

*This opinion is nonprecedential except as provided by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
A22-1187**

State of Minnesota,
Respondent,

vs.

Nathan Edward Garrett,
Appellant.

**Filed June 26, 2023
Affirmed
Frisch, Judge**

Anoka County District Court
File No. 02-CR-21-4258

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, Amy Lawler, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Frisch, Presiding Judge; Cochran, Judge; and Wheelock,
Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

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

he is particularly amenable to probation. Because the district court acted within its discretion in imposing a guidelines sentence, we affirm.

FACTS

In July 2021, respondent State of Minnesota charged appellant Nathan Edward Garrett with one count of violating an order for protection (OFP) in violation of Minn. Stat. § 518B.01, subd. 14(a) (2020). Garrett pleaded guilty to the offense and admitted that he instructed a jail acquaintance to deliver a message to his ex-girlfriend who, at that time, had an active OFP against Garrett.

Prior to sentencing, Garrett filed a motion for a downward dispositional departure, arguing that he was particularly amenable to probation. At sentencing, the state opposed the motion and expressed doubt regarding Garrett's ability to succeed on probation given his historic inability to follow court orders. Garrett argued that he was "extremely amenable" to probation because he successfully completed substance-abuse treatment, was managing a sober house and an online group for people in recovery with over 500,000 members, he was on intensive supervised release (ISR), he took ownership of his actions while in prison, and he needed to help his mother after his father's recent death. Garrett also emphasized effects of a prior traumatic brain injury (TBI) and asserted that the TBI caused him to be unaware that an OFP had been issued against him.

The district court denied Garrett's motion for a dispositional departure. The district court expressly stated that it considered "a lot" of available options and all of Garrett's arguments in support of the departure motion. It expressed concerns regarding Garrett's lack of participation in individual counseling as recommended in a neuropsychological evaluation related to his TBI, as well as his ISR expiring in October 2022, just five months

after sentencing. It also noted that, despite Garrett obtaining sobriety in March 2020, he violated two court orders in the subsequent 15 months. The district court concluded that Garrett's substance abuse was unrelated to his criminal behavior and that Garrett's sobriety was therefore not a meaningful factor in the district court's sentencing decision. Finally, the district court discredited Garrett's assertion that he was unaware of the OFP because his conduct indicated otherwise and determined that Garrett's arguments demonstrated a lack of truthfulness about his actions. The district court concluded that Garrett was not particularly amenable to probation and imposed a guidelines sentence of 36 months' imprisonment.

Garrett appeals.

DECISION

Garrett argues that the district court abused its discretion by denying his motion for a dispositional departure from the presumptive sentence under the Minnesota Sentencing Guidelines. The district court has great discretion when making sentencing decisions, and we will reverse those decisions only when the district court abuses 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 dispositional departure typically focuses on characteristics of the defendant." *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016). 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 truly presents the substantial and compelling circumstances that are necessary to justify a departure." *Soto*, 855 N.W.2d at 308-09 (quotation omitted). The district court may consider the following factors when deciding to dispositionally depart on this basis: "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.

Even if a district court determines that factors exist that might support a sentencing departure, a district court may choose not to depart without abusing its sentencing discretion. *See State v. Walker*, 913 N.W.2d 463, 468 (Minn. App. 2018). "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). 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).

Garrett argues that the district court abused its discretion by not fully considering evidence showing his particular amenability to probation, namely his acceptance of responsibility for his actions, his successful completion of substance abuse treatment and maintenance of sobriety while supporting others, and his success on ISR. But the record

reveals that the district court did consider these proffered reasons and concluded that they did not establish Garrett's particular amenability to probation.

First, the district court determined that Garrett had not accepted full responsibility for his actions. The district court discredited Garrett's assertion that he was unaware of the OFP and determined that Garrett was not honest about the circumstances giving rise to the offense. While the acceptance of responsibility and expression of remorse are factors that can support a dispositional departure, *State v. Hickman*, 666 N.W.2d 729, 732 (Minn. App. 2003), the district court acted within its discretion by discrediting this evidence.

Second, although the district court considered and applauded Garrett's sobriety, the district court determined that Garrett's substance abuse was unrelated to his criminal behavior. The record supports the district court's determination that Garrett continued to violate court orders even after he achieved sobriety. The district court found that Garrett's lack of participation in previously recommended individual therapy and counseling was a significant concern.

The district court carefully considered the reasons Garrett provided in support of his departure motion and properly exercised its discretion in rejecting the same and determining that Garrett was not particularly amenable to probation. *See Johnson*, 831 N.W.2d at 925.

Affirmed.