

*This opinion is nonprecedential except as provided by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
A22-1006**

State of Minnesota,
Respondent,

vs.

Kenneth Scott Adams, Jr.,
Appellant.

**Filed April 10, 2023
Affirmed in part and remanded
Jesson, Judge**

Lake County District Court
File No. 38-CR-21-449

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

Russell H. Conrow, Lake County Attorney, Two Harbors, Minnesota (for respondent)

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

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

NONPRECEDENTIAL OPINION

JESSON, Judge

Police found methamphetamine in a car where appellant Kenneth Scott Adams, Jr. was a passenger. Adams admitted that the methamphetamine belonged to him and pleaded guilty to third-degree possession of a controlled substance. On appeal, Adams

argues that his plea was neither voluntary nor intelligent, the district court abused its discretion by denying his requests for downward departures, and his warrant of commitment lists the wrong offense. Because Adams understood his guilty plea when he agreed to it and the district court did not abuse its discretion when it denied his requests for downward departures, we affirm. But because Adams's warrant of commitment lists the wrong offense, we remand to correct this mistake.

FACTS

In November 2021, respondent State of Minnesota charged Adams with three crimes: felony third-degree possession of a controlled substance, felony fifth-degree possession of a controlled substance, and misdemeanor unlawful possession of a hypodermic needle.¹ These charges arose out of a traffic stop involving Adams on October 30, 2021. On that day, an officer saw a vehicle driven by an individual the officer knew did not have a valid driver's license. The officer stopped the vehicle, approached it, and observed a hypodermic needle on the center console directly between the driver and Adams, who was in the passenger seat. The officer searched the car and found a number of items, including approximately 10.96 grams of methamphetamine, which Adams admitted belonged to him.

Adams agreed to plead guilty to third-degree possession of a controlled substance in return for the state dismissing the other two charges. Adams requested both downward dispositional and durational departures at sentencing, but the district court denied both

¹ These charges violate Minnesota Statutes sections 152.023, subdivision 2(a)(1), 152.025, subdivision 2(1), and 151.40, subdivision 1 (2020).

requests and sentenced Adams to 34 months' imprisonment, the lowest end of the presumptive range. The warrant of commitment stated that Adams was convicted under Minnesota Statutes section 152.023, subdivision 1(1) (2020), which criminalizes *sale* of a controlled substance, rather than section 152.023, subdivision 2(a)(1), which criminalizes the *possession* of a controlled substance (other than heroin) that weighs ten grams or more.

Adams appeals.

DECISION

Adams submits three challenges to his conviction and 34-month sentence. First, he argues that his plea was neither voluntary nor intelligent because the district court failed to adequately ensure that he possessed the understanding and capacity to plead guilty. Second, Adams asserts that he must be resentenced because the district court abused its discretion by denying his motion for downward dispositional and durational departures where substantial and compelling circumstances existed. Finally, Adams contends that his warrant of commitment lists the wrong offense and must be corrected. We address each argument in turn.

I. Adams's plea was voluntary and intelligent.

"A defendant has no absolute right to withdraw a guilty plea after entering it." *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010). At the same time, a court must allow a defendant to withdraw a guilty plea if the withdrawal "is necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. A manifest injustice exists if a guilty plea is invalid. *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). To be valid, a guilty plea must

be “accurate,² voluntary, and intelligent.” *Raleigh*, 778 N.W.2d at 94. A defendant has the burden of showing that their guilty plea was invalid. *Raleigh*, 778 N.W.2d at 94. Assessing the validity of a plea presents a question of law that this court reviews de novo. *Id.*

Here, Adams alleges that his plea was neither voluntary nor intelligent because the district court did not sufficiently establish that Adams understood his guilty plea when he agreed to it. Minnesota law requires that when a defendant enters a guilty plea, the district court must determine whether the defendant (a) is under the influence of drugs or intoxicating liquor, (b) has a mental disability, or (c) is undergoing mental or psychiatric treatment. Minn. R. Crim. P. 15.01, subd. 1(5). Adams contends that the record here does not sufficiently establish the voluntariness of his plea because the understanding and capacity section of his plea petition was left blank.

We disagree. During the plea hearing, the district court asked Adams if he was under the influence of any substance that would impact his ability to understand the plea agreement or if he has a mental illness or disability that would prevent him from understanding the plea. And Adams responded in the negative both times. Nor did Adams have any additional questions for his attorney or the court about the plea before it was entered. And although it is a best practice for attorneys to completely fill out a plea petition, because the district court inquired about the voluntariness factors during the plea colloquy, the record establishes that the plea was voluntary.

² Adams does not contest that his plea was accurate.

If the record shows that a defendant had full opportunity to consult their counsel before entering a plea, courts may “safely presume” that a defendant was adequately informed of their rights. *Hernandez v. State*, 408 N.W.2d 623, 626 (Minn. App. 1987). Adams told the district court he had enough time to go over the plea petition with his attorney and did not have any questions about it. Adams’s attorney’s statements to the district court align with Adams’s testimony. Accordingly, Adams’s plea was intelligent. Because the record demonstrates that Adams’s guilty plea was voluntary and intelligent, we conclude that his plea was valid.

