseph Melius,  
Appellant.

**Filed August 17, 2020  
Affirmed in part, reversed in part, and remanded  
Ross, Judge**

Hennepin County District Court  
File No. 27-CR-18-7586

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

Michael O. Freeman, Hennepin County Attorney, Jonathan P. Schmidt, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

**UNPUBLISHED OPINION**

**ROSS, Judge**

Stephen Melius pleaded guilty to two felony counts of driving while impaired and moved for downward dispositional and durational departures at sentencing. The district court denied his motions, orally adjudicating one conviction and pronouncing a 42-month

prison sentence while written records recorded two convictions and a 48-month prison sentence. On appeal, Melius challenges the adjudication of a second conviction, the district court's denial of his departure motions, and the duration of his prison term. We affirm the district court's denial of his departure motions but reverse and remand for the district court to vacate one conviction and to impose a 42-month prison sentence as pronounced.

## FACTS

The state charged Stephen Melius with two impaired-driving felonies, alleging that on March 23, 2018, Melius drove a motor vehicle while under the influence of alcohol with an alcohol concentration of 0.26 and with a prior felony DWI on his record. *See* Minn. Stat. §§ 169A.20, subd. 1(1), (5), .24, subd. 1(2) (2016). Melius pleaded guilty to both charges. The district court conditionally accepted his plea and released him to a residential mental-illness treatment program so he could “demonstrate . . . [his] ability to be sober” before the sentencing hearing.

The district court learned more about Melius and the details of his offenses through a presentence investigation report (PSI) and correspondence to the district court. It learned, for example, that Melius's father died when Melius was young and his mother had mental-health problems. After his mother died, her life partner adopted Melius and his brother. Melius cared for his adoptive mother when her health failed until she died in 2007. His brother told the district court that he realized “too late” that Melius needed help during that time and that Melius was “deep in [a] substance[-] [and] alcohol[-]abuse pattern.” Melius went through various treatment programs beginning in 1990 with limited success. He repeatedly relapsed, was charged with new offenses, and violated probationary

conditions. After 2010, Melius went through treatment, became involved in an alcohol-addiction recovery group, sponsored others in their recovery efforts, and remained sober for several years. But after two deaths in his family, Melius relapsed. His most recent drunk-driving offense occurred after he was drinking at a friend's home and the friend ordered him to leave after an argument.

After he pleaded guilty, Melius successfully completed a residential mental-illness treatment program in June 2019. He transferred to a different program where he consistently tested negative for alcohol use, participated in support-group meetings, and achieved 90 days of sobriety.

Melius faced a presumptive prison commitment of 48 months because of his criminal history and the severity of his crime. *See* Minn. Sent. Guidelines 2.C.3.d, 4.A (Supp. 2017). Melius moved for a downward dispositional or durational departure, citing among other things his successes in chemical-dependency treatment and mental-health improvement. The district court conducted a sentencing hearing after which it denied the motions, explaining as follows:

Sir, I wanted to take this time for a couple of reasons. One, I have been impressed by what you've done most recently and I want you to . . . hear that. When we have a case like this it always hurts a bit to have someone who suffers from mental[-]health issues and suffers from chemical addiction having the real presumption that you'd be going to prison, because in my heart of hearts I wish that we could always deal with these things out of custody.

The reality is, though, that when someone drinks and drives they put other people in danger. You know this . . . .

You've had a very difficult life. You, thankfully, have gotten some resources now about an insight into your mental health and your chemical addiction where my hope is . . . that you can be successful long term, but I don't find that there are substantial and compelling reasons that would allow me to properly depart right now. My best wishes, my best hopes [don't] amount to the level that's needed to depart so I'm not going to depart.

The district court orally adjudicated one conviction for driving under the influence of alcohol and pronounced a 42-month prison sentence. The district court's signed sentencing order likewise adjudicated one conviction for driving under the influence, but it recorded a 48-month sentence. The official warrant of commitment reflected convictions on both counts and imposed a 48-month prison term for the driving-under-the-influence conviction. Melius appeals.

## **D E C I S I O N**

Melius argues that one conviction must be vacated because his offenses arose from a single course of conduct, that the district court abused its discretion by denying his departure motions, and that his prison term must be reduced if his departure arguments fail. We affirm the district court's denial of Melius's departure requests, and we reverse and remand for the district court to vacate one conviction and reduce Melius's prison term.

