

*This opinion is nonprecedential except as provided by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
A20-0357**

State of Minnesota,
Respondent,

vs.

Ronny Ray Oleson,
Appellant.

**Filed January 11, 2021
Affirmed
Frisch, Judge**

Renville County District Court
File No. 65-CR-19-210

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

David Torgelson, Renville County Attorney, Olivia, Minnesota; and

Scott A. Hersey, Special Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Christopher L. Mishek, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

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

NONPRECEDENTIAL OPINION

FRISCH, Judge

Appellant argues that the district court abused its discretion by denying his motion for a downward dispositional departure from the presumptive sentence under the Minnesota Sentencing Guidelines. We affirm.

FACTS

The state charged appellant Ronny Ray Oleson with eight counts of criminal sexual conduct in violation of Minn. Stat. §§ 609.344, subd. 1(c), .345, subd. 1(c) (2012), alleging generally that Oleson used force or coercion to accomplish multiple acts of sexual contact with, and penetration of, his stepdaughter (the victim) between June 2013 and April 2014. Oleson pleaded guilty in October 2019 to one count of third-degree criminal sexual conduct in violation of Minn. Stat. § 609.344, subd. 1(c) (penetration accomplished by force or coercion), and the district court set the matter on for sentencing.

Corrections conducted a presentence investigation (PSI) and reported the following circumstances. At the time of the PSI, Oleson was 60 years old. Oleson maintained minimal contacts with his family, and his wife had recently informed him she would be filing for divorce. Oleson's criminal history included a July 2019 conviction for second-degree criminal sexual conduct based on Oleson's sexual contact with a child. As part of that proceeding, Oleson had completed a psychosexual evaluation recommending that Oleson complete in-patient sex-offender treatment. After conducting a follow-up assessment, a psychologist determined that Oleson was eligible for in-patient treatment,

reporting that Oleson's offense history and presentation suggested that he would benefit from therapy and would pose a minimal risk to public safety.

The Minnesota Sentencing Guidelines established a presumptive 62-month prison commitment with a durational range of 53 to 74 months. Minn. Sent. Guidelines 4.B (Supp. 2013). Corrections recommended that the district court impose the presumptive 62-month sentence. Oleson moved for a downward dispositional departure, arguing that he was particularly amenable to probation and treatment in a probationary setting. The state, meanwhile, moved for an upward departure, but the district court denied the request. He emphasized that he was remorseful and motivated to seek treatment and rehabilitation.

The parties appeared for a hearing on the departure motion and sentencing. The victim's stepmother testified that Oleson controlled the victim, groomed her, manipulated her, and isolated her. The victim's father testified that Oleson's crime hurt the victim and their family and that they all faced a long road of recovery due to Oleson's selfishness. The victim's mother (Oleson's wife at the time) testified that she was divorcing Oleson. The victim testified, describing Oleson's criminal sexual conduct and how he had betrayed her trust. She recalled how her fear of Oleson kept her from telling others about his conduct, how she felt isolated and depressed, and how she had contemplated suicide. She also testified that Oleson lied when she revealed what he had done to her.

Oleson also testified, informing the district court that he was sorry for what he had done. He claimed he was willing to complete treatment and any other programming the district court might order, and he assured the district court that he was willing to comply with any and all probationary conditions.

The district court denied Oleson's motion, reasoning that he failed to demonstrate particular amenability to probation as follows:

I don't disagree with defense [counsel] and Mr. Oleson that he is accepted into the treatment program, that he would benefit from that treatment program and that he wants to go to the treatment program. I don't see anything in the record in terms of Mr. Oleson's particular amenability however to treatment. It's typical that people . . . when faced with a prison sentence would rather do treatment th[a]n prison and they seek out treatment options available and they . . . avail themselves of those options. However, other than that there's nothing in the record and nothing that the Court can point to that . . . I would be able to find a substantial and compelling reason to show that you're particular[ly] amenable to treatment. You're certainly amenable, but . . . there's no factor that the Court can find or has heard that would allow me to determine that you're particularly amenable. This is a long-term issue, long-term incidents. The fact that you want to better yourself and determine why . . . this happened and [make sure] it never [happens] again is certainly . . . amenable and something that we want all these defendants to do, but at this point I would deny the motion to depart downward due to the fact that there's no substantial and compelling reasons to find that Mr. Oleson is particularly amenable to probation.

