

*This opinion is nonprecedential except as provided by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
A22-1471**

State of Minnesota,
Respondent,

vs.

Marcus Allen Owens, Jr.,
Appellant.

**Filed August 21, 2023
Affirmed
Bjorkman, Judge**

Le Sueur County District Court
File No. 40-CR-20-950

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

Brent Christian, Le Sueur County Attorney, Jason L. Moran, Assistant County Attorney,
Le Center, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Max Brady Kittel, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Ross, Judge; and Bjorkman,
Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant challenges his presumptive sentence for first-degree criminal sexual conduct, arguing that the district court abused its discretion by failing to consider the valid reasons supporting a downward dispositional departure. We affirm.

FACTS

Appellant Marcus Allen Owens, Jr. pleaded guilty to first-degree criminal sexual conduct involving a 12-year-old girl. At the time of the offense, Owens lived with the victim's family. He communicated with the victim using Snapchat, telling her she was pretty, saying that he wanted to touch and have sex with her, and once asking her "for a hand job." One night between midnight and 1:00 a.m., the victim woke up and left her bedroom to get a drink of water. Owens called her over to the laundry room, where he "sexually penetrated her vagina with his penis." When he was first interviewed by law enforcement, Owens denied any sexual contact with the victim. But when he was later confronted with evidence that she became pregnant and had an abortion, and that DNA testing of the fetus showed he was the father, Owens claimed that they had consensual sexual intercourse and that it "was a mistake."

At the guilty-plea hearing, Owens admitted that at the time he committed the offense he was 21 years old and his victim was 12 years old. But he maintained that he did not know the victim was 12.

Owens completed a presentence investigation (PSI) and a psychosexual evaluation.¹ The PSI report described Owens's difficult family history, lack of support in the community, and mental-health concerns. It also noted Owens's noncompliance with probation for prior offenses and his continued references to his criminal sexual conduct as

¹ We are mindful of our obligation under Minn. R. Pub. Access to Recs. of Jud. Branch 4, subd. 1(b), to protect the confidentiality of nonpublic information, and include in this opinion only information that Owens presents in his brief.

a “mistake,” which indicated a lack of accountability for his actions. The report recommended that Owens be given a guidelines sentence of 144 months’ imprisonment.

The psychosexual evaluator likewise considered Owens’s past difficulties and current challenges, and interviewed Owens twice. During the first interview, Owens told the evaluator that he did not need sex-offender treatment and attempted to justify his actions by insisting that he believed the victim was 16 years old. The evaluator opined that Owens posed a “moderate-high risk” to reoffend and recommended sex-offender treatment, which could be delivered in an outpatient setting so long as he was subject to court supervision. She also recommended a chemical-dependency assessment, stating that it was possible Owens was “minimizing his substance use, which is known to be a strong predictor of recidivism.” At the request of Owens’s attorney, the evaluator conducted a second interview and updated her written report. Owens explained that he was guarded during his first interview because “I didn’t really understand it was something to help” him. The evaluator noted that Owens “seems more amenable to treatment” and that she now had “more confidence in [Owens’s] ability to comply.” But she did not change her opinions and recommendations.

Owens moved for a downward dispositional departure. A dispositional advisor from the public defender’s office submitted a sentencing memorandum to “provide context into [Owens’s] history and address the mitigating circumstances surrounding this offense.” The memorandum focused on Owens’s lack of criminal sexual history, his “genuine regret and remorse,” his “developing adolescent brain,” and his efforts to “explore programming options” for outpatient sex-offender treatment. Owens told the dispositional advisor that

he thought he “would do well on probation versus last time” and had “more motivation now to comply because [he was] facing a lot more jail time” than he did for his prior offenses. The dispositional advisor recommended a probationary sentence, indicating that Owens was “highly motivated to attend sex offender treatment and mental health therapy.”

At the sentencing hearing, the district court acknowledged that it had reviewed the PSI report, the sentencing worksheet reflecting Owens’s relevant criminal history, the psychosexual-evaluation reports, Owens’s departure motion, and the dispositional advisor’s submission. The prosecutor argued for the presumptive 144-month sentence. Owens asserted a dispositional departure was warranted because he is particularly amenable to probation and his youth and brain development were substantial grounds that tended to mitigate his culpability.

Owens addressed the district court, stating that he “recognize[d] the harm and trauma” his victim went through, and that he “had no business fooling around with somebody that young.” He insisted that he did not want his “mistakes” to “reflect on the type of person” he “truly” was, and that he had “learned a lot” in the two years since he committed the offense. He said he was “committed to treatment” and “willing to do whatever” he could do to get his “life back on track.”

After recessing to consider the parties’ arguments, the district court denied Owens’s departure motion and imposed the presumptive 144-month sentence.

Owens appeals.

