

*This opinion is nonprecedential except as provided by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
A20-0733**

State of Minnesota,
Respondent,

vs.

Randy Joel Bade,
Appellant.

**Filed May 17, 2021
Affirmed
Bryan, Judge**

Blue Earth County District Court
File No. 07-CR-17-3442

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

Patrick R. McDermott, Blue Earth County Attorney, Susan B. DeVos, Assistant County Attorney, Mankato, Minnesota (for respondent)

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

Considered and decided by Bratvold, Presiding Judge; Bryan, Judge; and Halbrooks, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

BRYAN, Judge

In this direct appeal from judgment of conviction for first-degree controlled-substance sale, appellant challenges the accuracy of his guilty plea and the denial of his motion for a downward dispositional departure. Because the parties established a factual basis for each element of the offense, we conclude that appellant entered an accurate guilty plea. In addition, because the district court gave appropriate weight to each of the relevant factors, we conclude that the district court did not abuse its sentencing discretion in determining that appellant was not particularly amenable to probation.

FACTS

In September 2017, respondent State of Minnesota charged appellant Randy Bade with three counts of first-degree sale of a controlled substance: sale of 17 grams or more of cocaine or methamphetamine within a 90-day period, aiding and abetting that sale, and conspiracy to commit that sale. The state amended the complaint in April 2018 to add three additional counts of first-degree controlled-substance sale. The complaint alleged that police officers executed a search warrant on Bade's shop, where they discovered drug paraphernalia, evidence of drug sale, and 282 grams of methamphetamine.

In November 2019, Bade agreed to enter an *Alford* plea.¹ The agreement called for a guilty plea to one count of first-degree sale of methamphetamine, in exchange for a

¹ An *Alford* plea allows the defendant to enter a guilty plea, while maintaining a claim of innocence. *State v. Goulette*, 258 N.W.2d 758, 761 (Minn. 1977) (adopting *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160 (1970)).

dismissal of the remaining five counts. At the same time, Bade also signed a plea petition and an addendum summarizing the state's evidence against him. The addendum stated, "I have reviewed the evidence that the state will offer against me if I have a trial," and "I believe that there is a substantial likelihood that I will be found guilty, beyond a reasonable doubt, of the offense to which I am pleading if the following state's evidence is presented against me at trial." The addendum then generally described the state's anticipated trial evidence:

The State would call witnesses that would testify to the following: On or about September 12, 2017, the Minnesota River Valley Drug Task [Force] ("DTF") spoke with an individual who stated they had purchased methamphetamine from me on September 11, 2017, in Mankato, MN. The DTF then obtained a search warrant for my shop located at 1800 6th Avenue in Mankato, Minnesota and executed that search warrant on September 12, 2017. During the search of my shop, law enforcement found more than 17 grams of methamphetamine, as well as drug paraphernalia and evidence consistent with methamphetamine sales. The suspected controlled substance found by DTF in my shop was later tested by a scientist at the Minnesota BCA, which revealed the presence of methamphetamine in a mixture weighing over 17 grams. DTF also obtained a search warrant for my cellphone records and Verizon provided those pursuant to the warrant. The text message records included conversations indicative of narcotics sales. It is expected that the State would call co-defendants that would testify I was involved in the possession and sale of methamphetamine at my shop. I agree that if a jury heard and believed the foregoing evidence, considering the standard of proof beyond a reasonable doubt and the presumption of innocence, there is a substantial likelihood the jury would find me guilty of 1st Degree Sale of a Controlled Substance.

At the plea hearing, the district court questioned Bade about the plea petition and *Alford* addendum. The district court confirmed that Bade had been given the opportunity

to review the criminal complaint, police reports, and other relevant documents. Bade also acknowledged that the addendum contained a summary of the evidence the jury would hear if the matter proceeded to a jury trial. The district court asked Bade if he believed “that the evidence the [s]tate would likely offer against [him] . . . at trial, such as in the summary, would be sufficient for the jury to find [him] guilty of the offense of first degree controlled substance sale beyond a reasonable doubt.” Bade testified that he believed that the jury would find him guilty based on the anticipated evidence. Relying on this testimony, the district court found that Bade voluntarily, knowingly, and intelligently entered his plea. In addition, based on the facts offered to support the plea, including Bade’s testimony and the summary of the evidence in the addendum, the district court agreed with the parties that there was sufficient evidence to support a guilty verdict. The district court ordered a presentence investigation (PSI) report and set the matter for sentencing.

The PSI report recommended that Bade receive a presumptive 65-month prison sentence. Bade moved for a downward dispositional departure, arguing that he was particularly amenable to probation. Along with his sentencing memorandum, Bade submitted multiple letters of support from family and friends. Bade emphasized that he had no criminal record, had cooperated with the legal proceedings, and received plenty of support from his friends and family members. The state opposed the downward-dispositional-departure motion, asking for imposition of the presumptive sentence.

