

*This opinion is nonprecedential except as provided by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
A22-0730**

State of Minnesota,
Respondent,

vs.

Allison Wesley,
Appellant.

**Filed February 21, 2023
Affirmed
Frisch, Judge**

Anoka County District Court
File No. 02-CR-21-241

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

Brad Johnson, Anoka County Attorney, Kelsey R. Kelley, Assistant County Attorney,
Anoka, Minnesota (for respondent)

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

Considered and decided by Bjorkman, Presiding Judge; Jesson, Judge; and Frisch,
Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

Appellant argues that the district court abused its discretion by denying her motion
for a downward dispositional departure from the Minnesota Sentencing Guidelines because

substantial and compelling reasons exist to justify a departure. Because the district court acted within its discretion in imposing a guidelines sentence, we affirm.

FACTS

In January 2021, respondent State of Minnesota charged appellant Allison Wesley with attempted first- and second-degree murder after she broke into the apartment of her ex-partner's current girlfriend and stabbed her multiple times. Wesley subsequently reached an agreement with the state whereby she agreed to plead guilty to attempted second-degree murder and the state agreed to dismiss the remaining charge. The parties agreed that Wesley would enter a treatment program following the plea hearing and that she would comply with the terms of the program. Wesley entered treatment in January 2022.

In February 2022, the state learned that Wesley had been discharged from the treatment program for failing to submit urine samples and for other program infractions. The probation department notified the district court of the same. The district court issued a warrant for Wesley's arrest. The district court recalled the warrant after Wesley voluntarily appeared before the district court and explained the circumstances, including her ability to reenter treatment the next day. Wesley then reentered treatment. Before her sentencing hearing, Wesley submitted a motion for a dispositional departure, arguing that a departure was warranted based on her success in addressing her mental-health and related chemical-dependency issues in treatment.

In March 2022, at sentencing, Wesley reiterated the same arguments set forth in her written submissions. The state opposed any sentencing departure given the severity of the

crime and because Wesley's discharge from the treatment program demonstrated that she was not particularly amenable to probation. The district court stated that it had two options: impose the presumptive guidelines prison sentence or grant a departure if it found "that there [were] substantial and compelling factors that exist[ed] that would justify the Court not sending Ms. Wesley to prison." It acknowledged that Wesley presented some reasons that could justify a departure, but the district court determined that those reasons were not "substantial and compelling." The district court credited Wesley's efforts to attend treatment, but it did not find that her participation in treatment was sufficient to justify a departure and concluded that no other factors supported a departure. The district court imposed a guidelines sentence of 153 months' imprisonment.

Wesley appeals.

DECISION

Wesley argues that the district court abused its discretion by denying her motion for a dispositional departure from the presumptive sentence. The district court has great discretion when making sentencing decisions, and we will reverse those decisions only for an abuse of that discretion. *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014). A district court may depart from the presumptive sentence under the Minnesota Sentencing Guidelines "when substantial and compelling circumstances are present." *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981); *see also* Minn. Sent'g Guidelines 2.D.1 (2020). A district court generally does not abuse its discretion when imposing a sentence within the presumptive sentencing guidelines range. *See State v. Delk*, 781 N.W.2d 426, 428-29 (Minn. App. 2010), *rev. denied* (Minn. July 20, 2010).

In considering whether to grant a dispositional departure from the presumptive sentence, a district court may focus on the 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). A district court may consider the following factors in evaluating a defendant’s “particular amenability” to probation: “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. A district court should deliberately consider the reasons in support of a departure request. *State v. Curtiss*, 353 N.W.2d 262, 264 (Minn. App. 1984). But even if a district court determines that some factors might support a sentencing departure, a district court may properly exercise its discretion and choose not to depart. *State v. Walker*, 913 N.W.2d 463, 468 (Minn. App. 2018) (citing *Kindem*, 313 N.W.2d at 7). “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) (quotation omitted), *rev. denied* (Minn. Sept. 17, 2013). And we reverse a district court’s refusal to depart only in “rare” cases. *Walker*, 913 N.W.2d at 468 (quoting *Kindem*, 313 N.W.2d at 7).

Wesley argues that the district court did not properly consider the *Trog* factors when it determined that no substantial or compelling reasons justified her request for a dispositional sentencing departure. We emphasize that a district court is not required to grant such a departure even if presented with substantial and compelling reasons to do so. *Id.* Even so, Wesley argues that she was entitled to a departure because the district court overlooked the steps she had taken to rectify her mental-health and chemical-dependency challenges and her demonstrated success in treatment. We disagree. The district court deliberately considered Wesley’s arguments but determined, in its discretion, that the proffered reasons in support of a departure were both not compelling and insufficient to ensure public safety. The district court made this decision after Wesley had been discharged from her treatment program two months prior to sentencing.

This is not the rare case that justifies us reversing the district court’s decision not to grant a sentencing departure. *Kindem*, 313 N.W.2d at 7. Rather, the record reveals that the district court “carefully evaluated all the testimony and information presented” before making its decision. *Johnson*, 831 N.W.2d at 925 (quotation omitted). Thus, we conclude that the district court did not abuse its discretion by denying Wesley’s motion for a dispositional departure and affirm her sentence.

Affirmed.