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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0183**

State of Minnesota,
Respondent,

vs.

Christopher Michael Guzik,
Appellant.

**Filed August 17, 2020
Affirmed
Frisch, Judge**

Sherburne County District Court
File No. 71-CR-17-295

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

Kathleen A. Heaney, Sherburne County Attorney, George R. Kennedy, Assistant County Attorney, Elk River, Minnesota (for respondent)

Ryan Garry, Elizabeth Duel, Minneapolis, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Reilly, Judge; and Frisch, Judge.

UNPUBLISHED OPINION

FRISCH, Judge

Appellant pleaded guilty to third-degree murder after his acquaintance died from a drug overdose. Before sentencing, Guzik moved for either a downward dispositional or

durational departure from the Minnesota Sentencing Guidelines. The district court denied both motions and imposed a sentence within the presumptive guidelines range. Because the district court acted within its discretion, we affirm.

FACTS

Appellant Christopher Michael Guzik met C.L.A. through mutual friends. Their relationship involved using controlled substances. According to Guzik, C.L.A. was a regular drug user who struggled with addiction “for quite some time,” frequently using methamphetamine and marijuana. Guzik was addicted to heroin.

In June 2016—when Guzik had known C.L.A. for a little less than a year—C.L.A. contacted Guzik through Facebook Messenger to ask him if he could find her some drugs. Guzik responded that he could. C.L.A. asked for marijuana. At that time, Guzik was experiencing symptoms from heroin withdrawal and suggested that he could get heroin if C.L.A. was interested. After discussing quantity and price, Guzik understood their deal as follows: C.L.A. would give Guzik money to buy heroin from his supplier, and Guzik would give C.L.A. the heroin. Although Guzik did not profit monetarily from the transaction, C.L.A. agreed to give him some of the heroin.

Thereafter, C.L.A. and another woman picked up Guzik and drove him to meet his supplier. Guzik went to the supplier’s car, obtained about one-half gram of heroin, and gave the heroin to C.L.A. C.L.A. gave Guzik about \$70, and Guzik paid the supplier. Guzik believed the heroin appeared the same as heroin that he received from the supplier in the past. C.L.A. and the other woman drove Guzik back to where he was staying, and C.L.A. gave Guzik some of the heroin. C.L.A. left, and Guzik did not see her again.

Later that night, C.L.A. ingested the heroin and died. Although an autopsy revealed the presence of drugs other than heroin in her system, the cause of C.L.A.'s death was heroin toxicity. Several months later, the state charged Guzik with third-degree murder for his role in C.L.A.'s death.¹

Guzik pleaded guilty to the offense. At the plea hearing, Guzik waived his trial rights and testified that he understood there was no agreement regarding his sentence. Guzik then described the events leading to C.L.A.'s death, as set forth herein. He expressed sadness over C.L.A.'s death and explained that he did not intend for her to die. But Guzik agreed that although he was not the "originator" of the drugs, he was a "link in the chain" leading to C.L.A.'s death, making him criminally responsible. The district court found that Guzik established an adequate factual basis for his plea.

Before sentencing, Guzik filed a motion seeking a downward dispositional departure, or, alternatively, a downward durational departure from the Minnesota Sentencing Guidelines. In seeking a downward dispositional departure, Guzik argued that he was particularly amenable to probation. In requesting a downward durational departure,

¹ The relevant statute provides:

Whoever, without intent to cause death, proximately causes the death of a human being by, directly or indirectly, unlawfully selling, giving away, bartering, delivering, exchanging, distributing, or administering a controlled substance classified in Schedule I or II, is guilty of murder in the third degree and may be sentenced to imprisonment for not more than 25 years or to payment of a fine of not more than \$40,000, or both.

Minn. Stat. § 609.195(b) (2014).

Guzik maintained that his crime was less serious than a typical third-degree murder because he was not a drug dealer or supplier and because C.L.A. was a willing participant and joint possessor of the drugs. The state opposed both motions and asked the district court to impose a 98-month sentence, which is within the guidelines range. The district court denied both motions and sentenced Guzik to 84 months in prison, the bottom end of the presumptive sentencing range. Guzik appeals.

DECISION

Guzik argues that the district court abused its discretion by denying his motions for either a downward dispositional or durational departure from the Minnesota Sentencing Guidelines. “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). “[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). We “generally will not interfere with sentences that are within the presumptive sentence range.” *State v. Freyer*, 328 N.W.2d 140, 142 (Minn. 1982). “Only in a ‘rare’ case will a reviewing court reverse imposition of a presumptive sentence.” *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).

Downward Dispositional Departure

Guzik first argues that the district court abused its discretion by denying his motion for a downward dispositional departure from the sentencing guidelines. A downward dispositional departure “occurs when the [sentencing] [g]uidelines recommend a prison sentence but the court stays the sentence.” Minn. Sent. Guidelines 1.B.5.a.(2) (2015). The district court must find the defendant is *particularly* amenable to probation to justify a dispositional departure in the form of a stay of execution of a presumptively executed sentence. *Soto*, 855 N.W.2d at 308-09. “Departures from the presumptive sentence are justified *only* when substantial and compelling circumstances are present in the record.” *State v. Jackson*, 749 N.W.2d 353, 360 (Minn. 2008). The district court may consider the age of the defendant, prior record, remorse, cooperation, attitude in court, and support of family and friends in determining particular amenability to probation. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). Although the district court has discretion to grant a downward dispositional departure where a defendant is particularly amenable to probation, “it is not required to do so.” *Olson*, 765 N.W.2d at 664-65.

