

*This opinion is nonprecedential except as provided by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
A22-0469**

State of Minnesota,
Respondent,

vs.

Rolando Banda,
Appellant.

**Filed November 7, 2022
Affirmed
Frisch, Judge**

Sibley County District Court
File No. 72-CR-21-228

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

Donald E. Lannoye, Sibley County Attorney, Gaylord, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Eva F. Wailes, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Frisch, Presiding Judge; Ross, Judge; and Connolly,
Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

Appellant argues that the district court abused its discretion by denying his motions
to withdraw his guilty plea and for a downward dispositional sentencing departure.

Because the district court did not abuse its discretion by denying appellant's motions, we affirm.

FACTS

Appellant Rolando Banda was charged with first-degree driving while impaired (DWI) in violation of Minn. Stat. § 169A.20, subd. 1(1) (2020), first-degree DWI in violation of Minn. Stat. § 169A.20, subd. 1(5) (2020), and a violation of driver's license restriction under Minn. Stat. § 171.09, subd. 1(f)(1) (2020). Banda pleaded guilty to one count of first-degree DWI pursuant to a plea agreement. At the plea hearing, the district court scheduled a sentencing hearing approximately three months later to give Banda an opportunity to complete inpatient treatment prior to sentencing. At the time of the entry of his plea, the district court warned Banda that he would be required to return to jail if he left the treatment program for any reason. The district court ordered conditions of release, which included in part that Banda "[m]ust successfully complete treatment and all aftercare requirements."

Before the sentencing hearing, Banda completed residential inpatient treatment, but he was "unsuccessfully discharged" from residential outpatient treatment. The treatment facility cited behavioral issues as the reason for Banda's discharge from the program.

Between the plea hearing and sentencing hearing, Banda moved for a downward dispositional departure from the Minnesota Sentencing Guidelines. At the sentencing hearing, Banda orally moved to withdraw his guilty plea. The district court denied the plea-withdrawal and sentencing-departure motions and imposed a guidelines 60-month prison sentence. Minn. Sent'g Guidelines 4.A (2021).

Banda now appeals.

DECISION

Anderson argues that the district court abused its discretion by denying his motions to withdraw his guilty plea and for a downward dispositional sentencing departure. We address each issue in turn.

I. The district court did not abuse its discretion by denying Banda's motion to withdraw his guilty plea.

Banda first argues that the district court abused its discretion by denying his motion to withdraw his guilty plea. Banda argues that it was fair and just to allow plea withdrawal because he did not have an opportunity to complete the treatment program in order to demonstrate his amenability to probation. Banda specifically argues that because his inpatient treatment program was not a 90-day program and he was subject to confinement during outpatient treatment, he did not have a chance to demonstrate his amenability to success in the community. He also argues that the state did not establish prejudice associated with plea withdrawal. We disagree.

A defendant may withdraw a guilty plea under two circumstances: (1) at any time when it is necessary to correct a manifest injustice or (2) before sentencing and at the court's discretion if it is fair and just to permit withdrawal (the fair-and-just standard). Minn. R. Crim. P. 15.05, subds. 1, 2. Banda sought to withdraw his plea under the fair-and-just standard. Under that standard, a district court considers (1) the reasons the defendant advances to support withdrawal of the guilty plea and (2) whether granting the motion prejudices the state. Minn. R. Crim. P. 15.05, subd. 2; *State v. Raleigh*, 778 N.W.2d

90, 97 (Minn. 2010). The defendant bears the burden of advancing sufficient reasons to support withdrawal, and the state bears the burden of showing prejudice by the withdrawal. *Raleigh*, 778 N.W.2d at 97. We review a district court’s denial of a motion to withdraw a guilty plea under the fair-and-just standard for an abuse of discretion, and we reverse “only in the rare case.” *Id.* (quotation omitted). A district court abuses its discretion when its decision is based on an erroneous view of the law or is not supported by the facts in the record. *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019).

First, the district court did not abuse its discretion by determining that Banda’s reasons to support plea withdrawal were insufficient under the fair-and-just standard. In support of his motion, Banda argued he could not show that he was amenable to probation because the conditions in the treatment facility were unfavorable to him. Banda asserted that the treatment facility diet raised his blood-sugar level which prevented him from sleeping, that he did not enjoy feeling like a burden, and that other residents in the facility were unfriendly and “using and wanted to sell” to him. The district court considered Banda’s explanation for his discharge and argument in support of plea withdrawal but ultimately rejected Banda’s explanation. The district court stated that it understood Banda’s position, but it believed that Banda was given a chance and had enough control over his circumstances to demonstrate that he could complete treatment.

