

*This opinion is nonprecedential except as provided by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
A21-0323**

State of Minnesota,
Respondent,

vs.

Tywan George Christopher,
Appellant.

**Filed December 13, 2021
Affirmed
Smith, Tracy M., Judge**

Scott County District Court
File Nos. 70-CR-20-13214, 70-CR-19-19398, 70-CR-19-16014, 70-CR-19-13858

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

Ronald Hovevar, Scott County Attorney, Todd P. Zettler, Assistant County Attorney,
Shakopee, Minnesota (for respondent)

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

Considered and decided by Smith, Tracy M., Presiding Judge; Slieter, Judge; and
Gaïtas, Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this direct appeal from the final judgments of conviction for multiple counts of
violating an order for protection and violating a no-contact order, appellant Tywan George

Christopher challenges his sentences, arguing that the district court abused its discretion by denying his motion for a dispositional departure. We affirm.

FACTS

Respondent State of Minnesota charged Christopher in four separate complaints, but the district court held one plea hearing for all four cases. At the plea hearing, Christopher pleaded guilty to two counts of violating an order for protection in violation of Minn. Stat. § 518B.01, subd. 14(a) (2018), and two counts of violating a no-contact order in violation of Minn. Stat. § 629.75, subd. 2(d)(1) (2020).¹

At the sentencing hearing, Christopher moved for a downward dispositional departure, arguing that he was particularly amenable to probation. The district court denied Christopher's motion and sentenced Christopher to presumptive sentences under the Minnesota Sentencing Guidelines. For the first incident, the district court sentenced Christopher to 21 months' probation.² For the second, third, and fourth incidents, the district court sentenced Christopher to imprisonment for 24, 27, and 30 months, respectively. The district court ordered that the sentences be served concurrently.

Christopher appeals.

¹ With respect to the two counts for violating a no-contact order, the 2018 statute was in effect for one count while the 2020 statute was in effect for the other. Because the statute in effect in 2018 is identical to 2020, the opinion refers to the more recent version.

² Christopher chose to execute this sentence.

DECISION

Christopher’s sole argument on appeal is that the district court abused its discretion when it denied his motion for a downward dispositional departure.

District courts have broad discretion in sentencing. *State v. Soto*, 855 N.W.2d 303, 305 (Minn. 2014). We review a district court’s sentencing decision for an abuse of discretion. *See id.* at 307-08. A district court “abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record.” *Riley v. State*, 792 N.W.2d 831, 833 (Minn. 2011).

The district court’s sentencing discretion is limited by the Minnesota Sentencing Guidelines, which prescribe sentences that are “presumed to be appropriate.” Minn. Sent. Guidelines 2.D.1 (2020)³; *see Soto*, 855 N.W.2d at 308 (citing this provision of the Minnesota Sentencing Guidelines). A district court may depart from a presumptive sentence only if “identifiable, substantial, and compelling circumstances” warrant departure. *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016) (quoting Minn. Sent. Guidelines 2.D.1). To maintain uniformity and proportionality in sentencing, departures from the presumptive sentence are discouraged. *State v. Rund*, 896 N.W.2d 527, 532 (Minn. 2017) (quotation omitted).

If a defendant requests a downward dispositional departure, a district court must determine whether “mitigating circumstances are present” and, if so, whether “those

³ The 2019 version of the sentencing guidelines apply to the order-for-protection violations and one of the no-contact-order violations. The 2020 version applies to the other no-contact order violation. Because the portions cited in this opinion are identical between the two versions, the opinion refers to the more recent version.

circumstances provide a substantial and compelling reason not to impose a guidelines sentence.” *Soto*, 855 N.W.2d at 308 (quotations omitted). But “the mere fact that a mitigating factor is present in a particular case does not obligate the court” to grant a dispositional departure. *State v. Pegel*, 795 N.W.2d 251, 253-54 (Minn. App. 2011) (quotation omitted). We reverse a district court’s refusal to depart only in a “rare” case. *State v. Walker*, 913 N.W.2d 463, 468 (Minn. App. 2018) (quotation omitted).

The guidelines provide a nonexclusive list of mitigating circumstances that may be used to support a departure, including whether the defendant is particularly amenable to probation. Minn. Sent. Guidelines 2.D.3.a(7) (2020). District courts apply the *Trog* factors when evaluating whether a defendant is particularly amenable to probation. *See State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). These factors include the defendant’s age, prior record, remorse, cooperation, attitude in court, and support from family and friends. *Id.*

Christopher argues that the district court abused its discretion by determining that he was not particularly amenable to probation. Christopher’s argument fails for two reasons. First, even if the district court had found that Christopher was particularly amenable to probation, it was not required to depart from the presumptive sentence. *See Pegel*, 795 N.W.2d at 253-54.

Second, the record supports the district court’s determination that Christopher is not particularly amenable to probation. The district court explained its reasons for denying Christopher’s motion for a downward dispositional departure, stating:

I simply don’t have facts before me establishing that you will remain law abiding when you had an order for protection violation in 2019, were released, and then there was another

one, and then there was another one, and then there was another one. You know, I have you on probation in Dakota County and the probation officer asking for you to just serve a jail sentence and be discharged because they don't believe you're amenable to probation. I don't have a file before the court that I can use to make findings that you are amenable to probation unfortunately.

The record reflects that Christopher has several prior offenses including both felonies and misdemeanors. He has a long history of drug use. And Christopher was on probation for gross-misdemeanor domestic assault and violation of a no-contact order when he committed these offenses. Christopher's probation supervisor stated in the presentence investigation report that Christopher

is very personable and well-intended at times, but lacks follow through. [The probation supervisor] stated Mr. Christopher often seems like he is ready to make lasting change but tends to be unpredictable and cannot maintain stability for more than a few months at a time. Based on [the probation supervisor's] experience with Mr. Christopher [the probation supervisor] would have a difficult time advocating for any type of departure. Mr. Christopher admitted to his fourth probation violation in the Dakota County cases in March 2020.

On this record, the district court's finding that Christopher is not particularly amenable to probation is fully supported, and the district court did not abuse its discretion by denying Christopher's motion for a downward dispositional departure.

Affirmed.