

*This opinion is nonprecedential except as provided by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
A22-0789**

State of Minnesota,
Respondent,

vs.

Ajoko Gaye,
Appellant.

**Filed April 10, 2023
Affirmed
Reyes, Judge**

Ramsey County District Court
File No. 62-CR-20-2595

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

John J. Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney,
St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rebecca Ireland, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Larson, Judge; and Klaphake,
Judge.*

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

NONPRECEDENTIAL OPINION

REYES, Judge

On appeal from his conviction of first-degree burglary, appellant argues that the district court abused its discretion by denying his motion for a downward dispositional departure. We affirm.

FACTS

In April 2020, appellant Ajoko Gaye entered a residence uninvited while the homeowners were asleep. Appellant stole a television, a gaming system, two computers, shoes, a wallet, car keys, and a motor vehicle. The next day, a police officer observed the stolen vehicle with appellant inside and arrested him. Respondent State of Minnesota charged him with first-degree burglary in violation of Minn. Stat § 609.582, subd. 1(a) (2018), and motor-vehicle theft in violation of Minn. Stat § 609.52, subd. 2(a)(17) (Supp. 2019).

The parties reached a plea agreement consisting of appellant pleading guilty to the burglary charge in exchange for the state dismissing the theft charge. After the district court accepted the plea agreement, it conditionally released appellant to JusticePoint, a pretrial supervision agency, pending sentencing. The district court explained that appellant's release to JusticePoint required him to check in, abstain from using any drugs or alcohol that are not prescribed, and undergo urinalysis testing.

The sentencing worksheet calculated a presumptive sentence of 39 months with a lower end of 34 months and upper end of 46 months of the presumptive range. Following the hearing, appellant filed a downward-dispositional-departure motion asserting that he is

particularly amenable to probation. Because of the nature of appellant's presumptive sentence and the motion filed, the district court continued the sentencing hearing five times to give appellant more time to prove that his circumstances provide a substantial and compelling reason not to impose a guideline sentence. On March 9, 2022, the final sentencing hearing took place. The district court denied appellant's motion for a downward dispositional departure and sentenced appellant to 34 months in prison, the lower end of the presumptive range. This appeal follows.

DECISION

Appellant argues that the district court abused its discretion by denying his motion for a downward dispositional departure because he was particularly amenable to probation. We are not convinced.

Appellate courts "review a district court's decision to depart from the presumptive guidelines sentence for an abuse of discretion." *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016). When the sentence imposed is within the presumptive guidelines range, we generally do not review the district court's exercise of its discretion. *State v. Delk*, 781 N.W.2d 426, 428 (Minn. App. 2010), *rev. denied* (Minn. July 20, 2010). As a result, we will not exercise our authority to modify a sentence within the presumptive range, absent compelling circumstances. *Id.*

A district court may depart from the guidelines sentence "only if aggravating or mitigating circumstances are present," "and those circumstances provide a substantial and compelling reason not to impose a guidelines sentence." *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014) (quotations omitted). But even if substantial and compelling

circumstances exist, a district court need not depart from the guidelines. *State v. Walker*, 913 N.W.2d 463, 468 (Minn. App. 2018). “[A] defendant’s particular amenability to individualized treatment in a probationary setting will justify departure in the form of a stay of execution of a presumptively executed sentence.” *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). “Factors considered by the [district court] may include defendant’s age, prior record, remorse, cooperation, attitude in court, and the support of friends or family.” *State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985).

The presentence-investigation (PSI) report followed the recommendation from the sentencing guidelines and recommended that appellant be sentenced to 39 months. Moreover, the record reveals that the district court gave appellant many opportunities to show that he qualified for a downward dispositional departure by continuing his sentencing hearing five times.

At the first sentencing hearing in August 2021, the district court continued the hearing to give appellant an opportunity to maintain contact with JusticePoint because he had been missing his urinalysis testing. At the September sentencing hearing, appellant appeared 20 minutes late. The district court nevertheless heard appellant’s argument on his departure motion, including that he was taking medication for his substance-abuse disorder. The district court noted that the PSI report revealed that appellant had been referred to treatment in 2018 by his probation officer but failed to complete the program. Aside from medically assisted treatment, the district court asked appellant what other chemical-health treatment he had participated in and whether he would be prepared to participate in programming recommended by probation.

In response, his trial counsel stated that appellant “is not the most reliable,” “but he’s relying upon himself and those that are in his life to help him maintain [sobriety].” Appellant also told the district court that he had been engaged with caseworkers from the YMCA and saw Dr. Larson for his mental health. The district court requested documentation to support that appellant was seeing Dr. Larson. Appellant’s trial counsel asked for more time to show that appellant is particularly amenable to treatment. The district court granted his request and noted that being amenable to treatment means taking active steps to address that problem, not just thinking about treatment.

At the third and fourth sentencing hearings, appellant failed to provide the district court with consistent evidence that he was getting treatment. The district court found that it had not received a single uranalysis test from appellant. It also found out that appellant had an active warrant on a felony matter for damage to property that occurred in August 2021.

At the final sentencing hearing, appellant’s trial counsel argued for a departure, stating that appellant had participated in the Evergreen Recovery program but he could no longer participate in that program because of insurance issues. He also claimed that appellant had been seeing a counselor every two weeks since November 2021. The state argued against departure, citing the PSI report, appellant being on probation at the time of the burglary offense, and appellant’s new felony charge, just three months after his guilty plea. Ultimately, the district court denied appellant’s motion for downward dispositional departure and sentenced appellant to the lowest presumptive sentence of 34 months. It explained:

It is an eternal belief that people are always capable of redemption and that people are always capable of making good choices. Part of the reason that we had continued this matter so very many times was so that you could create a record that I could find and hold up against the [caselaw] and say this record shows both the people who may be on the short end of the spectrum of wishful thinkers and the people who may be considered to be much more cynical about human behavior. At this time, I [cannot] make those findings for you. That [i]s one of the hardest things about being a judge is watching someone make an effort, but fall short.

The district court carefully evaluated all the testimony and information before making its determination that it could not find appellant particularly amenable to treatment. *See Van Ruler*, 378 N.W.2d at 80-81 (stating that appellate courts defer to district court's discretion if record shows it evaluated all testimony and information presented before making determination). We discern no abuse of discretion by the district court.

Affirmed.