

*This opinion is nonprecedential except as provided by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
A21-1618**

State of Minnesota,
Respondent,

vs.

Fahid Nazir,
Appellant.

**Filed September 26, 2022
Affirmed
Worke, Judge**

Ramsey County District Court
File No. 62-CR-10-9908

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

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

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

Considered and decided by Worke, Presiding Judge; Jesson, Judge; and Kirk,
Judge.*

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

NONPRECEDENTIAL OPINION

WORKE, Judge

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

FACTS

In September 2010, appellant Fahid Nazir was helping his girlfriend watch M.H., the four-year-old daughter of a neighbor, and some other children at Nazir's apartment. Nazir's girlfriend left the apartment while Nazir stayed to watch the children. Nazir and M.H. were in a bedroom while the other children played in the living room. Nazir removed M.H.'s pants and rubbed his penis on M.H.'s vagina and rectum and then ejaculated.

M.H. told her mother about Nazir's criminal sexual conduct. M.H.'s mother then brought M.H. to the hospital. M.H. told investigators that Nazir touched his "tail" on her bare vagina. A DNA test confirmed the presence of Nazir's semen on M.H.'s skin near her vagina.

Nazir was charged with first-degree criminal sexual conduct, in violation of Minn. Stat. § 609.342, subd. 1(a) (2010). Following his arrest, Nazir left the country. In August 2020, Nazir was extradited to the United States.

In June 2021, Nazir entered an *Alford* plea¹ to first-degree criminal sexual conduct. Nazir denied that he removed his penis from his underwear or that he exposed M.H.'s

¹ *North Carolina v. Alford*, 400 U.S. 25, 38, 91 S. Ct. 160, 167-68 (1970) (holding that a court may constitutionally accept a defendant's guilty plea even though the defendant maintains innocence); *State v. Goulette*, 258 N.W.2d 758, 761 (Minn. 1977) (holding that Minnesota law permits acceptance of *Alford* pleas).

vagina. However, based on the evidence, Nazir agreed that there was a substantial likelihood that a jury would convict him of first-degree criminal sexual conduct. The plea agreement specified that the state would recommend a sentence of 120 months in prison, a downward durational departure from the presumptive 144-month prison sentence. Nazir moved the district court for a larger downward durational departure and for a downward dispositional departure. The district court denied the motion and imposed a sentence of 120 months in prison. This appeal followed.

DECISION

“We afford the [district] court great discretion in the imposition of sentences and reverse sentencing decisions only for an abuse of that discretion.” *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014) (quotation omitted). A district court abuses its discretion if its reasons are “improper or insufficient and there is insufficient evidence of record to justify the [decision].” *Id.* at 308 (quotation and quotation marks omitted). This court “may not interfere with the [district] court’s exercise of discretion, as long as the record shows the [district] court carefully evaluated all the testimony and information presented before making a determination.” *State v. Pegel*, 795 N.W.2d 251, 255 (Minn. App. 2011) (quotation omitted).

Dispositional departure

Nazir argues that the district court abused its discretion by denying his motion for a downward dispositional departure because he is particularly amenable to treatment and probation. The district court determined that “a durational departure, rather than a

dispositional departure, would allow [Nazir] an opportunity to get treatment while . . . in custody.”

The sentencing guidelines provide for presumptive sentences for felony offenses. Minn. Sent. Guidelines II.C (2010). The presumptive sentence is “presumed to be appropriate for the crimes to which they apply.” Minn. Sent. Guidelines I.D (2010); *Soto*, 855 N.W.2d at 308. District courts must utilize the presumptive sentencing range provided in the sentencing guidelines “unless there exist identifiable, substantial, and compelling circumstances to support a sentence outside the range on the grid.” Minn. Sent. Guidelines II.D. The “district court may consider both offender- and offense-related factors” when deciding whether to depart dispositionally. *State v. Walker*, 913 N.W.2d 463, 468 (Minn. App. 2018).

Several factors “are relevant to a determination whether a defendant is particularly suitable to individualized treatment in a probationary setting.” *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). These factors include the defendant’s age, prior record, remorse, cooperation, and family support. *Id.* A defendant’s “amenability to probation depends on [the defendant]’s ability to comply with the conditions of probation and benefit from the opportunity for rehabilitation that probation affords.” *State v. Hickman*, 666 N.W.2d 729, 732 (Minn. App. 2003). But even if a defendant would be particularly amenable to probation, the district court is not required to depart. *State v. Olson*, 765 N.W.2d 662, 664-65 (Minn. App. 2009). If the district court considered the defendant’s arguments and concluded that the presumptive sentence was appropriate, we will not reverse absent a

sufficient showing that the circumstances represent the “rare” case compelling reversal. *Id.* at 665 (quotation omitted).

Nazir’s presumptive sentence was 144 months in prison. The district court denied Nazir’s request for a downward dispositional departure after considering Nazir’s acceptance of responsibility and sincere remorse. The district court also noted that Nazir’s avoidance of M.H. and her family, and his decision to forgo trial by pleading guilty, likely prevented “the reliving of trauma that the young woman who was the survivor of [Nazir’s] act would likely have suffered and the embarrassment and perhaps . . . the stress and anger that the family would also have experienced as a result of this matter going to trial.”

The record shows that the district court properly considered Nazir’s arguments, and that this matter is not the “rare” case compelling reversal. *See id.* The district court did not abuse its discretion by denying Nazir’s request for a downward dispositional departure.

Durational departure

Nazir argues that if a sentencing departure was not warranted, he should have received a larger downward durational departure than his plea agreement offered because his criminal sexual conduct “was a single and isolated incident, and was significantly less serious than typical.”

In determining whether to grant a defendant’s request for a durational departure, the district court looks to the defendant’s conduct and considers whether it was “significantly less serious than that typically involved in the commission of the offense.” *State v. Mattson*, 376 N.W.2d 413, 415 (Minn. 1985). “A durational departure must be based on

factors that reflect the seriousness of the offense, not the characteristics of the offender.”
State v. Solberg, 882 N.W.2d 618, 623 (Minn. 2016) (emphasis omitted).

Here, Nazir’s presumptive sentence was 144 months in prison. Pursuant to a plea agreement, the state agreed to a 120-month sentence and opposed a larger durational departure. Subsequently, the district court denied Nazir’s request for a larger durational departure, and we conclude that it did not abuse its discretion in doing so.

The district court concluded that by imposing a “durational departure, rather than a dispositional departure,” Nazir would be allowed “an opportunity to get treatment while . . . in custody.” And Nazir’s criminal sexual conduct involved a child who was entrusted in his care. Generally, this circumstance would be considered an aggravating factor supporting an upward durational departure. *See State v. Edwards*, 774 N.W.2d 596, 601 (Minn. 2009) (stating a sentencing departure is justified if the district court articulates that “the defendant’s conduct was significantly more or less serious than typically involved in the commission of the offense”). Thus, the district court’s sentencing decision was not an abuse of its discretion.

Affirmed.