

*This opinion is nonprecedential except as provided by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
A21-0818**

State of Minnesota,
Respondent,

vs.

Edward David Stahlmann,
Appellant.

**Filed March 28, 2022
Affirmed; motion denied
Reilly, Judge**

Dakota County District Court
File No. 19HA-CR-20-1151

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

Kathryn M. Keena, Dakota County Attorney, Heather Pipenhagen, Assistant County Attorney, Hastings, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Connolly, Judge; and Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

REILLY, Judge

On appeal from his conviction and sentence for check forgery, appellant argues that the district court abused its discretion by denying his motion for a downward dispositional

departure. We affirm the district court's decision. Based on this ruling, we deny as moot respondent's motion to strike portions of appellant's pro se supplemental addendum.

FACTS

In December 2019, appellant Edward David Stahlmann agreed to purchase a restaurant business for about \$400,000. Appellant presented the business owner with a cashier's check and assumed control of the business and its accounts. In January 2020, appellant transferred the company's assets to his personal account and withdrew cash from his account. Several days later, the bank reported that the cashier's check was fraudulent.

Respondent State of Minnesota charged appellant with three counts of check forgery. The state gave notice that it would seek an aggravated durational departure because of appellant's status as a repeat felony offender. The state based its request on appellant's criminal record, which included five or more felony convictions, and the current charges committed as part of a pattern of criminal conduct.

The parties reached a plea agreement. Appellant agreed to plead guilty to one count of check forgery. In exchange, the state agreed to dismiss the remaining charges. At the plea hearing, appellant admitted that he presented a fraudulent check to the business owner. Appellant admitted that he "knew that it wasn't a valid check and, in fact, that it was a forged check." Appellant acknowledged that he used the check to gain control of the business. Appellant also admitted the aggravating factors of engaging in a pattern of

criminal conduct and of being a repeat offender.¹ The district court accepted appellant's guilty plea.

The plea agreement noted that the state could request a sentence of up to 180 months in prison because of the aggravating factors,² and that appellant could request probation or a guidelines sentence. Before sentencing, appellant moved for a downward dispositional departure, claiming that he was particularly amenable to probation. The district court sentenced appellant to 120 months in prison. The district court noted that this was an aggravated durational departure under Minnesota Statutes section 609.1095, subdivision 4 (2020), based on appellant's admission that he engaged in a pattern of criminal conduct. The district court also denied appellant's motion for a downward dispositional departure.

This appeal follows.

DECISION

I. We affirm the district court's sentencing decision.

Appellant challenges the district court's denial of his motion for a downward dispositional departure. Appellant does not challenge the district court's decision to impose an aggravated durational departure. We review a district court's refusal to grant a dispositional departure for an abuse of discretion. *State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006). We will affirm the district court's decision "when the record shows that the [district] court carefully evaluated all the testimony and information presented before

¹ Because appellant admitted these aggravating factors, the district court could use these factors to impose an upward durational departure from the sentencing guidelines.

² Appellant has 23 total criminal-history points with a sentencing guideline range of 44 months to 60 months and a presumptive prison commitment of 51 months.

making a determination.” *State v. Johnson*, 831 N.W.2d 917, 925 (Minn. App. 2013) (quotation omitted), *rev. denied* (Minn. Sept. 17, 2013).

Whether a downward dispositional departure is appropriate typically depends on a defendant’s individual characteristics. *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016). A downward dispositional departure may be appropriate if a defendant shows a “particular amenability to individualized treatment in a probationary setting.” *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014) (quoting *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982)). For a downward dispositional departure to be warranted on this basis, the defendant must be particularly amenable to probation—meaning “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). The district court considers several factors, including “the defendant’s age, his prior record, his remorse, his cooperation, his attitude while in court, and the support of [the defendant’s] friends and/or family.” *Trog*, 323 N.W.2d at 31. Offense-related factors may also be used to support a downward dispositional departure. *Soto*, 855 N.W.2d at 313 (considering circumstances of offense when reviewing departure request).

