STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0977

State of Minnesota,
Respondent,

vs.

Nicholas Isaiah Antoine James,
Appellant.

Filed June 20, 2023
Affirmed
Reyes, Judge

Chisago County District Court
File No. 13-CR-19-423

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

Janet Reiter, Chisago County Attorney, John L. Lovasz, Assistant County Attorney, Center City, Minnesota (for respondent)

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

Considered and decided by Larson, Presiding Judge; Reilly, Judge; and Reyes, Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

Appellant asserts that the district court abused its discretion by denying his motion for a downward dispositional departure, arguing that he is particularly amenable to

probation and treatment and that he has reduced culpability based on age, cognitive condition, and a more passive role than his co-defendants. We affirm.

FACTS

Respondent State of Minnesota charged appellant Nicholas Isaiah Antoine James with first-degree attempted murder, Minn. Stat. §§ 609.185(a)(3), .17, subd. 1 (2018); aiding and abetting first-degree attempted murder while committing a felony, Minn. Stat. §§ 609.185(a)(3), .05, subd. 1, .17, subd. 1; aiding and abetting first-degree assault, Minn. Stat. §§ 609.221, subd. 1, .05, subd. 1, .11, subd. 5(a) (2018); and aiding and abetting first-degree aggravated robbery, Minn. Stat. §§ 609.245, subd. 1, .05, subd. 1 (2018). The complaint alleged that, on or about May 15 to 16, 2019, appellant and two other teenagers robbed a victim of approximately three ounces of marijuana and $2,000 from the victim's residence. When the victim attempted to escape, one of appellant's co-defendants shot him in the upper torso. The victim remained at Hennepin County Medical Center at the time of the complaint on September 8, 2020. In November 2021, appellant entered an *Alford*[1] plea to the amended charge of aiding and abetting attempted second-degree intentional murder, Minn. Stat. § 609.19, subd. 1(1) (2018).

Appellant was 18 years old at the time of the offense. Appellant started living under his grandmother's foster care when he was two or three years old and suffered abuse from his grandmother. After detailing appellant's childhood trauma and mental-health history,

[1] Under *North Carolina v. Alford*, 400 U.S. 25 (1970), a criminal defendant may tender a guilty plea while maintaining innocence when they believe that, if the state presents the evidence at trial, there is a substantial likelihood that they will be found guilty of the offense to which they are pleading guilty.

the presentence-investigation (PSI) report recommended a sentence of 130 1/2 months, which is the lower end of the presumptive range of 130 1/2 months to 183 1/2 months for appellant's offense under the Minnesota Sentencing Guidelines. Minn. Sent'g Guidelines 4.A, 2.G.2 (2018). (The guideline's sentencing range for second-degree intentional murder is 261 months to 367 months, and the presumptive sentence for an attempt is one-half the amount for the underlying offense.)

In April 2022, appellant moved for a downward dispositional departure, asserting his particular amenability to probation and treatment. In support of the motion, appellant submitted (1) a dispositional advisor's memorandum recommending a downward departure; (2) information about appellant's chemical dependency and mental-health treatment; (3) support letters from family members and friends; (4) a letter from appellant to the district court; and (5) a treatment completion certificate. After reviewing all the exhibits and following a sentencing hearing, the district court denied the departure motion. It sentenced appellant to 130 1/2 months in prison and ordered him to pay $10,189.16 in restitution. This appeal follows.

DECISION

Appellant argues that the district court abused its discretion by denying his motion for a downward dispositional departure. We are not persuaded.

The Minnesota Sentencing Guidelines establish presumptive sentences for felony offenses. Minn. Stat. § 244.09, subd. 5 (2018). The guidelines seek to "maintain uniformity, proportionality, rationality, and predictability in sentencing." *Id.* "Consequently, departures from the guidelines are discouraged and are intended to apply

to a small number of cases." *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016). A district court may depart from the presumptive sentence only when there are "identifiable, substantial, and compelling circumstances to support a departure." Minn. Sent'g Guidelines 2.D.1 (2018); *see also State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). "Substantial and compelling circumstances are those circumstances that make the facts of a particular case different from a typical case." *State v. Peake*, 366 N.W.2d 299, 301 (Minn. 1985). But even if substantial and compelling circumstances exist, a district court is not required to depart from the guidelines. *State v. Walker*, 913 N.W.2d 463, 468 (Minn. App. 2018).

A district court's refusal to depart from the sentencing guidelines will not be reversed absent a clear abuse of discretion. *State v. Shattuck*, 704 N.W.2d 131, 140 (Minn. 2005). When a district court imposes a presumptive sentence, appellate courts may not interfere with the district court's exercise of discretion if the record shows that the district court "carefully evaluated all the testimony and information presented before making a determination." *State v. Van Ruler*, 378 N.W.2d 77, 80-81 (Minn. App. 1985). Only in a "rare case" will we reverse the district court's refusal to depart from a presumptive sentence. *Kindem*, 313 N.W.2d at 7. Finally, although the district court must give reasons for departure, no explanation is required when the court considers reasons for departure but decides to impose a presumptive sentence. *Van Ruler*, 378 N.W.2d at 80.

Here, appellant argued for a downward dispositional departure based on his particular amenability to probation. *See State v. Soto*, 855 N.W.2d 303, 308-09 (Minn. 2014) (recognizing "particular amenability to probation" as a basis for downward

departure). Assessing particular amenability to probation involves consideration of factors including the person's age, criminal history, remorse, cooperation, attitude while in court, and the support of friends and/or family. *See State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). Appellant further argued that his age, cognitive condition, and a relatively passive role in the offense as compared to his co-defendants also supported a downward departure. *See State v. Wittman*, 461 N.W.2d 247, 250 (Minn. App. 1990) (upholding district court's grant of downward dispositional departure based on defendant's limited role in offense).

The record shows that the district court reviewed all the exhibits appellant submitted, including the dispositional advisor's report, appellant's in-custody treatment progress, support letters from appellant's family and friends, letters from appellant's counsel and appellant himself. After hearing appellant's oral argument,[2] the district court took a recess to further consider all the evidence. Ultimately, the district court found that appellant was not particularly amenable to probation because, among other reasons, appellant (1) repeatedly failed to appear for court and committed conditional-release violations; (2) had additional pending charges from January 2020 for felony unlawful possession and sale of a controlled substance; (3) had an extensive juvenile history; and

[2] Pursuant to the plea agreement, the state did not argue against appellant's motion.

(4) told people inconsistent stories at different times to get different results.[3] Because the district court carefully evaluated all the testimony and information presented to it before making its determination, we conclude that it did not abuse its discretion by denying the motion to depart.

Affirmed.

[3] The district court also found that appellant failed to follow the doctor's instructions to regulate his diabetes. Appellant argues that the district court violated his constitutional right to control medical decisions by punishing him for it. Because appellant did not raise this argument at the district court, he has forfeited the argument on appeal. *See State v. Wembley*, 728 N.W.2d 243, 245 (Minn. 2007). The argument also fails on the merits because the record shows that the district court only referenced it as an example of appellant's history of disobeying orders. The district court did not "punish" him for his medical decisions.