DECISION

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.* A district court must impose a sentence within the presumptive sentencing range unless it finds substantial and compelling circumstances to depart. Minn. Sent’g Guidelines 2.D.1 (2020); *State v. Rund*, 896 N.W.2d 527, 532 (Minn. 2017). If such circumstances exist, a district court *may* but is not *required* to depart from the presumptive sentence. *Wells v. State*, 839 N.W.2d 775, 781 (Minn. App. 2013), *rev. denied* (Minn. Feb. 18, 2014). We afford district courts “great discretion in the imposition of sentences.” *State v. Soto*, 855 N.W.2d 303, 307 (Minn. 2014) (quotation omitted). Only in a “rare” case do we reverse the imposition of a presumptive sentence. *State v. Walker*, 913 N.W.2d 463, 468 (Minn. App. 2018) (quoting *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981)).

A defendant’s particular amenability to probation is a mitigating circumstance that may provide a substantial and compelling reason to depart. Minn. Sent’g Guidelines 2.D.3.a(7) (2020); *State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006). In determining whether a defendant is particularly amenable to probation so as to justify a downward dispositional departure, a district court may consider, among other things, “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). Mere amenability is not sufficient; “requiring a defendant to be *particularly* amenable to probation . . . distinguishes the defendant from most others and . . . presents the substantial

and compelling circumstances that are necessary to justify a departure.” *Soto*, 855 N.W.2d at 308-09 (quotation omitted).

Owens argues that the district court abused its discretion because it “simply ignored” the evidence supporting his particular amenability to probation: his “age and immaturity” when he committed his offense;² his “growth and maturity” while incarcerated; his “particular amenability” to outpatient treatment; and “his demonstrated remorse, his motivation to change, and his community support.” He contends that the district court failed to weigh these “valid reasons” to depart against reasons not to depart. We are not persuaded.

While a district court is required to give reasons for granting a departure, it need not explain its decision to impose a presumptive sentence, so long as the record is clear that the district court has considered reasons for departure. *State v. Curtiss*, 353 N.W.2d 262, 263 (Minn. App. 1984). Accordingly, we will not disturb the district court’s exercise of discretion in imposing “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)

² Owens dedicates a substantial portion of his brief to arguing that his “particularly young age” supports departure, citing several cases from other jurisdictions. None of these cases address the issue before us—whether the district court considered reasons supporting a dispositional departure before it imposed a presumptive sentence. The record demonstrates that Owens’s dispositional advisor addressed the topic of adolescent brain development in her memorandum to the court. The district court expressly noted that it received and considered the memorandum.

(quotation omitted), *rev. denied* (Minn. Sept. 17, 2013). The record here reveals the district court did precisely that.

During the sentencing hearing, the district court stated that it had reviewed the PSI report, the sentencing worksheet, the psychosexual-evaluation reports, Owens's departure motion, and the dispositional advisor's memorandum. It acknowledged Owens's statement and the arguments of counsel. And, after spending "a great deal of time" considering all this information, it ultimately determined that Owens was not amenable—let alone *particularly* amenable—to probation. In explaining its decision, the court stated:

Mr. Owens, when I first went over your case the clear thing that bothered me significantly was the age difference, 21 and 12. I was thinking about that again this morning. You know who is 12 years old? Sixth graders. I can't imagine a grown adult walking into a sixth-grade classroom and thinking, you know, I think it's appropriate to have sex with one of these girls. I think that's a good idea. Or I think she looks like she's 16. You know, that's been your claim all along, you thought she was 16. But when first confronted with this, you lied. And you lied to the point until DNA evidence proved otherwise. And you realized you had impregnated her. A pregnancy that later necessitated an abortion. I have a hard time getting past that.

In preparing for this sentencing something occurred to me that hadn't earlier, that I didn't know earlier. This happened more than once. You had sex with her more than once. That's not a mistake. You had more than sex with her, you communicated with her on Snapchat, looking for additional sex. Those are predatory tendencies. That's not a mistake, it's just not. And I—I don't want to lose focus of the fact, not only did a 12-year-old girl's life get changed forever, a fetus was lost, another potential life, because of your actions.

Your attorney has done a very solid job all throughout this case of trying to protect you, to defend you. At the end of the day, though, I look back, in your short time of being an

adult, before being incarcerated on this offense, you had seven criminal history—seven crimes that you were convicted of or pending conviction, and they might be misdemeanor and gross misdemeanor, but they were crimes of dishonesty, false info to police, counterfeiting, and you weren't successful on probation at that time. There is nothing in your record that indicates you are amenable to probation.

On this record, it is clear that the district court weighed the reasons for and against a dispositional departure. We are not persuaded that the district court abused its discretion in imposing the presumptive sentence or that this is the rare case in which we would disturb such a sentence.

Affirmed.