

*This opinion is nonprecedential except as provided by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
A21-0737**

State of Minnesota,
Respondent,

vs.

Tracy Dean Bullock,
Appellant.

**Filed March 7, 2022
Affirmed
Worke, Judge**

Ramsey County District Court
File No. 62-CR-19-2364

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

John Choi, Ramsey County Attorney, Jeffrey A. Wald, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Max B. Kittel, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Ross, Judge; and Larkin, Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant argues that the district court abused its discretion by denying his motion for a downward dispositional departure. We affirm.

FACTS

On a March evening, a father and his son (son 1) were in father's other son's (son 2's) driveway fixing a car radio. Appellant Tracy Dean Bullock came outside of his house and stared at them from across the street. Bullock returned inside his house briefly and, upon returning outside, resumed staring at father and son 1 from across the street. Bullock eventually shouted at the two men. Father responded by shining his flashlight at Bullock. Bullock drew a handgun and pointed it at father and son 1. Bullock then reentered his home and came back outside carrying an assault rifle with a scope and light.

Son 2 and his partner arrived home and saw father crouching behind their trash can. They went inside the house. Son 2's partner later told police that Bullock had "pointed [a] red laser light" into the home and that it was on her forehead and on each of her children during the incident. She stated that she was afraid Bullock would shoot her and the children. Son 2 and his partner have now moved to a new house away from the area. Some of son 2's children, as well as son 1 and father, have undergone therapy as a result of the incident.

Bullock told police that he never had a weapon outside. He stated that one of the victims shined a light on him and asked, "what the f--k are you looking at." He told police that he responded by raising his hand toward the victims, mimicking shooting a gun. After that, he said he went inside, grabbed his flashlight and a bat, and went back outside. He acknowledged that he owns a handgun and also has an assault rifle, registered in his wife's name, with a scope and laser light.

Respondent State of Minnesota charged Bullock with one count of second-degree assault with a dangerous weapon in violation of Minn. Stat. § 609.222, subd. 1 (2018), and three counts of threats of violence in violation of Minn. Stat. § 609.713, subd. 1 (2018). The state later indicated that it would add another second-degree-assault charge and request consecutive sentencing.

Bullock entered an *Alford* plea to the second-degree assault charge and one count of threats of violence, which the district court accepted.¹ Bullock then filed a motion requesting a dispositional departure or, in the alternative, a downward durational departure. In support of his motion, he submitted several documents, including a letter from his dispositional advisor advocating for probation, data from the Minnesota Sentencing Guidelines showing that many defendants who, like Bullock, have no criminal history and are convicted of second-degree assault receive departures, and letters from friends and relatives in support of Bullock. Bullock also submitted evidence showing that he voluntarily began treatment for alcoholism.

At a sentencing hearing, the district court found Bullock guilty and convicted him in accordance with his *Alford* plea. It then denied Bullock's motion for a dispositional departure and imposed the presumptive sentence of 36 months in prison on the assault count and imposed a stayed 15-month sentence on the threats-of-violence count. This appeal followed.

¹ A defendant may plead guilty even though he maintains innocence under *North Carolina v. Alford*, 400 U.S. 25, 38 (1970).

DECISION

Bullock argues that the district court abused its discretion by denying his motion for a dispositional departure, asserting that the district court improperly relied on his lack of remorse alone. We are not persuaded.

We review a district court's decision whether to depart from a presumptive sentence for an abuse of discretion. *State v. Schmit*, 601 N.W.2d 896, 898 (Minn. 1999). The Minnesota Sentencing Guidelines limit the district court's sentencing discretion by prescribing presumptive sentences. *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014); Minn. Sent. Guidelines 2.D.1 (2019). A district court must adhere to those presumptive sentences unless "identifiable, substantial, and compelling circumstances" support its decision to depart. Minn. Sent. Guidelines 2.D.1; *Soto*, 855 N.W.2d at 308. Only in a "rare" case will an appellate court reverse a district court's imposition of a presumptive sentence. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

