

*This opinion is nonprecedential except as provided by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
A20-0828**

State of Minnesota,
Respondent,

vs.

Bobbie Christine Bishop,
Appellant.

**Filed April 5, 2021
Affirmed
Slieter, Judge**

Otter Tail County District Court
File No. 56-CR-18-1035

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

Michelle M. Eldien, Otter Tail County Attorney, Benjamin G. A. Olson, Assistant County Attorney, Fergus Falls, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Lauermann, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Hooten, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

In this direct appeal from final judgment of conviction for aiding and abetting second-degree unintentional murder, appellant argues that the district court abused its discretion by refusing to grant a downward dispositional departure and imposing a

maximum presumptive sentence. The district court carefully considered the record in response to appellant's departure request before denying it, and the record reveals no compelling circumstances to indicate that a maximum presumptive sentence was improper. Therefore, we affirm.

FACTS

The state charged appellant Bobbie Christine Bishop in 2018 with second-degree murder (without intent), first-degree manslaughter, two counts of second-degree manslaughter, and malicious punishment of a child (great bodily harm) following the death of a six-year-old child in her care. The probable-cause portion of the complaint describes the following events. Bishop brought the child to an emergency room in Fergus Falls. Wearing only a diaper at the time, the child was described by medical staff as "unresponsive," "limp," "not breathing," having "no pulse," and being "cold to the touch." Examination of the child revealed several infected wounds, sores, burns, and abrasions across the child's body. Following unsuccessful attempts at resuscitation, hospital staff declared the child dead.

Bishop told investigators that she and another individual, W.W., had been watching the child and the child's brother since 2017 and that she brought the child to the ER after discovering that the child was not breathing and blue in color. Both Bishop and W.W. told investigators that they had punished the child in several ways including spanking him, hitting him with a belt, and wrapping him in duct tape.

Bishop completed three rule 20.01 competency examinations, after which the district court determined that she was competent to stand trial.¹ Bishop pleaded guilty to second-degree murder (without intent) pursuant to an *Alford* plea.² The district court accepted the plea and entered judgment of conviction. Bishop requested the court grant her a downward dispositional departure or sentence her to a minimum presumptive sentence of 128 months' imprisonment. The state requested a mid-range presumptive sentence of 150 months' imprisonment. The district court imposed a maximum presumptive sentence of 180 months' imprisonment. Bishop appeals.

DECISION

Appellate courts reverse a district court's sentencing decision only if there was an abuse of discretion. *See State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014). "[A] court abuses its discretion when its decision is based on an erroneous view of the law." *Id.* at 308 n.1 (quotation omitted). "[T]o the extent a decision to depart turns on a question of law," such as whether the facts of a case are sufficiently substantial and compelling so as to support a departure, we review the legal question *de novo*. *Id.*

The Minnesota Sentencing Guidelines establish presumptive sentences for criminal offenses. *See* Minn. Stat. § 244.09, subd. 5 (2016). For all criminal offenses, the presumptive sentence is "presumed to be appropriate for all typical cases sharing criminal

¹ Bishop does not challenge this finding of competency.

² With an *Alford* plea, a defendant acknowledges that the state has sufficient evidence to obtain a conviction without expressly admitting guilt. *See North Carolina v. Alford*, 400 U.S. 25, 37-38, 91 S. Ct. 160, 167-68 (1970); *see also State v. Goulette*, 258 N.W.2d 759 (Minn. 1977).

history and offense severity characteristics.” Minn. Sent. Guidelines 1B.13 (Supp. 2017). District courts must pronounce a sentence within the presumptive range for the particular offense “unless there exist identifiable, substantial, and compelling circumstances to support a departure.” Minn. Sent. Guidelines 2.D.1 (Supp. 2017); *see also Soto*, 855 N.W.2d at 308.

Particular amenability to probation is one such mitigating factor, and “will justify departure in the form of a stay of execution of a presumptively executed sentence.” *Id.* (quotation omitted). However, the district court is not required to depart even if facts exist that would support a finding of particular amenability to probation. *See State v. Pegel*, 795 N.W.2d 251, 253-54 (Minn. App. 2011) (stating that the “mere fact that a mitigating factor is present” does not require the district court to depart). A refusal to depart warrants reversal only in “rare” circumstances. *State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006).

In evaluating whether substantial and compelling circumstances for departure exist, courts may consider the defendant’s age, prior criminal record, remorse, cooperation, attitude in court, and support from family or friends. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). Bishop argues that her lack of criminal history, remorse, cooperation during the plea hearing, and support from family and friends establish that she is particularly amenable to probation.

The presentence investigation report (PSI) showed that Bishop had a criminal-history score of zero, and the record demonstrates that Bishop was remorseful and cooperative during the plea hearing and had the support of family. The district court recognized these facts, stating that “Ms. Bishop may be amenable to probation.”

We next turn to whether the district court’s decision to reject Bishop’s request for a downward dispositional departure was an abuse of discretion. Only if the record reflects the absence of the exercise of discretion may we remand for a resentencing hearing to consider the departure motion. *Pegel*, 795 N.W.2d at 253.

The district court carefully considered the record before imposing its sentence. The district court reviewed the PSI which noted that second-degree murder is a severity-level-ten offense and that the sentencing guidelines called for a presumptive sentence range of 120 to 180 months. The district court listened to a victim-impact statement from the victim’s brother, considered sentencing arguments from both parties, and listened to a statement from Bishop explaining why she believed she was particularly amenable to probation, pointing to her remorse.

In considering Bishop’s proffered reasons for her particular amenability to probation, the district court determined that the “circumstances are simply not adequately addressed through probation.” The district court found Bishop’s role in the child’s death was “significant” and that there were “weeks, perhaps months during which [the victim] was not provided adequate care physically, emotionally, or mentally.” We discern no abuse of discretion in denying the departure request because the district court’s decision was based on a careful review of the record and the sentence is within the sentencing guidelines range. In sum, the district court properly exercised its discretion in denying the departure request.

Bishop also argues that the district court erred by imposing a sentence at the top of the sentencing range. Our court gives great deference to a district court’s sentence “when

the sentence imposed is within the presumptive guidelines range.” *State v. Delk*, 781 N.W.2d 426, 428 (Minn. App. 2010), *review denied* (Minn. July 20, 2010). We only rarely reverse the imposition of a guidelines sentence, *see State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981), and will not modify it “absent compelling circumstances,” *State v. Freyer*, 328 N.W.2d 140, 142 (Minn. 1982).

The Minnesota Sentencing Guidelines grid sets the presumptive sentencing range for an offense of second-degree murder (unintentional) as 120 to 180 months with a mid-range sentence of 150 months. Minn. Sent. Guidelines 4.A (Supp. 2017). The supreme court has stated that “[a]ll three numbers in any given cell constitute an acceptable sentence based solely on the offense at issue and the offender’s criminal history score—the lowest is not a downward departure, nor is the highest an upward departure.” *State v. Jackson*, 749 N.W.2d 353, 359 n.2 (Minn. 2008). Because the imposed sentence is within the presumptive range provided by the sentencing guidelines and the record reveals no compelling circumstances requiring departure, the district court did not abuse its discretion by imposing maximum presumptive sentence.

Affirmed.