

*This opinion is nonprecedential except as provided by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
A22-0165**

State of Minnesota,
Respondent,

vs.

William Clyde Grunwald,
Appellant.

**Filed September 19, 2022
Affirmed
Bratvold, Judge**

Dakota County District Court
File No. 19HA-CR-20-857

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

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

Daniel Guerrero, Meshbesh & Spence, Ltd., Minneapolis, Minnesota (for appellant)

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

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

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

In this direct appeal from the final judgments of conviction for five counts of possession of pornographic work involving minors, appellant challenges his sentence. Appellant argues the district court abused its discretion by denying his motion for a downward dispositional departure. Because the district court imposed a guidelines sentence after considering the parties' submissions and arguments, we conclude the district court did not abuse its discretion. Thus, we affirm.

FACTS

Appellant William Clyde Grunwald pleaded guilty to five counts of possession of pornographic work involving minors under Minn. Stat. § 617.247, subd. 4(a) (2018). The facts of the underlying offenses are not disputed. On October 25, 2018, Grunwald's son died by suicide. Grunwald's son left a note stating, among other things, that his father had child pornography on his home computers.

In November 2018, Apple Valley police investigators talked to Grunwald at his home. Grunwald consented to an inspection of his computers, and the investigators located many files with titles indicating that they contained child pornography. Grunwald then admitted to possessing child pornography. Police later executed a search warrant and seized Grunwald's computers. According to the criminal complaint, "[m]ore than 1.15 million pictures and videos of child pornography depicting minors and child exploitive materials were located on 12 . . . devices seized from [Grunwald]'s home." Respondent State of

Minnesota charged Grunwald with eight counts of possession of pornographic work involving minors.

An evaluator completed a court-ordered psychosexual evaluation of Grunwald in March 2021. At about the same time, Grunwald chose to undergo another psychosexual evaluation by a licensed clinical psychologist following a referral by his attorney. Both written reports are similar.

Grunwald pleaded guilty to five of the eight counts; the remaining counts were dismissed. The district court deferred acceptance of the plea and directed probation to complete a presentence-investigation (PSI) report. The PSI report noted that several mitigating factors were present, including Grunwald's lack of a criminal history and his "[a]menability to outpatient treatment." The PSI report noted that under the Minnesota Sentencing Guidelines, the presumptive disposition and duration on the longest sentence (count V) was a commit to the commissioner for 39 months. Yet the PSI report recommended that Grunwald be granted a stay of execution and be placed on probation.

Grunwald moved for a downward dispositional departure. Grunwald averred he was "particularly amenable to treatment and probationary supervision." Citing his court-ordered psychosexual evaluation, his privately referred psychosexual evaluation, and his therapy treatment report, he noted his lack of a criminal history, his history of "health problems, both physical and mental," the "compassionate support of his wife and therapist," who would "closely and continuously observe" him while on probation, his age (64 at the time of sentencing), and his "acceptance of responsibility, his remorse, [and] his

positive and respectful attitude” as evidence he was particularly amenable to probation and should receive a downward dispositional departure.

Grunwald also submitted a letter from his medical doctor summarizing several health conditions, a list of his medications, a letter from his wife, a copy of the privately referred psychosexual evaluation, and a treatment report with an update from his therapist.

At the sentencing hearing on December 10, 2021, the district court accepted Grunwald’s plea and then heard arguments about his request for a downward dispositional departure. Grunwald’s attorney discussed his submissions in some detail, making many of the same points raised in the written motion. Grunwald’s attorney acknowledged that therapy would take “a long time,” but that Grunwald “is amenable to treatment and probation,” and “he will do well” in following conditions imposed along with a stayed sentence.

The state opposed the motion, acknowledging that Grunwald could “benefit from treatment,” was “doing moderately well in individual treatment,” and was older and had “serious medical concerns.” But the state also argued these were “very serious offense[s]” that took place over many years and for which Grunwald showed a “lack of insight.” The state stressed that there had been “numerous victims,” “the majority [of images] involved prepubescent children,” and that the number of child-pornography files found on Grunwald’s computer “exceed[s] a million.” The state requested a guidelines sentence of 39 months in prison on count V.