The district court explained its consideration of the factors that weighed for and against a downward dispositional departure. It found that Bade’s lack of criminal history and the support of his family and friends favored a downward dispositional departure. But

the district court found that most factors weighed in favor of the presumptive sentence, including Bade's age (35 years old), his lack of remorse as evidenced by his entering an *Alford* plea rather than an ordinary guilty plea, his attitude in court, which the district court described as "nothing particularly remarkable," and his failure to demonstrate any "particular cooperation." The district court concluded that Bade failed to show that the overall weight of these factors warranted a downward dispositional departure. The district court sentenced Bade to 65 months in prison. Bade appeals his conviction and sentence.

DECISION

I. Accuracy of Bade's *Alford* Plea

Bade first argues that his *Alford* plea was inaccurate because it lacked a sufficient factual basis.² Because the plea colloquy and addendum established a factual basis for each element of the offense, we conclude that the plea was accurate, and therefore, valid.

For a plea to be constitutionally valid, it must be accurate, voluntary, and intelligent. *State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983). The validity of a guilty plea is a question of law, which we review de novo. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). This appeal only concerns the accuracy of Bade's guilty plea. The accuracy requirement is meant "to protect a defendant from pleading guilty to a more serious offense than he could be convicted of were he to insist on his right to trial." *Trott*, 338 N.W.2d at 251. For a

² Bade also raises various arguments in a pro se supplemental brief. He lists multiple issues generally, including "lack of evidence, exculpatory evidence, withholding Brady material, inadmissible hearsay, improper search and seizure, ineffective assistance of counsel, malicious prosecution, and deprivation of rights under color of law." Because Bade does not include any legal authority to support his arguments, we deem them forfeited and decline to address them. See *State v. Krosch*, 642 N.W.2d 713, 719-20 (Minn. 2002).

guilty plea to be accurate, a proper factual basis must be established. *Raleigh*, 778 N.W.2d at 94. “[B]ecause of the inherent conflict in pleading guilty while maintaining innocence,” the factual basis for an *Alford* plea must “provide the court with a basis to independently conclude that there is a *strong* probability that the defendant would be found guilty of the charge to which he pleaded guilty.” *State v. Theis*, 742 N.W.2d 643, 649 (Minn. 2007). Parties can satisfy this requirement by having a discussion about the anticipated evidence on the record at the plea hearing:

[T]he better practice is for the factual basis to be based on evidence discussed with the defendant on the record This discussion may occur through an interrogation of the defendant about the underlying conduct and the evidence that would likely be presented at trial, the introduction at the plea hearing of witness statements or other documents, . . . the presentation of abbreviated testimony from witnesses likely to testify at trial, or a stipulation by both parties to a factual statement in one or more documents submitted to the court at the plea hearing.

Id. (citations omitted). In addition, the defendant must agree that the evidence the state would likely offer against him at trial is sufficient to convict him of the offense. *Id.*

Here, Bade entered a guilty plea to first-degree sale of a controlled substance, which has the following essential elements: (1) the defendant sold one or more mixtures of at least 17 grams containing methamphetamine; (2) the defendant knew or believed that the substance was a controlled substance; (3) the sale was without lawful authority; and (4) venue. Minn. Stat. § 152.021, subd. 1(1) (2016); *see also* 10A *Minnesota Practice*, CRIMJIG 20.02 (2020). Bade challenges the factual basis of his *Alford* plea, arguing that

the summary of the anticipated evidence offered in support of the plea could not establish the second and third elements. We are not persuaded.

Bade first argues that there was an insufficient factual basis to show that he knew or believed that the substance involved in the sales was a controlled substance. Bade correctly notes that the *Alford* addendum does not specifically say that he knew that the substance was methamphetamine. But knowledge generally must be inferred from the evidence, *State v. Mattson*, 359 N.W.2d 616, 617 (Minn. 1984), and the addendum includes a sufficient basis to infer knowledge that the substance was methamphetamine. For example, the addendum described anticipated evidence that included Bade's text messages containing "conversations indicative of narcotics sales." In addition, the addendum referred to codefendants as anticipated trial witnesses for the state who would testify that Bade sold methamphetamine in his shop. The addendum also references an informant who gave a statement to law enforcement claiming to have purchased methamphetamine from Bade. Finally, the addendum included the state's anticipated evidence recovered from Bade's shop, including more than 17 grams of methamphetamine, drug paraphernalia, and other "evidence consistent with methamphetamine sales." Given this anticipated evidence, including Bade's own text messages, the district court had a sufficient basis from which to conclude that a jury would find that Bade must have known or believed that the substance was methamphetamine. Thus, the *Alford* plea was accurate regarding the second element of the offense.

Bade also argues that the factual basis failed to establish that Bade lacked lawful authority to sell methamphetamine. Again, Bade is correct that the addendum does not

specifically state that Bade lacked lawful authority to sell methamphetamine. But, this does not require reversal. Bade cites to no authority, and this court is aware of none that authorizes anyone to sell more than 17 grams of methamphetamine. The element is not one that is typically at issue in methamphetamine cases, and Bade fails to explain why it would have been at issue in this case. In addition, and more importantly, a lack of lawful authority may be inferred from the circumstances and the nature of the methamphetamine transactions described in the state's summary of anticipated trial evidence. The sales occurred at Bade's "shop," not a pharmacy or some other location where controlled substances are lawfully sold. The district court could also infer from the description of the anticipated testimony of the codefendants and of the informant that the nature of the methamphetamine sales would convince a jury beyond a reasonable doubt that Bade did not sell methamphetamine under any lawful authority. Thus, we conclude that the plea was also accurate as to the third element of the offense.

