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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-2023**

State of Minnesota,
Respondent,

vs.

Alize Khudari Perkins,
Appellant.

**Filed September 14, 2020
Affirmed
Larkin, Judge**

Ramsey County District Court
File No. 62-CR-19-3108

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

John J. Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney,
St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sharon E. Jacks, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Segal, Chief Judge; Larkin, Judge; and Reilly, Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges his sentence for first-degree burglary, arguing that the district court abused its discretion by denying his motion for a downward dispositional departure. He also contends, in a pro se supplemental brief, that his counsel provided ineffective assistance at sentencing. We affirm.

FACTS

In April 2019, appellant Alize Khudari Perkins went to his child's mother's apartment. She refused to allow Perkins into her apartment. Perkins broke down her door, physically assaulted her, took her phone, and prevented her from leaving the apartment. Perkins was 22 years old at the time. Respondent State of Minnesota charged Perkins with first-degree burglary, felony domestic assault, and threats of violence. Perkins pleaded guilty to first-degree burglary in exchange for the state's dismissal of the other two charges and agreement not to seek an aggravated sentence. Under the terms of the plea agreement, Perkins could seek a sentencing departure.

According to the presentence investigation, Perkins has a criminal history that includes felony convictions for third-degree assault and violation of a domestic-abuse no-contact order. He was on probation for those felonies when he committed the burglary in this case. The presentence investigation indicates that Perkins had a difficult childhood and was exposed to domestic abuse at a young age.

Perkins moved for a downward dispositional departure, arguing that he was particularly amenable to probation. He informed the district court that he had been

accepted at a treatment facility and was scheduled to begin outpatient treatment for his substance-abuse issues. He also informed the court that he had taken steps to receive therapy from two other programs. The state opposed the motion.

The district court denied Perkins's request for a downward dispositional departure, reasoning:

There are a lot of reasons why I'd rather not send you to prison, but . . . I can't find that there are substantial and compelling reasons for me to deviate from the sentencing guidelines, and that's because of the nature of the offense that you committed when you were placed on probation and the fact that you were on supervision for that But supervision was not sufficient to prevent this crime, and I don't think that outpatient treatment or mental health therapy by itself without confinement will be successful and protect the public and other people from harm.

So—and I looked at this three or four times, as thoroughly and as seriously as I can, and I think that . . . these are all the ordinary reasons why I would not want to send somebody to prison, but they're just not substantial and compelling factors or reasons for me to deviate in this case.

The district court sentenced Perkins to serve 67 months in prison, which was at the low end of the presumptive range under the sentencing guidelines. Perkins 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 (2018). “[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) (citations and quotations omitted).

District courts have great discretion in imposing sentences, and this court will reverse sentencing decisions only for an abuse of that discretion. *Id.* at 307-08. “[A]s long as the record shows the [district] court carefully evaluated all the testimony and information presented [to it] before making a determination,” we will not interfere with the district court’s decision to impose a presumptive sentence. *State v. Pegel*, 795 N.W.2d 251, 255 (Minn. App. 2011) (quotation omitted). Only in a “rare” case will an appellate court reverse a district court’s refusal to depart. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

When considering a dispositional departure, the district court focuses “more on the defendant as an individual and on whether the presumptive 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 requirement of particular amenability “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).

Relevant factors for determining whether the defendant is particularly amenable to probation include the defendant’s age, prior criminal record, remorse, cooperation, attitude in court, and support of friends and family. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). But a district court is not required to depart from the presumptive-sentence range 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).

Perkins contends that the district court abused its discretion because it failed to consider circumstances demonstrating that he is particularly amenable to probation, including his acceptance of responsibility, remorse, cooperation during the prosecution, acceptance into a treatment program, motivation to change, and commitment to rehabilitation.

The sentencing-hearing transcript, however, demonstrates that the district court considered those circumstances. The district court acknowledged that Perkins was scheduled to begin treatment, but it also expressed concern that Perkins had committed the current offense while on probation for another offense. The district court noted that Perkins's supervision on probation "was not sufficient to prevent this crime" and that the court did not believe that Perkins's treatment "by itself without confinement [would] be successful and protect the public and other people from harm." The district court recognized that a downward dispositional departure requires particular amenability to probation and reasoned that although there were "ordinary" reasons for not imposing a prison sentence, they were not "substantial and compelling."

In sum, the record reflects that the district court appropriately weighed the relevant considerations when making its decision and did not abuse its discretion by denying Perkins's motion for a downward dispositional departure. This is not a "rare" case in which we would reverse a district court's refusal to depart. *Kindem*, 313 N.W.2d at 7.

In a pro se supplemental brief, Perkins suggests that he received ineffective assistance of counsel at sentencing, noting that his attorney did not inform the district court that he was willing to complete the Teen Challenge inpatient treatment program. We analyze a claim of ineffective assistance of counsel under the two-part test set forth by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052 (1984). *State v. Rhodes*, 657 N.W.2d 823, 842 (Minn. 2003). To prevail on such a claim, the defendant must show that “counsel’s performance fell below an objective standard of reasonableness, and that a reasonable probability exists that the outcome would have been different but for counsel’s errors.” *Id.* (quotation omitted). A court need not address both parts of the test if one is determinative. *Id.*

For the reasons that follow, Perkins does not satisfy the second part of the *Strickland* test. First, the record does not indicate that Perkins had been accepted at the Teen Challenge inpatient treatment program. Second, Perkins’s counsel informed the district court that he had been accepted at an outpatient treatment facility, that he was scheduled to begin that program, and that he had taken steps to receive therapy from two other programs. The district court nonetheless refused to depart because it determined that treatment alone would not be sufficient to protect the public. On this record, Perkins fails to show that there is a reasonable probability that the district court would have granted his request for a downward dispositional departure if counsel had mentioned Perkins’s willingness to pursue inpatient treatment at Teen Challenge.

Affirmed.