The probation officer who completed the PSI report noted her concerns about the effectiveness of sex-offender treatment given comments in the psychosexual-evaluation

report and that the therapist counseled that Grunwald's major mental-health issues would need to be addressed before any sex-offender treatment. Even so, the probation officer recommended, in accordance with the PSI report previously submitted to the court, that Grunwald be granted a stay of execution and be placed on probation.

Grunwald told the district court that he had "sincere[] regret for having done this" to the child victims and to his family. He stated that "child pornography is harmful to children," explaining that the children involved "are sexually abused and I contributed to that." "I need help and I'm working on that with my therapist to ensure it never happens again."

The district court stated:

I know that when . . . considering a dispositional departure, the Court focuses on the offender-based characteristics. I want to note that if I haven't already done so, *I reviewed carefully all the information that was available before me and considered carefully, more than once, the compelling arguments that were raised in the case.*

(Emphasis added.) The district court noted that Grunwald "is intelligent," "has the support of his wife," and "would likely have developed a trusting relationship with his therapist." The district court expressed concerns, however, that Grunwald's treatment was expected to be "very slow" and that sex-offender treatment required group therapy, and Grunwald was not able "to meaningful[ly] participate in that." The district court determined that "it does not appear . . . that Mr. Grunwald is in a position that he is able to make the meaningful changes that are appropriate given the magnitude of the public safety issues in this case."

The district court then entered a judgment of conviction, denied Grunwald’s motion for a downward dispositional departure, and imposed concurrent guidelines sentences on each of the five counts, including the 39-month prison sentence on count V. This appeal follows.

DECISION

On appeal, Grunwald argues the district abused its discretion by denying his motion for a downward dispositional departure. The district court has “great discretion in the imposition of sentences and [appellate courts] reverse sentencing decisions only for an abuse of that discretion.” *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014) (quotation omitted).

The guidelines provide that “when substantial and compelling circumstances are present, the judge may depart” from a guidelines sentence. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981) (quotation omitted). Among other things, a downward dispositional departure may be based on a defendant’s “particular amenability to individualized treatment in a probationary setting.” *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). But “merely being amenable to probation” is insufficient; “requiring a defendant to be *particularly* amenable to probation . . . distinguishes the defendant from most others and . . . presents the substantial and compelling circumstances that are necessary to justify a departure.” *Soto*, 855 N.W.2d at 309 (quotation omitted). Factors to examine while considering a defendant’s “particular amenability” to probation include “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*, 323 N.W.2d at 31 (*Trog* factors).

Even if a district court finds the *Trog* factors are present, the district court is not *required* to depart. *Id.* “We will affirm the imposition of a presumptive guidelines sentence when the record shows the sentencing court carefully evaluated all the testimony and information presented before making a determination.” *State v. Johnson*, 831 N.W.2d 917, 925 (Minn. App. 2013), *rev. denied* (Minn. Sept. 17, 2013). A district court’s refusal to depart is reversed only in “rare” cases. *State v. Walker*, 913 N.W.2d 463, 468 (Minn. App. 2018) (quoting *Kindem*, 313 N.W.2d at 7). Thus, we review Grunwald’s sentence to determine whether the district court abused its discretion in evaluating the record and concluding that a downward dispositional departure was not warranted in Grunwald’s case.

On appeal, Grunwald argues that his amenability to treatment in a probationary setting is “unprecedented relative to [similar] individuals” because of his “age, health, and prior criminal history” and his “remorse, cooperation, and attitude in court.” Grunwald also contends that his “mental and physical health render a three-year prison sentence extremely inappropriate” because of his alleged statistical unlikelihood of reoffending and “the costs and burdens of incarcerating an elderly man with specific [health] needs.”

