

*This opinion is nonprecedential except as provided by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
A22-0253**

State of Minnesota,
Appellant,

vs.

Donald Raymond Guse,
Respondent.

**Filed August 15, 2022
Affirmed
Jesson, Judge**

Anoka County District Court
File No. 02-CR-21-174

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

Anthony C. Palumbo, Anoka County Attorney, Kelsey R. Kelley, Assistant County Attorney, Anoka, Minnesota (for appellant)

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

Considered and decided by Wheelock, Presiding Judge; Reyes, Judge; and Jesson, Judge.

NONPRECEDENTIAL OPINION

JESSON, Judge

Respondent Donald Raymond Guse was convicted of a drive-by shooting after firing a bullet through the windshield of a police car. The district court granted Guse's motion for a downward dispositional departure and placed him on probation. Appellant

State of Minnesota contends that the district court should have sentenced Guse to a prison term instead of probation based on his criminal record. Because the district court did not abuse its broad discretion by concluding that Guse is particularly amenable to probation, we affirm.

FACTS

In January 2021, Guse—under the influence of alcohol—drove to the Centennial Lakes Police Department in his white pickup truck. He stopped along the road adjacent to the station and, from inside his vehicle, fired a shotgun, piercing both the window of a squad car and the glass door leading into the station. Police reviewed surveillance video, identified the shot as coming from a white pickup, and shortly thereafter found a matching truck driving in the area.

When officers approached the truck in a different squad car, Guse accelerated through a red light and turned into a nearby driveway, where he was arrested. The officers noted that Guse smelled of alcohol, had bloodshot and watery eyes, and slurred his speech. At the police station, police tried to administer a breath test to determine Guse’s level of intoxication, but he refused to take the test despite being informed that his refusal was another criminal offense. He later admitted to shooting the squad car. The state charged Guse with four felonies and one gross misdemeanor.¹

¹ The state charged Guse with: (1) drive-by shooting in violation of Minnesota Statutes section 609.66, subdivision 1e(b)(1) (2020); (2) reckless discharge of a firearm within a municipality in violation of Minnesota Statutes section 609.66, subdivision 1a(a)(3) (2020); (3) fleeing police in a motor vehicle in violation of Minnesota Statutes section 609.487, subdivision 3 (2020); (4) first-degree criminal damage to property in violation of Minnesota Statutes section 609.595, subdivision 1(2) (2020); and

In October 2021, Guse pleaded guilty to one count of drive-by shooting and one count of breath-test refusal. The state agreed to dismiss the remaining charges. At the plea hearing, Guse admitted that he discharged a firearm towards a police vehicle and station from within his own vehicle knowing that the station was occupied, that he was intoxicated at the time, and that he later refused to take a breath test knowing that refusal was a crime. The district court deferred acceptance of Guse's guilty plea pending a presentence investigation (PSI).

The PSI reviewed Guse's criminal history. Although Guse had never been convicted of a felony, he was convicted of five misdemeanors and five gross misdemeanors over a period stretching from 1997 through 2018. Most recently, Guse was convicted of two gross-misdemeanor offenses in 2018 that both involved the consumption of alcohol. Guse was sentenced to probation for both offenses, even though the second offense violated his probation for the first one. And Guse's dispositional adviser noted that Guse successfully completed his most recent stint on probation and remained sober for the entire probationary term.

After reviewing his criminal history, the PSI considered Guse's mental and chemical health. Guse reported that he began experiencing symptoms of post-traumatic stress disorder (PTSD) in 1992 after responding to a traffic fatality as a firefighter. He experienced "flashbacks" over the years that led him to heavily consume alcohol as a form of self-medication. Guse's dispositional adviser reported that Guse completed a ten-week

(5) breath-test refusal in violation of Minnesota Statutes section 169A.20, subdivision 2(1) (2020) (the gross misdemeanor).

PTSD Skills Group course in 2019 and continued to follow up with a psychotherapist once a week until his symptoms became manageable. Finally, Guse’s adviser explained that the pandemic, and the loss of his job, worsened his PTSD symptoms.

After completion of the PSI, Guse moved for a downward dispositional departure. In support of this motion, Guse attached a memorandum from his dispositional adviser and letters in support from seven people including family, friends, and a former therapist. Guse’s dispositional adviser also testified at his sentencing hearing. She explained that Guse resorted to binge drinking to cope with his PTSD symptoms. He attempted to quit drinking on his own at times, but his nightmares and flashbacks would resume when he did. The adviser also noted that Guse successfully completed a treatment program for PTSD in Florida in 2017 but relapsed upon returning to Minnesota. She opined that while Guse had demonstrated success in controlled settings, he “never really had smooth transitions to follow-up services and aftercare.”

At Guse’s sentencing hearing, he addressed the district court and apologized for his conduct. Guse’s counsel and dispositional adviser contended that the court should grant Guse’s motion for a dispositional departure because he was particularly amenable to probation. The state argued that Guse posed a risk to public safety—as evidenced by his prior criminal record—and urged the court to sentence Guse to an executed term of 57 months in prison.

The district court sentenced Guse to a term of 57 months in prison on the drive-by shooting conviction but stayed that sentence for five years. The court explained that it decided to depart because it believed that Guse had “demonstrated somewhat of a particular

amenability to individualized treatment in a probationary setting,” and because he did not injure anyone. The court ordered that Guse spend an additional 120 days in jail but allowed him to go straight to treatment as soon as he was declared eligible. In lieu of a fine, the court directed Guse to complete 100 hours of community service and ordered that he pay restitution to replace the damaged property.