Here, the district court conducted a thorough analysis of each of the *Trog* factors and concluded that a downward dispositional departure was not warranted. The district court concluded that some factors weighed in favor of the departure, including Guzik’s remorse, his respectful attitude in court, and the demonstrable support of his family and friends. The district court further recognized Guzik’s limited criminal history, observing that he had alcohol-related violations and petty misdemeanor violations of drug laws that

were “telling” but “relatively minimal.” The district court concluded that this criminal history could “potentially” weigh in favor of a departure.

But the district court ultimately concluded that the remaining *Trog* factors did not weigh in favor of the requested departure. The district court found that Guzik’s age was “beyond the period where we would look at youthful mistakes as an excuse or explanation.” The district court also cited multiple instances in which Guzik demonstrated a lack of cooperation and responsibility. The district court observed that Guzik violated his conditional release multiple times by using drugs and that he “fled the jurisdiction of the [c]ourt” and was “gone for months” before being returned to the court. The district court also noted that Guzik was not successful in substance abuse treatment outside of an incarcerated setting.

The district court weighed all of these factors and recognized its “very difficult decision.” After demonstrable consideration of those factors, the district court found that Guzik was not particularly amenable to probation because when he was “at liberty,” he returned to using drugs, was unsuccessful in multiple treatment programs, and disappeared from the court’s jurisdiction. We see no abuse of discretion by the district court in the denial of the motion for a downward dispositional departure.

Downward Durational Departure

Guzik also argues the district court abused its discretion in the denial of his motion for a downward durational departure. A durational departure “occurs when the court orders a sentence with a duration other than the presumptive fixed duration or range.” Minn. Sent. Guidelines 1.B.5.b (2015). Such a departure “must be based on factors that reflect the

seriousness of the *offense*, not the characteristics of the offender.” *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016). To justify a downward durational departure, a defendant’s conduct must be “significantly less serious than that typically involved in the commission of the offense.” *Id.* at 624 (quotation omitted).

Here, the district court stated that it “looked carefully” at potential grounds for a durational departure. The district court concluded that the offense was not significantly less serious than typical because

the complicating factor here is that this addicted young woman was looking for marijuana and you got her heroin. And that is likely a direct cause of why she died. And the [c]ourt cannot find that that’s any less serious than the typical third degree crime that you’re charged with.

Again, the district court acted well within its wide discretion by denying the motion for a downward durational departure, stating adequate reasons in support of its conclusion that this crime was not significantly less serious than a typical third-degree murder.

Guzik argues that the district court abused its discretion because the factual circumstances demonstrate that his offense was less serious than the typical controlled-substance murder. Guzik asserts that C.L.A. was a willing participant in the drug transaction, that she provided money for the purchase, that she was a long-time drug user, and that they were joint possessors of the heroin.² That C.L.A. may have participated in

² Because Guzik and C.L.A. were not married, Guzik concedes that they were not joint possessors under the law. *Cf. State v. Carithers*, 490 N.W.2d 620, 622 (Minn. 1992) (concluding that spouses jointly possessed controlled substances); *State v. Vasquez*, 776 N.W.2d 452, 458 (Minn. App. 2009) (distinguishing *Carithers* because couple was married). Guzik nonetheless asks us to find that their joint possession as friends was a mitigating factor and conclude that limiting the joint-possessor defense to married couples

her own death does not render Guzik’s involvement any less serious, particularly when the statute criminalizing third-degree murder contemplates the willing participation of the victim, does not require intent to cause death, and expressly includes a wide range of circumstances under which drugs may be used or possessed. *See* Minn. Stat. § 609.195(b) (stating that third-degree controlled-substance murder involves “directly or indirectly, unlawfully selling, giving away, bartering, delivering, exchanging, distributing, or administering a controlled substance”). Guzik also argues that his offense was less serious because he was a drug *user*, rather than a drug dealer or supplier, and points to nonprecedential cases from this court involving drug dealers or suppliers charged with third-degree murder.³ But the statute provides that “whoever” engages in the proscribed conduct commits third-degree murder, not just drug dealers or suppliers. *See* Minn. Stat. § 609.195(b). And even if *his status* as a drug user somehow rendered the *offense*

is unconstitutional. But Guzik waived this argument by pleading guilty, as he acknowledges in his reply brief. *See Dikken v. State*, 896 N.W.2d 873, 878 (Minn. 2017) (stating that “a valid guilty plea waives all non-jurisdictional defects arising prior to the entry of the plea” (quotation omitted)). Despite Guzik’s argument that this court can review his argument in the interests of justice, we decline to do so because it is unnecessary to resolve this question in addressing Guzik’s challenge to his sentence. *See State v. Bourke*, 718 N.W.2d 922, 926 (Minn. 2006) (noting general practice to avoid a constitutional ruling where a case can be decided on another basis).

³ Guzik cites *State v. Williams*, No. A19-0639, 2020 WL 1517939 (Minn. App. Mar. 30, 2020) (affirming conviction when victim died after using heroin purchased from the appellant), *review denied* (Minn. May 27, 2020); *Walker v. State*, No. A19-0161, 2019 WL 4409412 (Minn. App. Sept. 16, 2019) (concluding there was an underlying factual basis for the crime when appellant gave drugs to another individual who then sold the drugs to the victim); *State v. Burrell*, Nos. A17-1712 and A17-1713, 2018 WL 4391098 (Minn. App. Sept. 17, 2018) (concluding evidence supported conviction when two victims died after purchasing heroin from the appellant), *review denied* (Minn. Jan. 15, 2019).

significantly less serious than typical, the district court was not required to depart. *See Olson*, 765 N.W.2d at 664-65. Accordingly, we see no abuse of discretion by the district court in the denial of the motion for a downward durational departure.

Affirmed.