

*This opinion is nonprecedential except as provided by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
A20-0835
A20-0837**

State of Minnesota,
Respondent,

vs.

Christopher Charles Clinton Ames,
Appellant.

**Filed March 22, 2021
Affirmed in part, reversed in part, and remanded
Worke, Judge**

Crow Wing County District Court
File Nos. 18-CR-18-894, 18-CR-19-3849

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

Donald F. Ryan, Crow Wing County Attorney, Candace Prigge, Assistant County Attorney, Brainerd, Minnesota (for respondent)

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

Considered and decided by Reyes, Presiding Judge; Worke, Judge; and Kalitowski, Judge.*

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

NONPRECEDENTIAL OPINION

WORKE, Judge

In this consolidated appeal from the judgment of conviction in one matter and an associated probation revocation, appellant argues that the district court (1) miscalculated his criminal-history score, (2) abused its discretion by denying his request for a downward dispositional departure, (3) abused its discretion by revoking his probation, and (4) erroneously added a conditional-release term to his sentence. We affirm the district court's decisions to deny appellant's motion for a sentencing departure and revoke his probation. But we reverse and remand the determination of appellant's criminal-history score and imposition of the conditional-release term.

FACTS

A20-0835

In April 2018, appellant Christopher Charles Clinton Ames pleaded guilty to violating the requirements for registering as a predatory offender. The presumptive sentence was 30 months in prison, and the sentencing worksheet noted a ten-year conditional-release term was required if the sentence was executed.

Ames sought a dispositional departure because he “want[ed] to do something different with [his] life.” The prosecutor stated that she was familiar with Ames since he was “a kid” and that he had to be “getting tired of this.” She stated that, even though the state agreed to a departure, she did not know if Ames was particularly amenable to probation, but hoped that he would take advantage of it. The district court sentenced Ames to 36 months in prison, but stayed execution for five years. Ames's probation included the

following conditions: remain law abiding, no use or possession of alcohol or controlled substances, comply with the rules of probation, and successfully complete treatment at Teen Challenge. The district court told Ames “I want to emphasize . . . it’s time to change the direction of your life.”

In October 2019, probation alleged that Ames violated his probation by failing to refrain from the use of controlled substances and remain law abiding. A probation-violation report discussed Ames’s experience on probation. First, Ames requested to transfer out of Teen Challenge because he did not “like the rules.” Ames was allowed to transition to another program, but was discharged due to poor attendance. Next, Ames requested to transfer to a program to be near family and friends. Probation approved the transfer, but Ames failed to meet with his agent and was restructured for failing to maintain contact. When Ames finally met with his agent, he submitted a urinalysis that tested positive for methamphetamine. Ames was restructured for using a controlled substance and was directed to meet with his agent. Ames failed to meet his agent and was again restructured for failing to maintain contact. Finally, in September 2019, Ames received new criminal charges.

At a probation-violation hearing, Ames admitted that he failed to refrain from the use of controlled substances, and the district court took judicial notice that Ames pleaded guilty to the new offenses. The district court scheduled a disposition hearing to occur at Ames’s sentencing on the new offenses.

In September 2019, Ames was charged with fifth-degree possession of methamphetamine and fleeing a peace officer in a motor vehicle. According to the complaint, Ames evaded law enforcement by traveling at excessive speeds and ignoring stop signs. Deputies had to deploy stop sticks to flatten the vehicle's tires. Officers arrested Ames and found methamphetamine on him. Ames pleaded guilty to the offenses.

A sentencing worksheet showed that Ames had six criminal-history points. Ames moved to correct his criminal-history score, claiming that it incorrectly assigned one point for a receiving-stolen-property conviction, which is a severity-level-two offense that should have been assigned one-half of a point. Thus, he asserted that, because no partial points are given, his criminal-history score was five. The state countered that the offense involved a stolen motor vehicle, and motor-vehicle theft is a severity-level-three offense that is assigned one point; thus, Ames's six-point criminal-history score was correct.

Ames also moved for a downward dispositional departure. Ames argued that he is an addict who would benefit from programming and that his addiction explained his new offenses. He asserted that he experienced abuse and tragedy in his childhood that resulted in him suffering from post-traumatic stress disorder. Finally, Ames claimed to accept responsibility, expressed that he desired change, and stated that he would participate in Teen Challenge.