In determining whether to grant a dispositional departure, the district court focuses on the defendant's individual characteristics and what sentence would be best for the defendant and society. *State v. Heywood*, 338 N.W.2d 243, 244 (Minn. 1983). The sentencing guidelines provide a nonexclusive list of mitigating factors that may support a dispositional departure, including when the defendant is "particularly amenable to probation." *Soto*, 855 N.W.2d at 308; *see also* Minn. Sent. Guidelines at 2.D.3.a.7 (2019). The factors the district court may consider in determining whether the defendant is particularly amenable to probation include, but are not limited to, "the defendant's age, his prior record, his remorse, his cooperation, his attitude while in court, and the support of

friends and/or family” (*Trog* factors). *Soto*, 855 N.W.2d at 310 (quoting *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982)). However, the presence of mitigating factors does not obligate the district court to grant a departure. *Wells v. State*, 839 N.W.2d 775, 781 (Minn. App. 2013). Additionally, the district court need not make findings on a decision not to depart from a presumptive sentence. *State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985).

Here, the record shows that several of the *Trog* factors, including Bullock’s age (53), absence of a criminal history, respectful attitude while in court, and support from friends and family, favor a dispositional departure. But, contrary to Bullock’s argument that the only factor weighing against a departure was his lack of remorse, the district court noted that Bullock not only failed to show remorse, but he also failed to take responsibility for his actions or acknowledge harm to the victims. The record shows that the district court carefully considered the relevant factors and information in making its decision. *See id.* at 80-81 (stating that a reviewing court may not interfere with district court’s exercise of discretion when record shows district court carefully evaluated the relevant information before making its decision). And even if mitigating factors favoring a dispositional departure are present, the district court is not obligated to grant a departure. *See Wells*, 839 N.W.2d at 781. The circumstances here do not rise to the level of the “rare” case in which we will intervene in the district court’s sentencing discretion. *Kindem*, 313 N.W.2d at 7.

Bullock contends that the district court “treated remorse ‘as a necessary condition of staying a presumptively executed sentence.’” But it is not error for the district court to emphasize Bullock’s lack of remorse. Further, the district court also expressed concern

about Bullock's failure to recognize harm to the victims.² The district court did not make Bullock's remorse a necessary element for granting a departure. Instead, it weighed Bullock's lack of remorse and failure to recognize victim harm against the mitigating factors and, in its discretion, declined to grant a departure. *Soto*, 855 N.W.2d at 311 (stating that remorse is just one factor among several that the district court may consider in determining whether an offender is particularly amenable to probation); *State v. Fett*, 414 N.W.2d 783, 785 (Minn. App. 1987) (stating that an offender's "inability to recognize *the effect* of his actions negates amenability to treatment" (emphasis added)). This was not an abuse of discretion.

Bullock also contends that his voluntary participation in treatment for alcoholism is a mitigating factor that shows that he is amenable to treatment outside of prison. But his treatment is not connected to these offenses: the record reveals no evidence that Bullock committed the alleged offenses as a result of intoxication. In fact, Bullock denied being

² We disagree with Bullock's characterization at oral argument that any expression of "remorse" for victim harm would have been inconsistent with Bullock maintaining his innocence under *Alford*. Bullock could maintain his innocence of the charges levied but also recognize that his participation, such as it was, in the events caused harm to others involved.

We also emphasize that an *Alford* plea is, despite the defendant maintaining innocence, a guilty plea. See *Miller v. State*, 816 N.W.2d 547, 547 n.1 (Minn. 2012) (explaining that "[a]n *Alford* plea is guilty plea in which a defendant maintains his innocence" but acknowledges the strength of prosecution's case); see also Minn. R. Crim. P. 15. The district court need not accept the defendant's contention that he is innocent. Instead, it finds the factual basis for an *Alford* guilty plea through means other than a defendant's admissions. *State v. Theis*, 742 N.W.2d 643, 648-49 (Minn. 2007). And in accepting a defendant's *Alford* guilty plea, the district court finds the defendant guilty.

intoxicated during the incident and indeed denied wrongdoing of any kind. Here, Bullock's participation in treatment is not a mitigating factor with regard to these particular offenses.

In sum, the district court did not abuse its discretion by denying Bullock's motion for a dispositional departure.

Affirmed.