STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0820

State of Minnesota,
Respondent,

vs.

George Jerry Matlock,
Appellant.

Filed June 5, 2023
Affirmed
Wheelock, Judge

Ramsey County District Court
File No. 62-CR-19-6776

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, Kathryn J. Lockwood, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Wheelock, Presiding Judge; Segal, Chief Judge; and Ross, Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

Appellant challenges his sentence for second-degree burglary, arguing that the district court abused its discretion by denying his motion for either a downward

dispositional departure or a downward durational departure. Because the district court acted within its discretion in imposing a presumptive guidelines sentence, we affirm.

FACTS

In September 2019, respondent State of Minnesota charged appellant George Jerry Matlock with second-degree burglary after police arrested him for taking an iPad from Rondo Education Center, a St. Paul school. A security guard observed Matlock inside the school and followed him outside, where Matlock removed an iPad from his pants and set it on a retaining wall near the school before attempting to flee on foot.

In a separate Ramsey County court file, the district court ordered Matlock to undergo a Minnesota Rule of Criminal Procedure 20.01 mental-competency exam; the resulting report concluded that Matlock was incompetent to participate in his defense in that case. Further proceedings in that case and in this one were delayed during the pandemic in 2020. The district court suspended proceedings pursuant to rule 20.01 and ordered an updated competency report in both cases in February 2021. The updated report stated that Matlock experienced "genuine mental illness and cognitive impairment," but the related symptoms did not prevent him from understanding the legal process and participating in his defense.

In December 2021, Matlock pleaded guilty to second-degree burglary by entering a school building without consent and committing theft in violation of Minn. Stat. § 609.582, subd. 2(b) (2018). During the plea colloquy, he admitted to taking an iPad from an office inside the school.

At the sentencing hearing, the state opposed any departure from the recommended presumptive sentence range, which was 44 to 60 months' imprisonment based on Matlock's criminal-history score of seven and the offense's severity level of five. Matlock requested a downward dispositional departure on the bases that he was particularly amenable to probation because he had not violated his probation in a different matter in Dakota County, he had completed a treatment program, he had developed an appreciation of the impact of his behavior on others, and he had experienced significant health issues that motivated him to be more committed to a healthy lifestyle that would not include criminal behavior. In the alternative, Matlock requested a downward durational departure, first arguing that, although Matlock was not found incompetent, he showed signs of diminished capacity, and second, that the burglary was less severe than a typical offense because it took place in a public building and the school recovered the device after he left it on the school grounds.

The district court expressed sympathy for Matlock's severe health challenges but determined that he did not "meet the legal basis for departure" because he was not amenable to probation and his offense was not less serious than typical. It then denied both departure requests. It further noted that Matlock had been sent to the Minnesota Department of Corrections at least 14 times since 1997 and had been charged with two new counts of theft in 2020 after the theft offense for which he was being sentenced. The district court sentenced Matlock to 51 months' imprisonment.

Matlock appeals.

DECISION

Matlock argues that the district court abused its discretion by denying his motion for (1) a downward dispositional departure because he is particularly amenable to probation and particularly unamenable to prison or (2) a downward durational departure because his offense was less serious than the typical second-degree burglary offense. "Whether to depart from the guidelines rests within the district court's discretion, and this court will not reverse the decision absent a clear abuse of that discretion." *State v. Olson*, 765 N.W.2d 662, 664 (Minn. App. 2009) (quotation omitted); *accord State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016). When a district court imposes a presumptive sentence, an appellate court "may not interfere with the [district court's] exercise of discretion, as long as the record shows the [district court] carefully evaluated all the testimony and information presented before making a determination." *State v. Pegel*, 795 N.W.2d 251, 255 (Minn. App. 2011) (quotation omitted). "A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *State v. Guzman*, 892 N.W.2d 801, 810 (Minn. 2017). However, the denial of a departure is not equivalent to an abuse of discretion. *Pegel*, 795 N.W.2d at 253-54. And we reverse a district court's decision not to depart only in "rare" cases. *State v. Walker*, 913 N.W.2d 463, 468 (Minn. App. 2018) (quoting *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981)).