A presentence investigation (PSI) report noted that the presumptive sentence was 21 months in prison for the possession offense and 19 months in prison for the fleeing offense. The PSI report noted that the current offense showed that Ames was a danger to

himself, the passenger in the vehicle at the time of the offense, and the community. The PSI report concluded that, because Ames had a long history of violations while in the community, he was not particularly amenable to probation and should be incarcerated for as long as possible.

Combined disposition and sentencing

The district court entered an order concluding that Ames's six-point criminal-history score was correct because the receiving-stolen-property conviction was a severity-level-three offense that is assigned one point. The district court denied Ames's request for a downward dispositional departure and sentenced him to 21 months in prison for the possession conviction, and a concurrent 19 months in prison for the fleeing conviction. The district court also revoked Ames's probation, executed his 36-month prison sentence, and added a ten-year conditional-release term. This consolidated appeal followed.

DECISION

Criminal-history score

Ames first challenges his criminal-history score. The district court determined that Ames's six-point criminal-history score was correct, agreeing with the state that the receiving-stolen-property conviction is a severity-level-three offense that is assigned one point. When the assignment of a criminal-history point turns on interpreting the sentencing guidelines, this court reviews the district court's determination of a criminal-history score *de novo*. *State v. Strobel*, 932 N.W.2d 303, 306 (Minn. 2019).

According to the complaint filed in 2009, Ames crashed a stolen vehicle. Ames pleaded guilty to receiving stolen property under Minn. Stat. § 609.53, subd. 1 (2008).

Under section 609.53, subdivision 1, a “person who receives, possesses, transfers, buys or conceals any stolen property or property obtained by robbery, knowing or having reason to know the property was stolen or obtained by robbery, may be sentenced in accordance with the provisions of section 609.52, subdivision 3.” Under Minn. Stat. § 609.52, subd. 3(3)(d)(v) (2008), whoever commits a theft may be sentenced to imprisonment for not more than five years or to payment of a fine up to \$10,000, or both, if the value of the stolen property is not more than \$1,000, and is a motor vehicle.

Ames argues that a conviction for receiving stolen property valued at less than \$5,000 is a severity-level-two offense that is assigned one-half of a point. Ames is correct. *See* Minn. Sent. Guidelines 2.B.1.a, 5.A (Supp. 2009). The state counters that Ames pleaded guilty to an unranked offense, and so we should look to a ranked offense with similar conduct to ascertain the correct severity level. The state asserts that Ames’s admitted-to conduct is the same as using a motor vehicle without the owner’s permission, which is a severity-level-three offense assigned one point. *See* Minn. Sent. Guidelines 2.B.1.a, 5.A. But Ames did not plead guilty to unauthorized use of a motor vehicle. He pleaded guilty to receiving stolen property valued less than \$5,000, and as such, the district court erred in calculating Ames’s criminal-history score. We reverse the district court’s conclusion that Ames’s criminal-history score is six and remand for recalculation consistent with this opinion.¹

¹ Recalculation of Ames’s criminal-history score will likely change the presumptive sentences for the current offenses and require a resentencing hearing.

Dispositional departure

Ames next argues that the district court abused its discretion by denying his motion for a downward dispositional departure.

A sentence that is prescribed by the sentencing guidelines is “presumed” appropriate. *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014) (quotation omitted). A district court may depart from a presumptive sentence only if “identifiable, substantial, and compelling circumstances” warrant a departure. *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016) (quotation omitted). Appellate courts “afford the [district] court great discretion in the imposition of sentences and reverse . . . only for an abuse of that discretion.” *Soto*, 855 N.W.2d at 307-08 (quotation omitted). “[I]t would be a rare case which would warrant reversal of the refusal to depart.” *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

In considering a motion for a downward dispositional departure, a district court focuses on the defendant and whether he is particularly amenable to probation. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982) (stating that in assessing whether a defendant is particularly amenable to probation, a district court may consider age, prior record, remorse, cooperation, attitude in court, and support of family and friends). But, even if the record shows that the defendant would be amenable to probation, a district court is not required to depart from a presumptive sentence. *State v. Olson*, 765 N.W.2d 662, 664-65 (Minn. App. 2009).

Ames claims that he is entitled to probation because he is young, he took accountability, he planned to return to Teen Challenge, he was respectful and cooperative,

and he has been successful on probation. He also claims that departures have been granted in cases with similar mitigating circumstances, such as for defendants who, like him, have experienced childhood trauma and suffer from mental illness.

