

*This opinion is nonprecedential except as provided by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
A21-1580**

State of Minnesota,
Appellant,

vs.

Franky Esquivel Torres,
Respondent.

**Filed June 27, 2022
Affirmed
Bjorkman, Judge**

Kandiyohi County District Court
File No. 34-CR-20-1165

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

Shane D. Baker, Kandiyohi County Attorney, Julianna F. Passe, Assistant County Attorney, Willmar, Minnesota (for appellant)

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

Considered and decided by Bjorkman, Presiding Judge; Bratvold, Judge; and Klaphake, Judge.*

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

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant State of Minnesota challenges the district court's downward dispositional sentencing departure in this first-degree controlled-substance case. Because (1) the record supports the district court's determination that respondent is particularly amenable to probation and (2) the district court did not improperly base the departure on its prior decision to furlough respondent, we affirm.

FACTS

In June 2021, respondent Franky Esquivel Torres pleaded guilty to first-degree sale of methamphetamine and deprivation of custodial rights. The charges stemmed from a series of incidents that took place from 2019 to early 2020. In exchange for Torres's guilty pleas, the state agreed to dismiss all other charges pending in seven open files. There was no agreement as to sentencing.

Torres was taken into custody in December 2020 after he attempted to sell 22.2 grams of methamphetamine to a confidential informant. Torres had a chemical-health assessment in early 2021. The assessor recommended that Torres complete residential chemical-dependency treatment and aftercare programming. A second mental- and chemical-health assessment diagnosed Torres with moderate amphetamine-type substance-use disorder. In April, the district court granted Torres's request for a furlough to attend in-patient chemical-dependency treatment.

By early May, Torres had completed a "medium-intensity" residential treatment program at Red River Recovery Center in Dilworth and was transitioning to "low-intensity

programming.” Torres asked the district court to amend his furlough order to permit him to take an “off-campus” job with a drywall and painting company. The district court granted this request, permitting Torres to do so as long as he continued to reside at Red River Recovery and was “successfully engaging in programming.” The following month, Torres informed the district court that he had successfully completed the program, was ready to be discharged, and planned to receive aftercare services from Anchorage Recovery Center in Moorhead. The district court conditioned Torres’s continued furlough on his participation in aftercare.

Following his June 21 guilty plea, Torres met with a probation officer who prepared a pre-sentence investigation report (PSI). The PSI stated that Torres lived in Moorhead with his family, was working full-time, had successfully completed in-patient treatment, and was compliant with aftercare programming. The PSI outlined Torres’s extensive criminal history—which includes a 2006 felony conviction for drug sales and a 2014 misdemeanor conviction for possessing drug paraphernalia—and noted the serious nature of the current charges. The PSI recommended that the district court impose the presumptive 85-month prison sentence for the controlled-substance conviction.

Torres moved for a downward dispositional departure based on his particular amenability to probation as an addict in full compliance with primary and aftercare treatment. In support of his motion, Torres submitted a memorandum from a dispositional advisor who reviewed his March 2021 chemical- and mental-health assessment and treatment records. The advisor reported that Torres “did very well at Red River Recovery Center,” was “compliant with all requests for drug and alcohol tests,” engaged in “weekly

support group meetings,” and had been sober since December 18, 2020.¹ Torres also submitted treatment records from Anchorage Recovery Center, which demonstrate he had been engaging in group counseling, individual counseling, and recovery support services since being discharged from residential treatment.

On September 1, the district court held a sentencing hearing. After considering the parties’ written submissions, hearing arguments of counsel, and receiving Torres’s own statement, the district court found that Torres has chemical-dependency issues but has been fully compliant “with his primary care and aftercare requirements.” The court acknowledged Torres’s extensive criminal history and the seriousness of the charged offenses and noted their connection to Torres’s chemical use. In explaining its sentencing decision, the district court referenced its prior decision to furlough Torres, stating “[Torres] was on a very, very narrow tether but I can’t say that somebody who complied with every requirement of treatment . . . for the last five months is not amenable to probation.” The district court determined that substantial and compelling circumstances—Torres’s chemical dependency and his particular amenability to treatment—support a ten-year probationary sentence. The state appeals the dispositional departure.