### **I**

The district court orally adjudicated only one conviction for driving under the influence of alcohol, but the warrant of commitment recorded an additional conviction of driving with an alcohol concentration of 0.08 or greater. Melius argues, and the state correctly concedes, that only one conviction is proper. See Minn. Stat. § 609.04, subd. 1

(2016) (prohibiting multiple convictions under different sections of a criminal statute for acts constituting a single course of conduct). Melius’s two convictions for impaired driving arose from the same course of conduct. If a defendant is subject to conviction for more than one charge arising from the same act, the district court should adjudicate only one conviction and impose one sentence. *State v. LaTourelle*, 343 N.W.2d 277, 284 (Minn. 1984). The district court followed this approach orally, but its warrant of commitment failed to limit the conviction and sentence accordingly. We therefore reverse and remand for the district court to vacate one conviction.

## II

Melius challenges the district court’s denial of his motion for a downward dispositional departure and asks that we reverse and require a probationary sentence. We review a district court’s sentencing decision for an abuse of discretion. *State v. Soto*, 855 N.W.2d 303, 307–08 (Minn. 2014). Although the district court enjoys broad discretion in sentencing matters, its discretion is limited by the Minnesota Sentencing Guidelines. *Id.* at 308. The guidelines establish presumptively appropriate sentencing dispositions and durations, and a district court “must pronounce a sentence of the applicable disposition and within the applicable range unless there exist identifiable, substantial, and compelling circumstances to support a departure.” Minn. Sent. Guidelines 2.D.1 (Supp. 2017). Dispositional departures generally depend on a defendant’s characteristics indicating his suitability to a probationary setting. *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016). The sentencing guidelines list several mitigating factors that “may” justify departing from a presumptive sentence. Minn. Sent. Guidelines 2.D.3.a (Supp. 2017).

Melius raises two potentially mitigating factors: particular amenability to probation and particular amenability to probation as a chemically dependent person admitted to treatment. Minn. Sent. Guidelines 2.D.3.a.(7)–(8). We will address only one because paragraph (8) specifically contemplates controlled-substance convictions rather than impaired-driving convictions, *see* Minn. Sent. Guidelines 2.D.3.a.(8), and we construe Melius’s arguments regarding his treatment progress as applying to the more general particular-amenability factor.

We emphasize the district court’s substantial breadth of discretion and highlight the factors typically cited for departure. A district court *may* depart if “[t]he offender is particularly amenable to probation,” which “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). Factors relevant to particular amenability include a defendant’s age, past criminal record, remorse, cooperation, attitude, and support network. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). Motivation to reform also indicates particular amenability to probation. *See State v. Hennessy*, 328 N.W.2d 442, 443 (Minn. 1983); *State v. Malinski*, 353 N.W.2d 207, 210 (Minn. App. 1984) (“[A]menability may also be premised on timely observation of motive to reform.”), *review denied* (Minn. Oct. 16, 1984).

Melius argues that his circumstances were “in the ballpark of the cases affirming dispositional departures” and that the district court erred by concluding that his circumstances were not substantial and compelling. The state emphasizes accurately that the district court has discretion to determine whether a defendant is particularly amenable

to probation. This tracks with our understanding that the district court has discretion to determine whether circumstances *are* substantial and compelling so as to permit a departure. *See State v. Walker*, 913 N.W.2d 463, 468–69 (Minn. App. 2018) (“The district court considered evidence of factors that could have supported a departure *if they had been substantial or compelling*, but concluded that a departure was not warranted. . . . The district court did not abuse its discretion in denying appellant a downward dispositional departure.” (emphasis added)). And consistent with *Trog* and its progeny, the district court exercises its discretion by weighing competing factors to determine *whether* a defendant is particularly amenable to probation. *See Trog*, 323 N.W.2d at 31; *Soto*, 855 N.W.2d at 310.

The record reveals that the district court did not abuse its discretion by finding a lack of substantial and compelling reasons to depart. Age is a relevant consideration. *Trog*, 323 N.W.2d at 31. Melius was 47, which does not favor his particular amenability. *See Soto*, 855 N.W.2d at 310 (rejecting the district court’s reasoning that a defendant was particularly amenable because he was “only” 37 years old). Melius’s criminal record is also relevant. *See Trog*, 323 N.W.2d at 31; *id.* at 311. His criminal history is extensive, and, despite having been accounted for in calculating his presumptive sentence, it remains relevant to Melius’s ability to correct his behavior. *See Soto*, 855 N.W.2d at 310–11. This factor does not favor departure.