The district court adjudicated the conviction and sentenced Oleson to 74 months in prison, the highest duration within the presumptive range. The district court explained its decision to impose the 74-month sentence as follows:

From what I've . . . heard here today from the devastating nature of the acts[,], from the particular vulnerability of the victim, of the [e]ffects that the acts have had on the victim, the family and the community[,], I don't believe there [is] any question that Mr. Oleson should receive[] [a] top of the box disposition in this matter.

This appeal follows.

DECISION

Oleson challenges the district court's denial of his motion for a downward dispositional departure from the presumptive sentence under the Minnesota Sentencing Guidelines, arguing that the district court failed to consider mitigating circumstances and erroneously concluded that nothing in the record demonstrated Oleson's particular amenability to probation. 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). We will reverse a district court's refusal to depart only in "rare" cases. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

The Minnesota Sentencing Guidelines establish presumptively appropriate sentences and the district court "must pronounce a sentence within the applicable range unless there exist identifiable, substantial, and compelling circumstances to support a sentence outside the appropriate range." Minn. Sent. Guidelines 2.D.1 (Supp. 2013). Whether a dispositional departure is appropriate typically depends on a defendant's individual characteristics. *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016). "[A] defendant's *particular* amenability to individualized treatment in a probationary setting will justify departure in the form of a stay of execution of a presumptively executed sentence." *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982) (emphasis added); *see also* Minn. Sent. Guidelines 2.D.3.a.(7) (Supp. 2015) (adding particular amenability to enumerated list of mitigating reasons supporting departure). The *Trog* court described several factors relevant to a defendant's particular amenability, including age, criminal record, remorse, cooperation, attitude, and support network. 323 N.W.2d at 31. A

defendant's motivation to reform is also relevant. *See State v. Hennessy*, 328 N.W.2d 442, 443 (Minn. 1983).

We reject Oleson's argument that the district court failed to "fully consider . . . the positive remarks in the psychosexual evaluation update letter" and his "desire to seek out both chemical dependency and sex-offender treatment to change his behavior." The district court did not disregard those circumstances; it instead explicitly recognized "that [Oleson] is accepted into the treatment program, that he would benefit from that treatment program," and "that he wants to go to the treatment program." The district court concluded that these circumstances failed to establish Oleson's *particular* amenability by explaining that a willingness to complete treatment was "typical" of a defendant facing a prison sentence and that a desire for rehabilitation was something that courts expect of "*all* defendants." (Emphasis added.) The district court's analysis is consistent with our understanding—"particular" amenability is that which renders a defendant "exceptional" and "distinguishes the defendant from most others." *Soto*, 855 N.W.2d at 309.

Oleson also argues that the district court "failed to fully consider" the *Trog* factors. But, as we have explained, a district court's failure to explicitly analyze the *Trog* factors is not an abuse of discretion so long as the record demonstrates that the district court carefully considered the reasons offered for and against the departure motion. *State v. Pegel*, 795 N.W.2d 251, 254-55 (Minn. App. 2011); *see also State v. Johnson*, 831 N.W.2d 917, 925 (Minn. App. 2013) ("We will affirm the imposition of a presumptive guidelines sentence when the record shows that the sentencing court carefully evaluated all the testimony and information presented before making a determination." (quotation omitted)), *review denied*

(Minn. Sept. 17, 2013). We conclude that the district court, having reviewed Oleson’s departure memorandum and the PSI, and having heard both testimony and oral argument, carefully considered the reasons for and against departure and did not abuse its discretion by failing to conduct a more explicit analysis.

Oleson argues that “the district court’s finding that it could not find anything in the record to show that [he] was particularly amenable was error.” But the district court has the discretion to determine *whether* circumstances are substantial and compelling so as to permit departure. See *State v. Walker*, 913 N.W.2d 463, 468 (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.” (emphasis added)). Here too, the district court considered factors that might have supported a departure “if they had been substantial or compelling.” *Id.* But having considered Oleson’s primary reasons for a departure, the district court acted within its discretion by concluding that Oleson demonstrated mere amenability to probation but failed to demonstrate his *particular* amenability to probation. This is not one of the “rare” cases warranting reversal.

Affirmed.