Finally, the addendum and the colloquy included Bade's own assessment of the evidence. In writing and in person, Bade stated he had reviewed the evidence that would be offered against him if there were a trial, and that he believed there was a "substantial likelihood" that he would be found guilty based on the state's evidence. Because there was a strong factual basis for all elements of the offense, and because Bade agreed that the evidence was sufficient to support his conviction, his *Alford* plea was accurate and constitutionally valid.

II. Downward Dispositional Departure

Bade also challenges the denial of his departure motion at sentencing. Because the district court gave appropriate weight to each of the relevant factors, we affirm the district court's sentencing decision.

The Minnesota Sentencing Guidelines establish sentences that are presumptively appropriate. Minn. Sent. Guidelines 2.D.1 (Supp. 2017). The district court must pronounce a presumptive sentence “unless there exist identifiable, substantial, and compelling circumstances to support a departure.” *Id.* The guidelines provide a nonexclusive list of factors that may be used to support a departure. Minn. Sent. Guidelines 2.D.3 (Supp. 2017). Bade argued for a downward dispositional departure, which “places the offender in a different setting than that called for by the presumptive guidelines sentence”—such as probation instead of imprisonment. *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016). We review the denial of a dispositional departure request for an abuse of discretion. *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014). A district court is not required to grant a departure even if there are grounds that would support it. *State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006); Minn. Sent. Guidelines 2.D.3 (providing that the factors “may” be used to depart). 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).

Bade argued for a downward dispositional departure based on his particular amenability to individualized treatment in a probationary setting. Minn. Sent. Guidelines 2.D.3.a.(7). For a departure to be warranted on this basis, the defendant must

be *particularly* amenable to probation—meaning 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.” *Soto*, 855 N.W.2d at 309 (quotation omitted). In *State v. Trog*, the supreme court listed several factors that are relevant to whether a defendant is particularly amenable to probation: “the defendant’s age, his prior record, his remorse, his cooperation, his attitude while in court, and the support of his friends and/or family.” 323 N.W.2d 28, 31 (Minn. 1982). Here, the district court denied Bade’s departure request after considering each of the *Trog* factors and determining that most factors weighed against a departure. On appeal, Bade challenges the district court’s weighing of the *Trog* factors, arguing that the factors weighed in favor of a finding that he was particularly amenable to probation. For the following reasons, we conclude that the district court did not abuse its discretion in its weighing of the factors.

The district court determined that two *Trog* factors weighed in favor of a downward departure. Bade had very little criminal history, and many friends and family members submitted letters of support to the district court. While both weighed in favor of departure, the district court discounted the support of family and friends because at least one family member insisted that Bade was innocent. We discern no error in the district court’s weighing of these factors.

The district court determined that the other applicable *Trog* factors compelled denial of Bade’s departure motion. First, after considering the Minnesota Supreme Court’s analysis in *Soto*, the district court determined that Bade’s age (35) weighed against departure. See *Soto*, 855 N.W.2d at 310 (holding that the district court erred by finding

that a defendant's age made him particularly amenable to probation when he was 37 years old, which was older than 60 percent of defendants convicted of the same crime). Second, the district court determined that Bade's lack of remorse, lack of cooperation, and attitude in court also weighed against a departure. Bade demonstrated "absolutely no remorse for the criminal enterprise in which he perpetuated." The district court acted within its discretion when it reasoned that maintaining one's innocence is inconsistent with showing remorse. Likewise, Bade "demonstrated no particular cooperation." Although Bade asserts that he was cooperative and respectful to the district court, the district court correctly noted that "showing up at hearings is the bottom of the expectation."³ The district court did not abuse its discretion in requiring more than mere attendance to show sufficient cooperation to justify a dispositional departure. Similarly, the district court acted within its discretion when it reasoned that avoiding trial through a guilty plea, by itself, does not show that a person has been particularly cooperative with law enforcement or the state. The district court also commented that there was "nothing particularly remarkable" about Bade's attitude in court that could support a departure. Again, the district court acted within its discretion in requiring Bade to display an attitude that was somehow different from other defendants.

³ We observe that Bade does not assign error to the district court's factual findings underlying its reasoning. Instead, Bade challenges the decision by the district court that a given factor weighed in favor or against his motion. To the extent that Bade impliedly disputes the district court's characterizations or factual findings, however, we conclude that the record supports the district court's findings.

In sum, this is not that “rare case” requiring reversal. *Kindem*, 313 N.W.2d at 7. We discern no abuse of discretion because the district court carefully considered the applicable factors and appropriately weighed those that favored departure against those that did not. We affirm the district court’s denial of Bade’s departure motion.

Affirmed.