DECISION

The Minnesota Sentencing Guidelines set forth sentences that “are presumed to be appropriate for the crimes to which they apply.” Minn. Sent. Guidelines 2.D.1 (2019). A district court may depart from the presumptive sentence only if “identifiable, substantial,

¹ The advisor stated that Torres would have 257 days of sobriety at the time of sentencing.

and compelling circumstances” support a departure. *Id.* A defendant’s particular amenability to probation based on chemical dependency and compliance with treatment is a valid departure ground. Minn. Sent. Guidelines 2.D.3.a(8) (2019); *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014). District courts are afforded “great discretion” in sentencing decisions and reversal is warranted “only for an abuse of that discretion.” *Id.* at 307-08 (quotation omitted). A district court abuses its sentencing discretion if it relies on an improper ground or “the record contains insufficient evidence to justify the departure.” *State v. Rund*, 896 N.W.2d 527, 533 (Minn. 2017).

The state acknowledges that a defendant’s particular amenability to probation is a valid departure ground. But the state argues that the district court abused its discretion because the evidence was not sufficient to support a departure and the court improperly based the sentence on its decision to furlough Torres to treatment while this case was pending. We address each argument in turn.

I. The record supports the district court’s determination that Torres is particularly amenable to probation.

The state asserts that the evidence does not establish that Torres is particularly amenable to probation, arguing that his five months of success on furlough do not overcome his lengthy history of chemical use and criminal activity. And it contends Torres’s compliance while on furlough is dubious since the district court did not order drug testing. We are satisfied that the record supports the district court’s exercise of its sentencing discretion.

During the sentencing hearing, the district court described its analysis at length. The court acknowledged Torres's criminal history and the number and seriousness of the offenses charged in the seven open files. But the court weighed this evidence against the clear connection between Torres's criminal conduct and his drug use, concluding that "absent his chemical problem," Torres was capable of being "a contributing and productive member of society." The district court pointed to Torres's six-year period of sobriety and lawful conduct before the current offenses and his recent treatment success and compliance with furlough conditions as evidence that Torres is particularly amenable to treatment for his chemical dependency.

The record supports this determination. Torres was diagnosed with moderate amphetamine-type substance-use disorder in March 2021 and has been in treatment or aftercare ever since. Treatment records reveal that Torres has been successful in the treatment and aftercare programs, and that random drug testing is part of Torres's treatment protocol. In addition to engaging in treatment and maintaining his sobriety, Torres obtained employment, established a residence with his family in a new community, and did not commit any new criminal offenses. His lack of criminal history between 2014 and 2019 also coincides with his reported abstinence from controlled substances. And it was the last time Torres lived away from Willmar, where the charged offenses occurred. In short, the record supports the district court's decision to depart from the presumptive sentence based on Torres's chemical dependency and positive response to treatment.

II. The district court did not impermissibly base the sentence on the court's prior furlough decision.

A district court may not base a sentencing departure on pretrial release decisions. *See* Minn. Sent. Guidelines 2.D.3.a (2019) (listing factors that may be used as a reason for departure). The state contends that the district court did just that when it stated at sentencing that “[u]ltimately, to me, it comes down to the decision I made earlier.” We are not persuaded.

When viewed in context, the district court's statement reflects its assessment that Torres's conduct between his April release from custody and sentencing is evidence of his ability to be successful in chemical-dependency treatment. But it was not the only evidence of Torres's particular amenability to treatment the district court referenced during sentencing. The district court noted that Torres previously abstained from drug use for six years, which the court deemed “a significant period.” During that period of abstinence, Torres did not commit any criminal offenses. And the court stated its belief that “absent his chemical problem,” Torres could be “a contributing and productive member of society.” Our review of the record persuades us that the district court based its sentencing decision on a valid departure ground.

In sum, the record contains evidence that supports and evidence that weighs against a sentencing departure. At its core, the state's argument invites us to substitute our judgment for that of the district court that weighed the competing evidence and exercised its broad sentencing discretion. We have no authority to do so. *See State v. Sejnoha*, 512 N.W.2d 597, 601 (Minn. App. 1994), *rev. denied* (Minn. Apr. 21, 1994) (stating “it is not

our role to substitute our own judgment for that of the district court”). On this record, we discern no abuse of discretion by the district court in imposing a dispositional departure.²

Affirmed.

² In his responsive brief, Torres contends that imposition of a guidelines sentence would violate the plea agreement. Because we affirm the sentencing departure, we need not address this additional argument. But we note the parties did not reach an agreement as to sentencing.