

*This opinion is nonprecedential except as provided by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
A22-0544**

State of Minnesota,
Respondent,

vs.

Peter Jay Engen,
Appellant.

**Filed February 13, 2023
Affirmed
Klaphake, Judge ***

Mower County District Court
File Nos. 50-CR-20-2093, 50-CR-19-1787

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

Kristen Nelsen, Mower County Attorney, Scott K. Springer, Assistant County Attorney,
Austin, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Kathryn J. Lockwood, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larson, Presiding Judge; Gaïtas, Judge; and Klaphake,
Judge.

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

NONPRECEDENTIAL OPINION

KLAPHAKE, Judge

Appellant Peter Engen challenges the district court’s denial of his motion for a downward dispositional departure and failure to impose a sentence at the bottom of the Minnesota Sentencing Guidelines (guidelines) range. Appellant argues that the district court abused its discretion because he is particularly amenable to probation and, alternatively, compelling circumstances support imposing a shorter sentence. We affirm.

DECISION

The Minnesota Sentencing Guidelines establish presumptive sentences for criminal offenses. Minn. Stat. § 244.09, subd. 5 (2018).¹ The district court must impose the presumptive sentence unless “there exist identifiable, substantial, and compelling circumstances to support a departure,” in which case the district court *may* depart. Minn. Sent’g Guidelines 2.D.1 (Supp. 2019). “This means that the [district] court has broad discretion and that [appellate courts] generally will not interfere with the exercise of that discretion.” *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

Appellate courts will reverse sentencing decisions only for an abuse of discretion. *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014). “We will affirm the imposition of a presumptive guidelines sentence when the record shows that 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,

¹ No changes were made to the relevant Minnesota Statutes sections or sentencing guidelines between Engen’s 2019 and 2020 offense dates.

2013) (quotation omitted). Only a “rare case” will warrant “intervention with the district court’s discretion” in sentencing. *State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006).

I. The district court acted within its discretion when it denied Engen’s motion for a downward dispositional departure.

Engen pleaded guilty to fifth-degree drug possession, fourth-degree DWI, and second-degree drug possession based on 2019 and 2020 incidents in Mower County where police found methamphetamine in Engen’s car. Prior to his initial sentencing hearing, Engen failed to complete a presentence-investigation report (PSI) as ordered by the district court, prompting the court to issue a warrant for Engen’s arrest. Engen was taken into custody several months later and held pending the completion of the PSI and sentencing. Engen moved for a downward dispositional departure² and respondent State of Minnesota objected. The district court denied Engen’s downward-dispositional-departure motion and imposed presumptive guidelines sentences.³

² Engen’s motion cited five bases for a dispositional departure: (1) “the defendant’s criminal conduct was a result of circumstances unlikely to recur”; (2) “the present character and attitude of defendant indicates he is unlikely to commit another crime”; (3) “the defendant is particularly likely to comply with the terms of a period of probation and is amenable to treatment and programming available at the local level”; (4) “taking into account the character of the defendant, the nature and circumstances of the offense and the public interest, a dispositional departure from the sentencing guidelines is appropriate”; and (5) “the defendant’s professionally evaluated rehabilitative needs are best met by utilization of resources available in the community and, by imposing a lengthy probationary period, the court can appropriately monitor the programming necessary for the defendant’s rehabilitation and the long term public safety.”

³ Per Engen’s request that the district court execute his sentences to run concurrently, the district court imposed an executed, instead of a presumptively stayed, 17-month sentence for fifth-degree drug possession.

“A dispositional departure places the offender in a different setting than that called for by the presumptive guidelines sentence.” *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016). 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). When determining a defendant’s particular amenability to probation, the district court may consider the defendant’s age, prior record, remorse, cooperation, attitude in court, and the support of friends and family, among other things. *Id.* But even if there are grounds that would justify departure, the district court is not required to depart. *See* Minn. Sent. Guidelines 2.D.1 (stating that a district court “may” depart); Minn. Stat. § 645.44, subd. 15 (2018) (“‘May’ is permissive.”).

In his brief to this court, Engen argues that the district court abused its discretion when it denied his motion because he is “particularly amenable to treatment and probation.” Engen argues that he is particularly amenable to probation because he “admitted guilt and took responsibility,” which is “a critical factor in an offender’s amenability,” citing to *State v. Hickman*, 666 N.W.2d 729, 732 (Minn. App. 2003). Engen also argues the district court “did not acknowledge . . . the availability of community-based treatment” or Engen’s “inability to attend the initial PSI” because the notice was “sent to the incorrect address.” Lastly, Engen argues his “inability to appear for the initial PSI and his previous unsuccessful treatment attempts do not indicate Engen is not amenable to probation” and is “a public safety risk.” Rather, such circumstances demonstrate he “is a person struggling with chemical dependency and in need of further community-based treatment services.”