Melius acknowledges his “relatively significant criminal history” but argues that his demonstrated intent to reform shows his particular amenability to probation. The record lends only partial support for his claim. On one hand, there was a significant gap between his offenses, he adopted plans to remain sober, and he completed inpatient treatment. But

on the other, between March 2018 and March 2019, he tested positive for drugs and alcohol, failed to comply with testing schedules, was unsuccessfully discharged from one treatment program, failed to complete an updated chemical-health assessment, and failed to appear for a scheduled court hearing.

The record supports the district court's recognition of Melius's remorse, cooperation, and attitude in court, *see Trog*, 323 N.W.2d at 31, as well as his supportive circle. Melius entered his plea acknowledging that he might be sentenced to prison and might not be granted a departure. The district court expressed its appreciation for his candor during the proceedings. He was sober for an extended period. These circumstances tend to favor a particular-amenable determination. As for the support of family and friends, *see id.*, Melius cites to the support of his brother, ex-girlfriend, treatment counselor, and addiction-recovery support group. This factor also weighs in Melius's favor.

On balance, Melius fails to convince us that the district court was bound to grant his departure motion. Certain circumstances suggest Melius's particular amenability, while other factors do not. Faced with all the information, the district court exercised its discretion to conclude that no substantial and compelling circumstances supported departing dispositionally. The district court did not abuse its discretion.

### III

The record belies Melius's argument that the district court erred by failing to even consider the merits of his request for a downward durational departure. We review a district court's decision regarding durational departures for an abuse of discretion. *See Solberg*, 882 N.W.2d at 623. Durational departures are generally appropriate only when a

defendant's conduct is "significantly less serious" than conduct typically associated with the crime. *Id.* at 624 (quotation omitted). If a defendant seeks a sentencing departure, the district court must make "a deliberate decision to impose [a] presumptive sentence[]," considering reasons for and against departing. *State v. Mendoza*, 638 N.W.2d 480, 484 (Minn. App. 2002), *review denied* (Minn. Apr. 16, 2002). But the district court need not explain its reasons for imposing a presumptive sentence, and we will affirm if the record demonstrates that the district court carefully considered the testimony and information before it. *State v. Johnson*, 831 N.W.2d 917, 925 (Minn. App. 2013), *review denied* (Minn. Sept. 17, 2013).

Melius argued for a durational departure by asserting that his impaired driving was unplanned, he attempted to avoid driving, his driving "was likely less dangerous" than a typical offense because he was traveling only ten miles over the speed limit, he had no injurious collision, and he was suffering depression and lacked necessary medication. *See* Minn. Sent. Guidelines 2.D.3.a.(3). The district court did not discuss Melius's cited behavioral circumstances, saying only, "[W]hen someone drinks and drives they put other people in danger." But the record shows that the district court carefully reviewed Melius's request before imposing the presumptive sentence.

The district court explicitly recognized at the sentencing hearing that Melius was requesting "a *downward durational* or downward dispositional departure." (Emphasis added.) It stated that it had reviewed the PSI, which included the state's probable-cause allegations describing Melius's offenses, Melius's recounting of his offenses, and a summary of his mental-health status. The district court listened as Melius's attorney

explained how family loss and “not being psychiatrically stable on his medication” had affected Melius. It questioned Melius specifically about the circumstances of his impaired driving. It took time to consider Melius’s requests during a recess after which it acknowledged that Melius had gained “resources . . . about an insight into [his] mental health.”

We reject Melius’s assertion that the durational-departure request “f[ell] through the cracks” in the district court merely because the district court more expressly analyzed the dispositional-departure request. Our inquiry focuses on a threshold of deliberate consideration, not comparative attention. We also reject Melius’s speculation that the district court’s reference to two prepared orders during the sentencing hearing (one imposing probation and one imposing a 42-month sentence) implies that it forgot about the durational request. The district court had reviewed Melius’s joint departure requests and recognized without prompting that he had made both requests. We conclude that the district court did not abuse its discretion in rejecting the durational-departure request.

#### IV

We turn to the sentencing challenge. The district court orally imposed a 42-month prison sentence, but its written order and the warrant of commitment recorded a 48-month sentence. When a district court’s oral sentencing pronouncement is unambiguous but inconsistent with its written order, the oral pronouncement controls. *See State v. Staloch*, 643 N.W.2d 329, 332 (Minn. App. 2002). We reverse and remand for the district court to impose the correct 42-month term.

**Affirmed in part, reversed in part, and remanded.**