

*This opinion is nonprecedential except as provided by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
A22-1310**

State of Minnesota,
Respondent,

vs.

Collin Charles Koerner,
Appellant.

**Filed May 15, 2023
Affirmed
Cochran, Judge**

Morrison County District Court
File No. 49-CR-21-681

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

Brian Middendorf, Morrison County Attorney, Little Falls, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Eva F. Wailes, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Worke, Judge; and
Cochran, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

On appeal from his conviction of first-degree possession of a controlled substance,
appellant argues that the district court abused its discretion by denying his motion for a

downward dispositional departure from his presumptive prison sentence. Because the district court did not abuse its discretion, we affirm.

FACTS

On May 25, 2021, respondent State of Minnesota charged appellant Charles Koerner in Morrison County with first-degree possession of a controlled substance in violation of Minn. Stat. § 152.021, subd. 2(a)(1) (2020), and fifth-degree possession of a controlled substance in violation of Minn. Stat. § 152.025, subd. 2(1) (2020). The complaint alleged that police found approximately 107 grams of methamphetamine and a large amount of cash in Koerner’s backpack, as well as 1.7 grams of methamphetamine and 16 grams of marijuana in his vehicle, following a traffic stop.

On April 20, 2022, Koerner pleaded guilty to first-degree possession of a controlled substance. There was no deal as to sentencing with the state. The district court deferred acceptance of the plea, ordered a presentence investigation (PSI) report, and set the matter for sentencing. There was no discussion of the fifth-degree possession charge at the plea hearing. While awaiting the sentencing hearing, Koerner entered a long-term drug-treatment program.

The PSI report detailed Koerner’s extensive criminal history, including three felony drug convictions, four felony theft convictions, and forty-two misdemeanor convictions—four of which were for drug offenses. The PSI report also explained that Koerner had received “lenient sentences” in the past and had participated in several drug-treatment programs, including one through the Stearns County Drug Court, but had continued to reoffend. The report recognized that “a commitment to prison is justified and viewed as

appropriate” under the sentencing guidelines, but it “reluctantly” recommended a downward dispositional departure based on Koerner’s ongoing participation in the long-term drug treatment program and his sobriety since entering the program.

The day after the PSI report was completed, Koerner filed a motion for a downward dispositional departure. Koerner asked the district court to impose a probationary sentence rather than the presumptive prison sentence. In support of his motion, Koerner filed several documents including: (1) a memorandum from a dispositional advisor in the public defender’s office, which recommended probation; (2) letters from Koerner’s drug treatment counselors and peers emphasizing his commitment to his recovery and the benefits of long-term drug treatment; and (3) a letter from members of his family expressing their support. Koerner also included a transcript from a recent sentencing hearing in a Stearns County matter during which Koerner moved for a dispositional departure and the district court granted it.¹

On June 23, 2022, Koerner appeared for sentencing. At sentencing, Koerner acknowledged that his extensive criminal history resulted in a presumptive “guideline[s] sentence of 125 months” in prison. But he argued that his individual circumstances supported a downward dispositional departure. In support of his position, Koerner noted that he voluntarily sought treatment prior to sentencing because he recognized that “there were changes that he needed to [make] in his life.” He asserted that the long-term

¹ Koerner acknowledges that this Stearns County sentencing decision was not binding on the district court in this matter. Therefore, like the district court, we do not factor this decision into our analysis.

drug-treatment program that he entered was “a very good fit for him” and that he was doing well in the program. At the time, Koerner had completed approximately 8 of 13 months of the program. Koerner argued that he could benefit from additional treatment and that he was “still young” at 31 years old. Koerner also expressed remorse about the pain that he had caused others. Koerner told the district court that his past crimes were the result of his addiction and asserted that “incarceration [was] not the answer.” For these reasons, Koerner argued that he is particularly amenable to probation and asked the district court to grant his motion for a downward dispositional departure.