The state appeals.

DECISION

The Minnesota Sentencing Guidelines establish presumptive sentences depending on the severity of the offense and the defendant’s criminal-history score. *State v. Morgan*, 968 N.W.2d 25, 28 n.2 (Minn. 2021); Minn. Sent. Guidelines 2 (2020). But a district court may depart from a presumptive sentence when “identifiable, substantial, and compelling circumstances” support a departure. Minn. Sent. Guidelines 2.D.1. A dispositional departure places the offender in a different setting than called for by the presumptive sentence, such as a probation term instead of a term of imprisonment. *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016).

A dispositional departure may be justified if the offender is particularly amenable to probation. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). Numerous factors can support a dispositional departure: the offender’s age, prior record, remorse, cooperation, attitude while in court, and support of friends and family (the *Trog* factors). *Id.*

Here, the state challenges the district court’s decision to depart from the presumptive sentence by staying Guse’s prison term. To evaluate this decision, we first turn to our standard of review.

We review a district court's decision to depart from a presumptive guidelines sentence for an abuse of its "great discretion." *State v. Soto*, 855 N.W.2d 303, 312 (Minn. 2014) (quotation omitted). A district court exceeds the bounds of that great discretion if "its reasons for departure are legally impermissible and insufficient evidence in the record justifies the departure." *Solberg*, 882 N.W.2d at 623. But if the court's reasons for a downward departure are inadequate or improper, we may search the record for other grounds supporting the departure. *Id.* And the district court need not explicitly go through each *Trog* factor so long as the record demonstrates that the court considered the circumstances for and against departure and made a reasoned decision. *State v. Pegel*, 795 N.W.2d 251, 254-55 (Minn. App. 2011). With all of the above in mind, we consider the district court's grant of Guse's dispositional-departure motion.

Here, the district court deliberately considered whether to grant a departure. *Id.* Guse expressed remorse at sentencing. *Trog*, 323 N.W.2d at 31. He cooperated by pleading guilty early on and forthrightly admitted to the conduct that made him guilty of those offenses. *Id.* He had no prior felony convictions or charges involving firearms. *Id.* And he enjoyed the support of friends, family, and a therapist. *Id.* Further, Guse's dispositional adviser emphasized that Guse had been successful at past treatment programs and would benefit from community-based services following an inpatient-treatment program. The PSI writer noted that Guse appeared to lack appropriate services at the time of the offense. And Guse's former probation officer in Ramsey County stated that Guse had been "very compliant" while being supervised, attended all of his counseling sessions, and took urinalyses twice a month—without failing a single test.

While the facts summarized above do not require a downward dispositional departure, given the court’s wide discretion over sentencing, they provide adequate support for the district court’s determination that Guse was particularly amenable to probation. *State v. Rund*, 896 N.W.2d 527, 532 (Minn. 2017) (recognizing the district court’s “great discretion in the imposition of sentences” (quotation omitted)).

To persuade us otherwise, the state first argues that the district court abused its discretion because it only found that Guse was “somewhat” amenable to probation. But the state misquotes the district court. The court did not find that Guse was “somewhat amenable,” it found that he had demonstrated “somewhat of a particular amenability to individualized treatment in a probationary setting.” Importantly, the question is whether the record supports the district court’s determination that Guse was particularly amenable to probation, not the specific, isolated words used by the district court. *See Solberg*, 882 N.W.2d at 623.

Second, the state contends that the district court impermissibly relied on an offense-based factor. But when considering whether to grant a downward dispositional departure, as the court did here, “a district court may consider both offender- and offense-related factors.” *State v. Walker*, 913 N.W.2d 463, 468 (Minn. 2018).² Accordingly, the district court was entitled to consider the fact that no one was harmed by Guse’s conduct in its decision to grant his dispositional-departure motion.

² The state relies on *State v. Chaklos*, 528 N.W.2d 225 (Minn. 1995), to support its argument that the district court could not rely on an offense-based factor. But the *Chaklos* court explained that an *offender*-based factor could not justify an *upward durational* departure. 528 N.W.2d at 228. This opinion does not control here.

Third, the state argues that Guse's criminal history shows that he is not particularly amenable to probation. The state posits that Guse has a pattern of drinking and committing offenses, such as driving while intoxicated (in 1999 and 2018) and domestic assault (in 2004, 2006, and 2018). And the state notes that Guse violated probation as recently as 2018, when he committed his latest prior offense. Further, the state correctly points out that alcohol use was a factor in each of Guse's prior offenses.

But Guse's criminal history did not require the district court to conclude that Guse was not particularly amenable to probation. The large gaps in time between the offenses—between 1999 and 2004 and again between 2006 and 2012—show that Guse has been successful at treatment in the past. And the dispositional adviser informed the district court that although Guse has made good progress at particular treatment programs in the past, he never had a smooth transition from inpatient treatment to community-based services. While Guse violated probation in 2018, the district court decided to give him another chance at probation, and he successfully completed that term.

In light of the entire record, *Pegel*, 795 N.W.2d at 254-55, the district court did not abuse its broad discretion by concluding that Guse was particularly amenable to probation and accordingly by granting his motion for a downward dispositional departure.

Affirmed.