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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A20-0119**

State of Minnesota,  
Respondent,

vs.

Christian Hamzah Coleman,  
Appellant.

**Filed December 21, 2020  
Affirmed  
Frisch, Judge**

St. Louis County District Court  
File No. 69DU-CR-19-932

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

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

Cathryn Middlebrook, Chief Appellate Public Defender, Kathryn J. Lockwood, Assistant  
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Hooten, Judge; and  
Frisch, Judge.

**UNPUBLISHED OPINION**

**FRISCH**, Judge

Appellant challenges his executed sentences for multiple offenses, arguing that the  
district court abused its discretion by denying his motion for a downward dispositional

departure and by executing the sentence for criminal sexual conduct consecutively to the other sentences. We affirm.

## **FACTS**

Appellant Christian Hamzah Coleman pleaded guilty to aiding and abetting crimes of false imprisonment, Minn. Stat. § 609.25, subd. 1(2) (2018); first-degree criminal sexual conduct, Minn. Stat. § 609.342, subd. 1(c) (2018); and three counts of first-degree burglary, Minn. Stat. § 609.582, subd. 1(c) (2018), for an incident involving multiple victims and codefendants on March 13, 2019. *See also* Minn. Stat. § 609.05, subd. 1 (2018) (setting forth aiding and abetting liability). He was 18 years old at the time he committed the offenses and had a criminal-history score of zero. Although he admitted to participating in the actions underlying the charges, he claimed that his codefendants were the primary instigators of the assaults and false imprisonment that occurred during the burglary.

The district court accepted Coleman's pleas, and the matter proceeded to sentencing. The presentence investigation (PSI) report recommended concurrent, executed sentences within the presumptive ranges set forth in the Minnesota Sentencing Guidelines. Coleman moved for a downward dispositional departure from the presumptive sentencing ranges and sought a stay of execution of his sentences conditioned on his compliance with probationary conditions. The state opposed Coleman's motion and requested a consecutive sentence for the aiding and abetting criminal-sexual-conduct conviction.

The district court reviewed the parties' written arguments and exhibits and held a hearing, during which the district court received additional evidence and testimony. After hearing additional argument from both parties, the district court denied Coleman's motion

for a dispositional departure, imposed sentences within the presumptive guidelines ranges, and granted the state's motion for a consecutive sentence. Coleman appeals.

## D E C I S I O N

**I. The district court did not abuse its discretion by denying Coleman's motion for a downward dispositional departure.**

Coleman argues that the district court abused its discretion by denying his motion for a downward dispositional departure from the Minnesota Sentencing Guidelines. A downward dispositional departure occurs when the sentencing guidelines recommend imprisonment but the district court stays execution of the sentence on conditions of probation. Minn. Sent. Guidelines 1.B.5.a.(2) (2018). To justify a departure, a district court must find mitigating circumstances that “provide a substantial and compelling reason not to impose a guidelines sentence.” *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014) (quotation omitted). Mitigating circumstances may exist when a district court finds that the defendant is particularly amenable to probation. *Id.* at 308-09. In finding particular amenability to probation, a district court may consider the defendant's age, prior record, remorse, cooperation, attitude in court, and support of family and friends. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). And even if a district court determines that a defendant is particularly amenable to probation, a district court retains discretion to deny the departure. *State v. Olson*, 765 N.W.2d 662, 664-65 (Minn. App. 2009).

We will not reverse a refusal to depart absent a clear abuse of discretion. *Id.* at 664. We “generally will not interfere with sentences that are within the presumptive [guidelines] range,” *State v. Freyer*, 328 N.W.2d 140, 142 (Minn. 1982), and reverse imposition of

presumptive sentences only in “rare” cases, *State v. Delk*, 781 N.W.2d 426, 428 (Minn. App. 2010) (quoting *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981)), *review denied* (Minn. July 20, 2010).

Coleman argues that the district court failed to adequately consider evidence that he is particularly amenable to probation. He cites *State v. Curtiss*, in which we remanded and held that the district court erred in denying the motion because “[t]he record suggest[ed] factors for departure” that the district court failed to “deliberately consider[.]” 353 N.W.2d 262, 264 (Minn. App. 1984).<sup>1</sup> But in *Curtiss*, the topic of departure “was abandoned” before the district court had an opportunity to exercise its broad discretion. *Id.* at 263. By contrast, here the district court reviewed all of the evidence Coleman presented, heard testimony from Coleman and one of the victims, considered the attorneys’ written and oral arguments, and then made a deliberate decision not to credit Coleman’s evidence. Although the district court could have—and perhaps best practices suggest that it should