The Minnesota Sentencing Guidelines establish presumptive sentences for felony offenders "based on reasonable offense and offender characteristics." Minn. Stat. § 244.09, subd. 5 (2018). The sentences are "presumed to be appropriate for the crimes to which

they apply," and the district court must pronounce a sentence within the guidelines "unless there exist identifiable, substantial, and compelling circumstances to support a departure." Minn. Sent'g Guidelines 2.D.1 (Supp. 2019); *accord Pegel*, 795 N.W.2d at 253. "Substantial and compelling circumstances" are those that distinguish the instant case from typical cases. *State v. Peake*, 366 N.W.2d 299, 301 (Minn. 1985). The guidelines and caselaw provide a "nonexclusive list" of mitigating circumstances that can justify a downward departure. *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014) (quoting Minn. Sent'g Guidelines 2.D.3.a).

I. The district court did not abuse its discretion by denying Matlock's motion for a downward dispositional departure.

Matlock argues that the district court abused its discretion by not granting a downward dispositional departure from the presumptive guidelines sentence because Matlock is both particularly amenable to probation and particularly unamenable to prison because of his health. A downward dispositional departure "occurs when the [sentencing g]uidelines recommend a prison sentence but the court stays the sentence." Minn. Sent'g Guidelines 1.B.5.a(2) (Supp. 2019).

A. Particular Amenability to Probation

First, Matlock asserts that he is particularly amenable to probation. In evaluating a request for a downward dispositional departure, the district court may consider whether a defendant is "particularly amenable to probation." *Soto*, 855 N.W.2d at 309; Minn. Sent'g Guidelines 2.D.3.a(7) (Supp. 2019). It is not sufficient for the defendant to be merely amenable to probation; the defendant must be "particularly" amenable to probation to

distinguish the defendant from others and present the substantial and compelling circumstances necessary to justify a departure. Minn. Sent'g Guidelines 2.D.303 cmt. (Supp. 2019) (quoting *Soto*, 855 N.W.2d at 309). A district court may consider the following factors in evaluating whether a defendant is particularly amenable to probation: age, prior record, remorse, cooperation, attitude in court, and the support of friends and/or family. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982).

Matlock argues that the *Trog* factors weigh in favor of a determination that he is particularly amenable to probation, pointing to his age, completion of treatment, involvement in mental-health care, willingness to make changes in his life, and remorse for his criminal activity. He asserts that these factors, combined with his unique circumstances and medical issues, demonstrate that the presumptive prison sentence is not best for him or for society. The district court determined that Matlock was not amenable to treatment or probation given that he continued to add theft charges to his extensive criminal history while under pretrial supervision. And it specifically stated that it could not keep Matlock in the community given the prolific nature of his crimes over the span of many years.

The district court determined that the substantial and compelling circumstances that would justify a downward dispositional departure were not present here because it found that Matlock was not amenable—let alone "particularly amenable"—to probation. *Soto*, 855 N.W.2d at 309. The record shows that the district court "evaluated all the testimony and information presented" before it made its decision. *State v. Johnson*, 831 N.W.2d 917, 925 (Minn. App. 2013) (quotation omitted), *rev. denied* (Minn. Sept. 17, 2013). Moreover,

"[a]lthough the trial court is required to give reasons for departure, an explanation is not required when the court considers reasons for departure but elects to impose the presumptive sentence." *State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985); *see also Pegel*, 795 N.W.2d at 254 (there is "no requirement" that a district court must discuss all the *Trog* factors). We discern no abuse of discretion in the district court's denial of Matlock's motion for a dispositional departure on the basis of particular amenability to probation.

B. Particular Unamenability to Prison

Matlock also argues that he is "particularly unamenable to prison" due to his mental illness and severe medical issues and asserts that this is a sufficient basis for the district court to depart from the guidelines. As an initial matter, we note that he did not make this argument to the district court, and we could therefore decline to review it. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996) (stating that the reviewing "court generally will not decide issues which were not raised before the district court"). But even if we consider this argument, it does not persuade us that the district court erred in its sentencing determination.

