

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0187**

State of Minnesota,
Respondent,

vs.

Xueyan Wang,
Appellant.

**Filed February 8, 2021
Affirmed
Reyes, Judge**

Dakota County District Court
File No. 19HA-CR-19-1852

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

James C. Backstrom, Dakota County Attorney, Anna Light, Assistant County Attorney,
Hastings, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Chang Y. Lau, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Gaïtas, Presiding Judge; Connolly, Judge; and Reyes,
Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

In this direct appeal from a judgment of conviction of promoting prostitution, appellant argues that the district court abused its discretion by denying her motion for a downward dispositional departure because the factors listed in *State v. Trog*, 323 N.W.2d

28, 31 (Minn. 1982), collectively demonstrated that she is particularly amenable to probation. We affirm.

FACTS

Between June 2017 and July 2019, appellant Xueyan Wang managed Herb Spa, a massage parlor in Inver Grove Heights. The shades remained drawn over Herb Spa's windows, and the front door remained locked at all times, requiring customers to ring the doorbell to enter. Appellant employed two women, Y.O. and G.S., to provide sexual services to customers of Herb Spa. Appellant knew that Y.O. and G.S. provided these services, and, when scheduling appointments, would note the clients' preferences. The local police began investigating Herb Spa in early 2019 and eventually obtained a search warrant leading to appellant's arrest.

Appellant pleaded guilty to two counts of second-degree promoting prostitution in violation of Minn. Stat. § 609.322, subd. 1a(2) (2018). The presumptive-guidelines-sentence range on the first count, with a zero criminal-history score, is 41 to 57 months. The presumptive-guidelines-sentence range on the second count, with a *Hernandized*¹ criminal-history score of two points, is 65 to 91 months. Under the plea agreement, respondent State of Minnesota agreed to seek a concurrent 65-month sentence on the

¹ “*Hernandize*” is “the unofficial term for the process described in section 2.B.1.e. [of the sentencing guidelines] of counting criminal history when multiple offenses are sentenced on the same day before the same court.” Minn. Sent. Guidelines 1.B.(10) (2018); see *State v. Hernandez*, 311 N.W.2d 478, 480-81 (Minn. 1981).

second count and agreed not to prosecute appellant for any additional charges related to Herb Spa.²

Before sentencing, a presentence investigation (PSI) identified no substantial and compelling aggravating or mitigating factors to warrant a departure and recommended that appellant's sentence follow the presumptive sentence in the guidelines. Appellant moved for both downward durational and dispositional departures, and submitted letters to the district court in support of the departures. The district court requested information from the Minnesota Sentencing Guidelines Commission about similar cases to this one.

At the sentencing hearing, the state argued that no substantial and compelling reasons warranted a downward dispositional or durational departure. The state argued that appellant denied that she trafficked the victims and claimed that she was "set up." Finally, the state noted that the illegal activity took place over two years.

Appellant in turn argued that she is particularly amenable to probation. In support, appellant argued that she accepted responsibility for her actions and noted her lack of criminal history. Appellant also noted that she cared for a young daughter. Appellant explained that she made her "set up" comment in error due to a misunderstanding because English is not appellant's first language. Appellant apologized and stated that she felt remorse for her actions.

² The state also charged appellant with two counts of second-degree receiving profits derived from prostitution in violation of Minn. Stat. § 609.322, subd. 1a(3) (2018), both of which were dismissed as part of the plea agreement.

The district court denied appellant's request for a downward dispositional and durational departure and sentenced appellant to a presumptive 48 months' imprisonment on the first count, and to a concurrent 65 months' imprisonment on the second count. This appeal follows.

DECISION

Appellant argues that the district court abused its discretion by determining that she is not particularly amenable to probation and denying her motion for a downward dispositional departure³ because it “cherry picked” departure factors rather than considering them together. We disagree.

Appellate courts “afford the [district] court great discretion in the imposition of sentences and reverse sentencing decisions only for an abuse of that discretion.” *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014) (quotation omitted). When the district court imposes a presumptive sentence, appellate courts will not interfere “as long as the record shows the [district] court carefully evaluated all the testimony and information presented before making a determination.” *State v. Pegel*, 795 N.W.2d 251, 255 (Minn. App. 2011) (quotation omitted). We will reverse a refusal to depart from a presumptive sentence only in “rare” cases. *State v. Walker*, 913 N.W.2d 463, 468 (Minn. App. 2018).

Guideline sentences “are presumed to be appropriate for the crimes to which they apply.” Minn. Sent. Guidelines 2.D.1 (2017). A district court must impose a sentence within the guidelines unless “identifiable, substantial, and compelling circumstances”

³ Appellant does not challenge on appeal the district court's denial of her motion for a downward durational departure.

warrant departure. *Id.*; accord *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016) (quotation omitted). Even if valid grounds for departure exist, the district court need not depart from the guidelines. *State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006). “[T]he mere fact that a mitigating factor is present in a particular case does ‘not obligate the [district] court to place defendant on probation.’” *Pegel*, 795 N.W.2d at 253-54 (quoting *State v. Wall*, 343 N.W.2d 22, 25 (Minn. 1984)). And, “[a]lthough the [district] court is required to give reasons for departure, an explanation is not required when the court considers reasons for departure but elects to impose the presumptive sentence.” *State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985).

Relying on *State v. Trog*, appellant argues that the district court did not consider appellant’s prior record, remorse, cooperation, attitude in court, or support of friends and family. Her argument is not supported by the record. In her motion for departure, appellant specifically informed the court of her lack of a “criminal record,” of her “deep[] remorse,” of her ability to “cooperate with the State,” that she “cried each time she appeared in court,” and that she provides care for both her young daughter and elderly mother.

At sentencing, the district court noted that it reviewed appellant’s motion for departure more than once, the PSI, and a PSI restitution study. The district court stated that it read both of appellant’s letters more than twice before the sentencing hearing. It also noted that it sought guidance from the Minnesota Sentencing Guidelines Commission by requesting additional information about sentencing in similar cases. Finally, the district court noted that:

[Appellant's] attorney wrote a full memorandum and pointed me to all of the cases that he thought would help your case. *And I took a look at that and considered it. . . .* And I do not believe in this particular case that there is any support for a departure.

(Emphasis added.) The record supports the conclusion that the district court carefully considered all of the information presented to it before imposing the presumptive sentence.

No further explanation was required. *Van Ruler*, 378 N.W.2d at 80.

Affirmed.