The state opposed Koerner’s motion. The state argued that Koerner’s numerous first-degree drug convictions and his pattern of reoffending after being placed on probation and attending drug-treatment programs demonstrate that he is not particularly amenable to probation. The state objected to Koerner’s characterization of his drug crimes as a product of his addiction. The state noted that Koerner’s most recent conviction was based on his possession of a large amount of methamphetamine consistent with “trafficking,” not personal use. The state also suggested that Koerner expressed remorse and entered a long-term drug-treatment program only to avoid prison. The state acknowledged that Koerner had the support of his family and friends but implied that this factor was not enough to support a downward dispositional departure. The state characterized Koerner as a danger to the public and asked the district court to impose a 138-month executed prison sentence.

After hearing from the parties, the district court denied Koerner’s motion for a downward dispositional departure. The district court emphasized that Koerner had been

granted dispositional departures twice before and “ha[d] violated probation on multiple files and multiple occasions.” The district court acknowledged Koerner’s progress in the long-term drug-treatment program but noted that Koerner had already “availed himself [of] multiple treatment formats,” and yet still had “multiple pending drug-related files.” The district court explained that Koerner was “not youthful as far as the criminal justice system goes,” that his cooperation with law enforcement was “nonapplicable at best,” and that his remorse was “highly questionable,” in light of the serious charges against him. The district court recognized Koerner’s “strong family support” but observed that this support had been insufficient to curb Koerner’s criminal activity thus far. Based on its findings, the district court concluded that Koerner is not particularly amenable to probation and that the circumstances did not support a downward dispositional departure.

The district court imposed a 150-month executed prison sentence for the first-degree possession crime, which represented the top-of-the-box presumptive sentence, and dismissed the fifth-degree possession charge. This appeal follows.

DECISION

The Minnesota Sentencing Guidelines establish presumptive sentences for felony offenses. Minn. Stat. § 244.09, subd. 5 (2022). Pursuant to Minn. Sent’g Guidelines 2.D.1 (2020), “[t]he [district] court must pronounce a sentence of the applicable disposition . . . unless there exist identifiable, substantial, and compelling circumstances to support a departure.” A downward dispositional departure “occurs when the Guidelines recommend a prison sentence[,], but the [district] court stays the sentence” and places the defendant on probation. Minn. Sent’g Guidelines 1.B.5.a(2) (2020).

A district court may grant a downward dispositional departure if the defendant is “*particularly* amenable to probation.” Minn. Sent’g Guidelines 2.D.3.a(7)(a) (2020) (emphasis added). “By requiring a defendant to be *particularly* amenable to probation . . . we ensure that the defendant’s amenability to probation distinguishes the defendant from most others and truly presents the substantial and compelling circumstances that are necessary to justify a departure.” *State v. Soto*, 855 N.W.2d 303, 309 (Minn. 2014) (quotation omitted). The supreme court has recognized that several factors may be relevant to a district court’s determination of whether a defendant is particularly amenable to probation, “including the defendant’s age, his prior record, his remorse, his cooperation, his attitude while in court, and the support of friends and/or family.” *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). These factors are commonly known as the *Trog* factors. A district court is not obligated to depart from the presumptive sentence, even if some of the *Trog* factors support a departure. *See State v. Walker*, 913 N.W.2d 463, 468-69 (Minn. App. 2018).

Koerner challenges the district court’s denial of his motion for a downward dispositional departure. “We afford the [district] court great discretion in the imposition of sentences and reverse sentencing decisions only for an abuse of that discretion.” *Soto*, 855 N.W.2d at 307-08 (quotation omitted). This is especially true when, as here, the district court imposes a presumptive sentence. We generally will not interfere with a presumptive sentence “as long as the record shows the sentencing 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). It is only in a “rare” case

that we will reverse a district court's decision not to depart. *Walker*, 913 N.W.2d at 468 (quoting *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981)).