This conclusion is supported by the record. Banda did not complete the outpatient treatment program. The treatment facility stated that it discharged Banda because of behavioral issues. Thus, the district court’s conclusion that Banda was given an

opportunity to complete treatment and Banda did not complete treatment because of his own behavior is supported by the record.

Even so, we observe that the plea agreement did not ensure that Banda was guaranteed a sentencing departure even if he had successfully completed treatment. The terms of the plea agreement provided that the parties could argue for their preferred sentence at the sentencing hearing, but there was no agreement as to specific sentencing disposition or duration. The district court's denial of the plea-withdrawal motion therefore did not undercut any promise to Banda associated with the plea agreement.¹

Second, a district court may deny a plea-withdrawal motion in the absence of identified prejudice to the state when the defendant fails to show sufficient reasons for withdrawal under the fair-and-just standard. *See Raleigh*, 778 N.W.2d at 97-98 (holding that the district court did not abuse its discretion by denying a plea-withdrawal motion under the fair-and-just standard when the prejudice to the state was overstated but the defendant failed to provide any valid reason why the withdrawal would be fair and just). Because Banda did not set forth a valid reason why plea withdrawal would be fair and just, the district court did not abuse its discretion in denying the motion even in the absence of prejudice to the state.

¹ Banda also argues that he did not receive the benefit of the plea agreement because he was required to complete residential outpatient treatment as opposed to outpatient treatment in the community. We note that nothing in the plea agreement or plea hearing suggested that the parties contemplated that Banda would complete community-based treatment before sentencing. The district court did not abuse its discretion in determining that Banda's proffered reason for plea withdrawal did not satisfy the fair-and-just standard.

II. The district court did not abuse its discretion by denying Banda's motion for a downward dispositional sentencing departure.

Banda also argues that the district court abused its discretion by denying his motion for a downward dispositional sentencing departure because the district court did not fully consider the factors suggesting that Banda is particularly amenable to probation. We disagree.

We accord “great discretion” to the district court in the imposition of sentences and reverse only for abuse of that discretion. *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014) (quotation omitted). The Minnesota Sentencing Guidelines allow for departures from a presumptive sentence where, for example, a district court specifically finds that “[t]he offender is particularly amenable to probation,” a finding which may “be supported by the fact that the offender is particularly amenable to a relevant program of individualized treatment in a probationary setting.” Minn. Sent’g Guidelines 2.D.3.a(7) (2021). In determining whether an offender is particularly amenable to treatment in a probationary setting, district courts consider the offender’s age, prior record, remorse, cooperation, attitude while in court, and the support of friends and/or family (*Trog* factors). *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). General amenability to probation is not enough. *Soto*, 855 N.W.2d at 308. To qualify for a dispositional departure from the presumptive sentence, an offender must be *particularly* amenable to probation, in that they are distinguishable from most others. *Id.* at 308-09; Minn. Sent’g Guidelines cmt. 2.D.303 (2021) (citing *Soto*, 855 N.W.2d at 309). In making its determination, a district court need not address each *Trog* factor but instead must exercise its discretion by considering the

factors both for and against imposition of a departure sentence. *See State v. Pegel*, 795 N.W.2d 251, 254 (Minn. App. 2011) (citing *State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985)) (reasoning there is no requirement for a district court to discuss all the *Trog* factors before imposing a sentence). And, even if the record establishes certain facts in support of a conclusion that an offender is particularly amenable to probation, a district court is not obligated to depart from the guidelines. *State v. Walker*, 913 N.W.2d 463, 468-69 (Minn. App. 2018).

The district court considered the factors for and against a sentencing departure and ultimately determined that Banda was not particularly amenable to probation. The district court praised Banda for his completion of inpatient treatment. The district court also acknowledged that there may have been some miscommunication about outpatient treatment. The district court then considered the fact that Banda did not successfully complete outpatient treatment, noted his prior DWI convictions, and expressed concern regarding a past incident where he “struggled being on probation.” The district court weighed all of this information and concluded that it could not “ignore [his] history and [his] last attempt at treatment.” The district court then imposed the presumptive sentence—60 months in prison. Minn. Sent’g Guidelines 4.A.

We see no abuse of discretion by the district court in making this decision. The district court considered appropriate factors in denying Banda’s motion—his failure to complete outpatient treatment, his criminal history, and his treatment history. And the record supports the district court’s assessment.

Because the district court did not abuse its discretion in denying Banda's motions to withdraw his guilty plea and for a downward dispositional sentencing departure, we affirm.

Affirmed.