II. The district court did not abuse its discretion by denying Adams’s motion for a downward durational or dispositional departure.

The Minnesota Sentencing Guidelines establish presumptive sentences for felony offenses. Minn. Stat. § 244.09, subd. 5 (2022). 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 (2021); *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

need not 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, 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 it made 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. And 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. With this standard of review in mind, we address Adams's downward durational- and dispositional-departure arguments in turn.

A durational departure is a sentence shorter or longer than the presumptive range prescribed by the sentencing guidelines. Minn. Sent'g Guidelines 1.B.5.b (Supp. 2021). This type of departure must be based on factors that reflect the seriousness of the offense, not the characteristics of the offender. *Solberg*, 882 N.W.2d at 623-24. In determining whether to grant a downward durational departure, a district court must consider whether the defendant's conduct was significantly less serious than that typically involved in the commission of the offense. *State v. Mattson*, 376 N.W.2d 413, 415 (Minn. 1985). When a defendant's actions fit squarely within the conduct prohibited by the statute, the offense

is not significantly less serious than typical. *State v. Rund*, 896 N.W.2d 527, 534 (Minn. 2017); *Solberg*, 882 N.W.2d at 626-27.

Here, Adams argues that his conduct was less serious than typical because he was a passive participant whom the primary participant preyed on and “took advantage of.” And although Adams claimed to be the owner of all the drugs found in the car, only 2.28 grams of methamphetamine were actually found in his wallet. While it is true that whether an offender played a minor or passive role in the crime is a potential mitigating factor under the sentencing guidelines, Minn. Sent’g Guidelines 2.D.3.a(2) (Supp. 2021), Adams claimed to be the owner of *all* the drugs, and the district court was entitled to credit his testimony. *State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992), *aff’d*, 508 U.S. 366 (1993). Thus the district court did not abuse its discretion by denying Adams’s motion for a downward durational departure.

Adams also contends that the district court abused its discretion when it denied his motion for a downward dispositional departure. A dispositional departure places the offender “in a different setting than that called for by the presumptive guidelines sentence” based on characteristics of the defendant that make them particularly amenable to individualized treatment in a probationary setting.³ *Solberg*, 882 N.W.2d at 623. If the record suggests factors for departure, the district court should deliberately consider those factors along with what would be best for society. *State v. Curtiss*,

³ Factors to examine while considering a defendant’s particular amenability to probation include a defendant’s age, prior record, remorse, cooperation, attitude while in court, and the support of friends and family. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982).

353 N.W.2d 262, 263-64 (Minn. App. 1984). When the district court fails to exercise its discretion in denying a motion to depart, this court will remand for resentencing. *State v. Mendoza*, 638 N.W.2d 480, 484 (Minn. App. 2002), *rev. denied* (Minn. Apr. 16, 2022).

Here, the district court noted that Adams inconsistently accepted responsibility for his actions, was suffering from a substance-use disorder, posed a risk to society given his criminal history, and failed to properly deal with his substance-abuse issues in a community setting despite multiple opportunities. This evaluation shows that the district court considered all the information presented before making the determination to deny Adams's motion for a downward dispositional departure. Adams argues that his amenability to treatment in the community, community support, age, criminal history, cooperation with the judicial process, and remorse support granting him a dispositional departure. But the district court addressed a majority of these factors in its sentencing decision and determined that they weigh against a dispositional departure. And even if the district court had found *some* mitigating factors present, the district court can choose not to depart and still not abuse its discretion. *Trog*, 323 N.W.2d at 31 (stating that a defendant's clean record does not by itself justify mitigation of sentence). Accordingly, the district court did not abuse its discretion when it denied Adams's request for a downward dispositional departure.

III. We remand to the district court to correct the warrant of commitment.

Adams contends, and the state agrees, that Adams's warrant of commitment contains a clerical error because it lists the wrong statute for his conviction. Under the Minnesota Rules of Criminal Procedure, "[c]lerical mistakes in a judgment, order, or in the

record arising from oversight or omission may be corrected by the court at any time, or after notice if ordered by the court.” Minn. R. Crim. P. 27.03, subd. 10. A clerical mistake is a mistake in the clerical work of transcribing the record and cannot reasonably be attributed to the exercise of judicial consideration or discretion. *State v. Walsh*, 456 N.W.2d 442, 443 (Minn. App. 1990).

Here, the discrepancy in the original warrant of commitment was between the statute Adams was convicted under, Minnesota Statutes section 152.023, subdivision 2(a)(1), and the statute listed in the warrant of commitment, Minnesota Statutes section 152.023, subdivision 1(1). This is a mistake of transcription, not of judgment, because during sentencing, Adams admitted a factual basis for the crime of possession of a controlled substance in the third degree. The plea petition also made the same mistake, and it was amended at the direction of the district court.⁴ Because this court cannot issue a corrected warrant of commitment and the district court could correct a mistake “at any time,” we remand to the district court to correct the warrant of commitment. Minn. R. Crim. P. 27.03, subd. 10.

Affirmed in part and remanded.

⁴ The state contends that we can fix this clerical error without remanding, but it cites neither statute nor caselaw to support this proposition.