The record supports the district court's denial of Ames's motion for a departure. First, although Ames was 30 years old at the time of sentencing, he has an extensive criminal history. When the prosecutor agreed to a dispositional departure on the registration-violation offense, she noted her familiarity with Ames and stated that she was uncertain as to whether Ames was particularly amenable to probation. At that point, the district court emphasized that Ames needed to change his life. But Ames ultimately violated the terms of his probation.

Ames claims that he has shown success on probation, but he failed to comply with previous conditions—he used methamphetamine and he pleaded guilty to new charges. Ames claims that he will enter Teen Challenge, but he previously requested to transfer out of Teen Challenge, claiming that the program did not align with his beliefs. He then failed to attend the new program.

The PSI report noted that the possession and fleeing offenses showed that Ames was dangerous to himself and the community. It also noted that Ames had many violations while on probation and numerous restructures, which showed that he was not particularly amenable to probation and required incarceration. The district court stated that it considered “all of the evidence, recommendations, and arguments” before concluding that “there are no substantial and compelling reasons that justify departure in the matter.” The

district court did not abuse its discretion by denying Ames's motion for a dispositional departure.

Probation revocation

Ames argues that the district court abused its discretion by revoking his probation because the policies favoring probation are not outweighed by the need for confinement. He argues that the district court even stated: "In light of the evidence presented, the policies favoring probation are *not* outweighed by the need for confinement." (Emphasis added.)

The district court stated:

The violations [of using a controlled substance and failing to remain law abiding] . . . are found to be intentional and inexcusable. In light of the evidence presented, the policies favoring probation are *not* outweighed by the need for confinement. [Ames] received a dispositional departure and had been given an opportunity to complete treatment at a facility of his choosing. [Ames] quit attending the treatment program, failed to stay in contact with his agent as requested, and used drugs for four months before being charged with two new felony level offenses.

(Emphasis added.) Considering the district court's statements and decision, the inclusion of the word "not" in that location was a clerical error.²

Ames argues that even if it was a clerical error, the district court still abused its discretion by revoking his probation because it failed to balance his constitutional interest in freedom and the interests of rehabilitation with the interests of public safety.

The district court has broad discretion in determining if there is sufficient evidence to revoke probation. *State v. Austin*, 295 N.W.2d 246, 249-50 (Minn. 1980). To revoke

² This clerical error should be corrected on remand.

probation, a district court must “1) designate the specific condition or conditions that were violated; 2) find that the violation was intentional or inexcusable; and 3) find that [the] need for confinement outweighs the policies favoring probation.” *Id.* at 250. The burden of proof is on the state to establish each element by clear and convincing evidence. Minn. R. Crim. P. 27.04, subds. 2(1)(c)b, 3(1). We review de novo whether the district court made the findings required for revocation of probation. *State v. Modtland*, 695 N.W.2d 602, 605 (Minn. 2005).

Ames challenges only the third *Austin* factor—that the need for confinement outweighs the policies favoring probation. In considering the third *Austin* factor, relevant circumstances include whether (1) confinement is necessary to protect the public, (2) the offender is in need of correctional treatment most effectively provided institutionally, and (3) the seriousness of the violations would be unduly depreciated if probation were not revoked. 295 N.W.2d at 251.

The district court stated that Ames had previously been on probation and was unsuccessful, failed to attend treatment, and used drugs for months. The district court also observed that, while on probation, Ames committed two felonies. These comments indicate that Ames requires treatment that will be more effective in prison because he failed treatment while on probation. Also, noting the felony-level charges that were detailed in the PSI report indicates that confinement is necessary to protect the public, and the seriousness of the violations would be unduly depreciated if probation were not revoked. The PSI report noted that the current offenses showed that Ames was a danger to himself

and the community, and that he should be incarcerated after numerous restructures while on probation. The district court did not abuse its discretion by revoking Ames's probation.

Conditional-release term

Finally, Ames argues that the district court erred by adding a ten-year conditional-release term to his registration-violation sentence because conditional-release terms apply only to level-three registrants and there was no evidence that he was a level-three registrant. The state agrees. And the parties are correct. A district court may not impose a ten-year conditional-release term for a conviction of failing to register as a predatory offender absent a jury's finding, or the defendant's admission, that he was a level-three offender at the time of the violation. Minn. Stat. § 243.166, subd. 5a (2016); *State v. Her*, 862 N.W.2d 692, 693 (Minn. 2015). There is neither a jury finding nor an admission by Ames that he is a level-three offender. Accordingly, we reverse the imposition of the conditional-release term and remand for the district court to vacate the conditional-release term.

Affirmed in part, reversed in part, and remanded.