Engen's arguments are unpersuasive. First, Engen did not cite his admission of guilt as a basis for departure in his motion or at the sentencing hearing. Second, the district court need not depart even if mitigating factors, such as the admission of guilt, are present. *See State v. Wall*, 343 N.W.2d 22, 25 (Minn. 1984) ("The fact that a mitigating factor was clearly present did not obligate the court to place defendant on probation."). The district court need only evaluate all relevant information carefully before making its decision and is not required to "explain its reasons for imposing a presumptive sentence." *Johnson*, 831 N.W.2d at 925.

Here, the district court carefully considered the circumstances for and against departure as raised and argued by the parties. Prior to imposing a sentence, the district court stated that it read the "presentence investigation report; notice of motion and motion [to depart]; [and] character letters" from members of Engen's Alcoholics Anonymous/Narcotics Anonymous (AA/NA) group in support of Engen's motion. The district court then heard from Engen's counsel, Engen, and the prosecutor.

In denying Engen's departure motion, the district court addressed each of the five bases for departure outlined in Engen's motion. First, the district court determined that the criminogenic-needs assessment of Engen as "a high risk of re-offense" was "credible" and that Engen's offenses "piggy-backed" on each other, indicating a "pattern" of criminal behavior. Second, the district court cited Engen's "little to no cooperation with the presentence investigation process." Third, the district court again noted Engen's "almost complete failure to comply" with the PSI process and that the "CD [chemical-dependency] assessment was only done very recently" but "was supposed to be done a long time ago."

Fourth, as to the nature of the offense, the district court determined that the possession, sale, and use of drugs “is a significant public safety risk” such that “there is not a public interest in a disposition departure.” Fifth, the district court concluded that given Engen’s “two failed treatment attempts,” a probation period would not “change that in any way.”

Engen argues that the district court did not acknowledge the availability of community-based treatment; however, the district court directly addressed the claim from Engen’s motion that Engen’s “rehabilitative needs are best met by utilization of resources available in the community.” The district court stated it did not “find that that’s the case” based on Engen’s “two failed treatment attempts.”

Additionally, Engen’s argument that the PSI information was sent to the incorrect address is not supported by the record. Engen confirmed at multiple hearings that the PSI materials were sent to his correct address.

Lastly, Engen argues his past treatment failures do not indicate he was “unamenable to probation” and “unable or unwilling to commit to a sober life.” While the PSI noted Engen’s “desire to change,” and the letters from Engen’s AA/NA friends stated he “wants a sober life,” the record supports the district court’s determination that Engen was not particularly amenable to probation based on his pattern of criminal behavior, his failure to comply with the PSI process, the nature of the offense, and his past treatment failures. At the time of sentencing, Engen had three pending drug-related offenses—the 2019 and 2020 Mower County cases and an additional 2020 case in a different county. The record also shows that Engen delayed the completion of a chemical-dependency evaluation, ordered by the district court in June 2021, until right before sentencing in January 2022. In addition,

despite being made aware of the warrant for his arrest due to his failure to comply with the PSI process, Engen did not appear before the court for over two months.

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.” *State v. Walker*, 913 N.W.2d 463, 468 (Minn. App. 2018).

II. The district court acted within its discretion when it imposed the presumptive sentence.

After the district court denied Engen’s motion for a downward dispositional departure, he asked the court to “consider sentencing on the low end” of the guidelines range for his second-degree drug possession charge; however, the district court imposed the presumptive sentence of 98 months.

Appellate courts “generally will not interfere with sentences that are within the presumptive sentence range.” *State v. Freyer*, 328 N.W.2d 140, 142 (Minn. 1982). Although appellate courts have the authority “to modify a sentence that is within the presumptive sentence range, [they] generally will not exercise that authority absent compelling circumstances.” *Id.*

Engen argues that “compelling circumstances” exist here because “his offense was less serious than typical,” and he has “a long history of trauma and addiction.” These arguments are unpersuasive. Engen analogizes to *State v. Hennum*, 441 N.W.2d 793, 801 (Minn. 1989), in which the supreme court determined that a downward departure from the presumptive sentence was warranted because “the victim physically abused defendant on

the night of the victim's murder." Engen's "long history involving trauma and drug use, including being abused by his alcoholic father as a child," is far more remote from his criminal behavior than the abuse experienced by the defendant in *Hennum* on the night of the offense. Further, Engen's history was detailed in the PSI, which the district court stated it "read" prior to sentencing. Thus, Engen fails to show that the district court's imposition of the presumptive sentence was an abuse of discretion.

Affirmed.