Koerner argues that the district court abused its discretion by denying his motion for a downward dispositional departure because “the *Trog* factors demonstrate that [he] meets the legal standard for particular amenability to probation.” In support of his argument, Koerner emphasizes the following information in the record relating to the *Trog* factors: his “significant efforts . . . to seek out treatment and maintain his sobriety and success in doing so, as well as his acceptance of responsibility, remorse for the crime, and the support of his family and community.” Koerner's argument is unavailing.

The district court reasonably determined that the *Trog* factors did not support a downward dispositional departure. *See Trog*, 323 N.W.2d at 31. In considering the *Trog* factors, the district court found that Koerner's pattern of receiving a dispositional departure, entering a drug-treatment program, and then returning to court on serious drug charges demonstrated that he was not particularly amenable to probation. The district court also found that Koerner's age did not favor a departure because he was not particularly young, especially in the context of his extensive criminal record. While the district court acknowledged that Koerner's family support favored a departure, it also noted that, thus far, this support had not kept Koerner out of trouble. Because the district court carefully considered the record and arguments before it in light of the *Trog* factors, we discern no abuse of discretion in the district court's denial of Koerner's motion for a downward dispositional departure. *See Pegel*, 795 N.W.2d at 255; *Trog*, 323 N.W.2d at 31.

In arguing otherwise, Koerner essentially asks this court to reweigh the evidence on the *Trog* factors and find in his favor. But that is not the role of an appellate court. See *Nelson v. Schlener*, 859 N.W.2d 288, 294 (Minn. 2015) (explaining that “[t]he function of the court of appeals is limited to identifying errors and then correcting them” (quotation omitted)); *In re Welfare of M.D.O.*, 462 N.W.2d 370, 374-75 (Minn. 1990) (holding that the role of the court of appeals is to correct errors, not to find facts). Rather, as explained above, our role is to determine whether the district court carefully evaluated the information and testimony before it when deciding whether to grant a departure. See *Pegel*, 795 N.W.2d at 255 (explaining that this court will affirm the imposition of a presumptive sentence “as long as the record shows the sentencing court carefully evaluated all the testimony and information presented before making a determination” (quotation omitted)).

To support his argument, Koerner also cites to several cases reviewing a district court’s decision to *grant* a dispositional departure. See *State v. Hennessy*, 328 N.W.2d 442, 443 (Minn. 1983); *State v. Dokken*, 487 N.W.2d 914, 916 (Minn. App. 1992), *rev. denied* (Minn. Sept. 30, 1992); *State v. Malinski*, 353 N.W.2d 207, 209 (Minn. App. 1984), *rev. denied* (Minn. Oct. 16, 1984). Koerner’s reliance on these cases is misplaced. To begin, in none of these cases did the appellate court conclude that the district court had abused its discretion in its sentencing decision, as Koerner asks us to do here. Instead, in each of the cases, the appellate court *affirmed* the district court’s sentencing decision. See *Hennessy*, 328 N.W.2d at 443 (affirming the district court’s grant of a downward dispositional departure); *Dokken*, 487 N.W.2d at 919 (same); *Malinski*, 353 N.W.2d at 211 (same). Additionally, none of these cases establish that a district court *must* grant a motion for a

dispositional departure when some of the *Trog* factors weigh in favor of a downward dispositional departure, and the law does not support this proposition. *See* Minn. Sent’g Guidelines 2.D.1 (providing that district courts “may” depart from presumptive sentences); *Trog*, 323 N.W.2d at 31 (explaining that “[n]umerous factors” are “relevant” to determining whether a defendant is particularly amenable to probation); *Walker*, 913 N.W.2d at 468 (noting that appellate courts will reverse a district court’s decision not to depart only in “rare” cases (quotation omitted)). Thus, the caselaw relied on by Koerner does not support reversal of the district court’s decision in this case.

In sum, the district court “carefully evaluated all the testimony and information presented,” as the law requires, and concluded that the record did not support a downward dispositional departure. *Pegel*, 795 N.W.2d at 255. We discern no abuse of discretion by the district court in its decision. This is not a “rare case” requiring reversal of the district court’s refusal to depart.

Affirmed.