In support of this argument, Matlock cites *State v. Wright* for the principle that "unamenability" to incarceration can be a "substantial basis for departure" even when the defendant could pose a public-safety risk if unsupervised. 310 N.W.2d 461, 462-63 (Minn. 1981). Matlock characterizes the Minnesota Supreme Court's decision in *Wright* as upholding a district court's decision to grant a dispositional departure "based largely" on the defendant being "particularly unamenable to incarceration." He then attempts to draw

an analogy between his health issues and Wright's mental-health issues, which rendered Wright "more child than man" and thus potentially susceptible to being "abused seriously if he were in some type of correctional institution." *Id.* at 462. Matlock's physical diagnoses include end-stage kidney disease and congestive heart failure, and his mental-health diagnoses include substance use and posttraumatic stress disorder. Matlock emphasizes that he is suffering from "end-of-life" health issues that require multiple treatments and therapies per week, but he does not assert that these health issues cause him to be in danger of being abused in a correctional facility. Matlock's health issues are thus distinguishable from those Wright experienced and from the type of health issues that the supreme court held could be a substantial basis for departure. And contrary to Matlock's assertion, *Wright* stands for the proposition that the district court *may* issue a downward dispositional departure if a defendant has serious health problems and the court believes society will not be harmed by the decision, 310 N.W.2d at 462-63; it does not stand for the inverse—that when a defendant has serious health concerns, a district court *must* grant a downward dispositional departure. Because *Wright* is inapposite and Matlock cites no other relevant authority to support his argument, we conclude that the district court was not required to depart from the presumptive sentence based on Matlock's alleged "unamenability" to prison and thus did not abuse its discretion in declining to do so.

II. The district court did not abuse its discretion by denying Matlock's motion for a downward durational departure.

Matlock argues he should have received a downward durational departure because he suffers from "diminished capacity due to his mental illness and severe medical issues"

and because his conduct during the offense was significantly less serious than is typically involved in second-degree burglaries. A downward durational departure "occurs when the court orders a sentence with a duration [lower] than the presumptive fixed duration or range." Minn. Sent'g Guidelines 1.B.5.b (Supp. 2019). "[A] downward durational departure is justified if the defendant's conduct is significantly less serious than typically involved in the commission of the offense." *State v. Mattson*, 376 N.W.2d 413, 415 (Minn. 1985).

A. Diminished Capacity

Matlock asserts that he should have received a downward durational departure due to his "mental illness and severe medical issues." He specifically asserts that his mental and physical health caused him to have diminished capacity that may be a basis for a downward durational departure. *See* Minn. Sent'g Guidelines 2.D.3.a(3) (Supp. 2019) (listing lack of substantial capacity for judgment because of physical or mental impairment when the offense was committed as a mitigating factor that can support a departure). The district court considered Matlock's health history, the rule 20 evaluation report, and the criminal-history memorandum filed in lieu of a PSI report and stated that, although it understood his argument about mitigation of culpability, it did not find this factor to be compelling under the circumstances. Moreover, because the district court imposed the presumptive sentence, it did not have to explain its decision. *See Van Ruler*, 378 N.W.2d at 80 (stating the district court need not provide an explanation when it considers reasons for departure and imposes a presumptive sentence). We discern no abuse of the district court's discretion in declining to depart durationally on this basis.

B. Seriousness of Offense

Finally, Matlock argues that his offense is less serious than the typical second-degree burglary because Rondo Education Center is "open to the public," and therefore, he was not in the building without consent. He also argues that because the iPad was returned to the school undamaged, "there was no victim, no violence, no harm." The district court rejected these bases as establishing that Matlock's offense was less serious than a typical second-degree burglary. The district court first explained that the crime to which Matlock pleaded guilty required that he enter "a government building, religious establishment, historic property, or school building without consent," Minn. Stat. § 609.582, subd. 2(b), and thus, "[t]his very charge implies that the buildings are public buildings . . . [s]o really, it's no different than the typical case." And as the state correctly points out, Matlock's assertion that the iPad was recovered also does not make his offense less serious than a typical burglary because the record does not explain why Matlock left the iPad behind; indeed, adverse inferences might be drawn from the fact that a security guard was following Matlock as he was leaving the school with stolen property. Although the school ultimately did not suffer a monetary loss for which it had to seek restitution, Matlock provides no authority supporting his suggestion that a lack of a monetary loss or the ultimate return of the stolen property makes this offense less serious than a typical burglary. Additionally, nothing in the record indicates the offense was less serious than a typical burglary inside a school or other public building. An offense that "fits squarely within" the statutory definition is not "less serious" than a typical offense in that category.

State v. Rund, 896 N.W.2d 527, 534 (Minn. 2017). Thus, we discern no abuse of the district court's discretion in declining to depart durationally on this basis.

In sum, the district court did not abuse its discretion by denying Matlock's request for a downward dispositional or downward durational sentencing departure.

Affirmed.