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<sup>1</sup> Coleman cites additional cases in which district courts failed to adequately consider reasons for departure, but those cases are inapposite. In *State v. Wall*, the district court imposed an *upward* durational departure after declining to consider the defendant’s mental impairment, erroneously implying that the defendant’s failure to take medication for schizophrenia was analogous to voluntary intoxication despite expert testimony that refusal to take medication is itself a symptom of the disease. 343 N.W.2d 22, 24-26 (Minn. 1984). And in *State v. Mendoza*, the record was unclear as to whether the district court made a deliberate decision to impose a presumptive sentence for two defendants because the district court erroneously concluded that the defendants’ immigration statuses rendered probation “impossible and impractical.” 638 N.W.2d 480, 482-84 (Minn. App. 2002), *review denied* (Minn. Apr. 16, 2002).

have—more thoroughly addressed the factors, its failure to do so was not an abuse of discretion.<sup>2</sup>

**II. The district court did not abuse its discretion by imposing a consecutive sentence for the aiding and abetting criminal-sexual-conduct conviction.**

Coleman next argues that the district court abused its discretion by imposing the sentence for aiding and abetting criminal sexual conduct in violation of Minn. Stat. §§ 609.342, subd. 1(c), .05, subd. 1, consecutively to his sentences for aiding and abetting kidnapping and first-degree burglary. We review the imposition of consecutive sentences for an abuse of discretion. *State v. Ali*, 895 N.W.2d 237, 247 (Minn. 2017). We do not interfere with this discretion unless “the sentence is disproportionate to the offense or unfairly exaggerates the criminality of the defendant’s conduct.” *Id.* (quotation omitted).

When an offender is convicted of multiple current offenses, concurrent sentencing is generally presumptive. Minn. Sent. Guidelines 2.F (2018). But a consecutive sentence for criminal sexual conduct is always permissive when the court imposes punishment for any other crime the defendant committed as part of the same conduct. Minn. Sent. Guidelines 2.F.2.a.(2)(iii).

Coleman does not argue that the consecutive sentences here violate the guidelines. Rather, he contends that the district court failed to “carefully consider” whether the purpose

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<sup>2</sup> Coleman additionally argues that the district court improperly focused on *offense*-related factors that are more relevant to a durational departure. Although a dispositional departure is typically based on offender-specific characteristics, *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016), a district court may consider *both* offender- and offense-related factors when deciding whether to grant a dispositional departure, *State v. Chaklos*, 528 N.W.2d 225, 228 (Minn. 1995).

of the guidelines would best be served by consecutive sentences. He relies on a comment in the guidelines: “The Commission recommends that the court *consider carefully* whether the purposes of the Guidelines (in terms of punishment proportional to the severity of the offense and the offender’s criminal history) would be served best by concurrent rather than consecutive sentences.” Minn. Sent. Guidelines cmt. 2.F.01 (emphasis added). He does not cite any caselaw in which a consecutive sentence has been reversed on this basis.

“[C]omments to the guidelines are not binding but rather are advisory” to the courts. *State v. Rouland*, 685 N.W.2d 706, 708 (Minn. App. 2004), *review denied* (Minn. Nov. 23, 2004). Even so, the record shows that the district court adequately considered whether a consecutive sentence was proportionate to the severity of Coleman’s aiding and abetting criminal sexual conduct. After reviewing the facts of the underlying incidents, the district court found that “[r]eleasing [Coleman] back into the community in any shorter time period would place the public and the victims at risk and would diminish the seriousness of these offenses.”

Coleman lists multiple reasons that the consecutive sentence unfairly exaggerates the criminality of his conduct. In part, he reiterates his dispositional-departure arguments regarding his youth and minimal criminal history. But the presence of such factors alone do not compel a conclusion that a sentence exaggerates criminality. *See Ali*, 895 N.W.2d at 246-47. Coleman argues that his more aggressive codefendant influenced his behavior, but the supreme court has rejected a similar argument. *See State v. Vang*, 774 N.W.2d 566, 583-84 (Minn. 2009). Coleman additionally observes that the PSI did not recommend consecutive sentences. But even if the PSI specifically recommended concurrent

sentences, the ultimate decision is within the discretion of the district court—not the probation officer who wrote the PSI. *See Hamilton v. State*, 398 N.W.2d 680, 683 (Minn. App. 1987) (explaining that district court is not obligated to follow recommendation in PSI), *review denied* (Minn. Mar. 13, 1987). None of these reasons, considered individually or together, establish an abuse of discretion by the district court.<sup>3</sup>

**Affirmed.**

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<sup>3</sup> The state asks that we dismiss Coleman’s appeal based on Coleman’s failure to “observe the timeliness or captioning requirements of Minn. R. Crim. P. 28.05, subd. 1(1).” We decline to do so where the alleged defects are not jurisdictional and where the state asserts no prejudice. *See State v. Batzer Constr. Co.*, 445 N.W.2d 281, 282-83 (Minn. App. 1989).