We are not persuaded. Even if substantial and compelling circumstances existed for the reasons argued by Grunwald, the district court was not required to depart from the guidelines. *See Kindem*, 313 N.W.2d at 7. Thus, while Grunwald tries to relitigate whether he was particularly amenable to probation or whether there were compelling circumstances to justify a departure, that is not the issue on appeal. Rather, we must determine whether, in sentencing Grunwald, the district court “considered evidence of factors that could have supported a departure if they had been substantial or compelling,” and if it did, whether

this is the “rare case” in which reversal is nonetheless warranted. *See id.*; *Walker*, 913 N.W.2d at 468-69.

Here, the district court explicitly considered Grunwald’s physical, emotional, and mental health. The district court’s comments during the sentencing hearing do not expressly discuss Grunwald’s criminal history, remorse, cooperation, and attitude before the district court, or his risk of reoffending. But the district court was not required to expressly discuss every sentencing factor. *See State v. Pegel*, 795 N.W.2d 251, 254 (Minn. App. 2011) (holding that the district court need not discuss every *Trog* factor when declining to depart). Because the district court imposed the presumptive guidelines sentences on all counts, it did not have to explain its decision. *See State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985) (stating that the district court need not provide an explanation when it considers reasons for departure and imposes a presumptive sentence).

Still, we disagree with Grunwald’s description of the district court’s review of his motion. The record reflects that the district court considered the circumstances for and against departure as raised and argued by the parties. At sentencing, the district court stated, “I reviewed carefully all of the information that was available before me and considered carefully, more than once, the compelling arguments that were raised in the case.”

In its evaluation of the “compelling arguments,” the district court weighed the information in the record, including what the district court saw as “the minimization aspect, the lack of insight” noted in the psychosexual-evaluation reports and that “Grunwald basically was in a rumination stage and not able to move forward in any meaningful way,” as noted in the treatment report and update from Grunwald’s therapist. The district court

expressed concern with the therapist's observations about Grunwald's inability to proceed with group therapy and Grunwald's "very slow" progress in individual therapy.

In short, the district court disagreed with Grunwald's contention that he was particularly amenable to probation. The district court reasoned that amenability to probation was not merely "going to the place that you are supposed to go and hoping to make progress." It pointed out that "there's also the component of public safety that is concerned" and that "particular amenability to probation also means the ability, willingness, and cognitive and emotional and mental health ability to get better [and] to fully engage . . . in the process, and to actually absorb the treatment, and to make meaningful change." The district court found, "[I]t does not appear to me that Mr. Grunwald is in a position that he is able to make the meaningful changes that are appropriate given the magnitude of the public safety issues in this case." The record, which details the slow progress Grunwald had made and his resistance to group therapy, supports the district court's findings.

Grunwald argues he is "particularly unamenable to incarceration" because of his age and poor health, which has some support in caselaw.¹ See *State v. Wright*, 310 N.W.2d 461, 462 (Minn. 1981) (determining a defendant was "particularly unamenable to incarceration" when the defendant had a "unique" psychiatric condition that would lead to the defendant being "abused seriously if he were in some type of correctional institution").

¹ Health is not a *Trog* factor. *Trog*, 323 N.W.2d at 31. A district court's analysis of amenability, however, is not limited to the factors set out in *Trog*. *Soto*, 855 N.W.2d at 310 ("[T]hese are not the only factors that can bear on a defendant's amenability to probation But they provide a useful framework for approaching the issue.").

Here, the district court noted and considered this factor. The district court stated, “I fully acknowledge the significant health, emotional, and mental health needs that are before the court.” It still found the countervailing factors, including public safety and Grunwald’s slow progress in treatment, outweighed any concerns about Grunwald’s unamenability to incarceration.

In sum, the record reflects that the district court “considered evidence of factors that could have supported a departure if they had been substantial or compelling, but concluded that a departure was not warranted.” *Walker*, 913 N.W.2d at 468. The record also supports the district court’s findings about the slow progress of Grunwald’s treatment and the public safety risk of outpatient treatment. Given the district court’s “great discretion” when imposing sentences, as discussed in *Soto*, 855 N.W.2d at 307, we affirm.

Affirmed.