Appellant claims he is entitled to a downward dispositional departure. A district court need not set forth its reasons for denying a motion for a downward dispositional departure, provided it considered the reasons for departure. *State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985). The district court need only demonstrate that it exercised its discretion by considering the reasons for and against departure. *Id.* at 80-81. Here,

appellant claims he accepted responsibility for his actions, has family support, and is committed to addressing his mental-health issues. Assuming, without deciding, that these *Trog* factors show appellant's particular amenability to probation, "the presence of mitigating factors does not obligate the [district] court to place a defendant on probation or impose a shorter [prison] term." *Wells v. State*, 839 N.W.2d 775, 781 (Minn. App. 2013) (quotation omitted), *rev. denied* (Minn. Feb. 18, 2014).

Appellant also argues in his pro se supplemental brief that his crimes stem from his mental illness, which he prefers to address in counseling in a probationary setting. Appellant claims he "lacks capacity" because of his depression and anxiety, and that the district court should have considered a stayed sentence under Minnesota Statutes section 609.1055 (2020). A district court may, "when consistent with public safety," place an offender "with a serious and persistent mental illness" on probation with the requirement that the offender successfully complete treatment, rather than impose a prison sentence. Minn. Stat. § 609.1055. The decision to place the offender on probation is discretionary. *Id.* Appellant failed to raise this argument in district court and we decline to consider it for the first time on appeal. *See State v. Sorenson*, 441 N.W.2d 455, 457 (Minn. 1989) (noting that reviewing courts "will not decide issues which are not first addressed by the trial court and are raised for the first time on appeal"). Further, even assuming appellant suffered from anxiety and mental illness, the district court did not have to place appellant on probation because the decision to depart is discretionary. *See State v. Abdi*, 855 N.W.2d 546, 548-49 (Minn. App. 2014) (noting that even if section 609.1055 applies, the decision whether to apply it rests with the district court).

The record shows that the district court thoroughly and thoughtfully considered the arguments in support of the departure motion, but did not find that there were identifiable, substantial, or compelling reasons to grant appellant's motion to depart. The district court referenced the presentence investigation report (the PSI) and noted that appellant had

approximately 28 or 30 convictions listed [in the record presented to the court], all of similar types of convictions: issued dishonored check, filing of false taxes, check forgery, theft by swindle, [and] possession of sales of counterfeit checks. All very concerning behavior. What I might add is that these aren't small amounts, which is very concerning to the Court We're looking at almost 17 years of behavior of which [appellant] has served multiple prison terms. But we are still on the same behavior.

The district court observed that appellant displayed "an ongoing pattern of conduct that is dangerous to all of the people and a financial danger to everybody." The district court noted that there are "types of patterns of things that have been going on for so many years [that] are concerning to the Court and financially injures [everyone]." The district court also found that appellant "admitted to aggravating factor[s]" as part of a pattern of criminal conduct. The district court ultimately concluded that appellant was not entitled to a downward dispositional departure. Upon review, we determine that the PSI supports the district court's statements about appellant's escalating criminal behavior. Thus, because the record supports the district court's determination, we discern no abuse of discretion.

The Minnesota Supreme Court recognizes that only a "rare case" merits reversal of a district court's refusal to issue a downward dispositional departure. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). This is not the "rare case" compelling reversal. The district court considered the circumstances for and against departure and concluded that appellant

was not entitled to a downward dispositional departure. The record supports the district court's decision. We thus determine that the district court did not abuse its discretion by denying appellant's motion.

II. The state's motion to strike is moot.

The state moved to strike portions of appellant's pro se supplemental addendum that are not part of the record on appeal. Because we are not considering appellant's argument that he lacked capacity for judgment based on his failure to make this argument at sentencing, the motion to strike the confidential material from the addendum is denied as unnecessary.

Affirmed; motion denied.