

*This opinion is nonprecedential except as provided by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
A22-1804**

State of Minnesota,
Appellant,

vs.

Eric David Haskins,
Respondent.

**Filed June 5, 2023
Reversed and remanded
Ross, Judge**

Sherburne County District Court
File No. 71-CR-21-606

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

Kathleen A. Heaney, Sherburne County Attorney, George R. Kennedy, Assistant County Attorney, Elk River, Minnesota (for appellant)

Christina Zauhar, Halberg Criminal Defense, Bloomington, Minnesota (for respondent)

Considered and decided by Wheelock, Presiding Judge; Segal, Chief Judge; and
Ross, Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

Eric Haskins threatened his fiancée with a gun, told her he was going to kill her, and prevented her from leaving their home. He pleaded guilty to second-degree assault and possessing a firearm as an ineligible person, and the district court convicted him. The

district court stayed execution of his prison sentences and imposed probation, a dispositional departure from the sentencing guidelines. The state appeals, arguing that the departure constituted an abuse of discretion and that the failure to order Haskins to register as a predatory offender was error. Because the record does not support the district court's conclusion that Haskins is particularly amenable to probation, we reverse and remand for the district court to impose a guidelines sentence. And because the district court's failure to state whether Haskins must register as a predatory offender is inconsequential given our remand, we need not address the alleged error.

FACTS

The state filed a criminal complaint alleging that Eric Haskins pointed a gun at his fiancée in May 2021 and threatened to kill her. The complaint stated that, after a disagreement, Haskins took her phone and computer, told her she could not leave, and told her he was going to kill her and himself. The complaint alleged second-degree assault, kidnapping, threats of violence, and interference with an emergency call. The state amended the complaint to also charge Haskins with possession of a firearm as an ineligible person based on two prior felony burglary convictions. Haskins later acknowledged that he possessed “a lot of” firearms and did not object when the prosecutor informed the court that these included 16 long guns—rifles and shotguns—plus an unspecified number of handguns.

Haskins pleaded guilty to the second-degree assault and firearm-possession charges with no agreement as to sentencing. The state dismissed the remaining charges.

Haskins's fiancée spoke on his behalf at his sentencing, and Haskins apologized in court to his friends and his family, promising that he would keep working to improve himself. The district court concluded that Haskins was particularly amenable to probation and that, therefore, substantial and compelling reasons supported departing dispositionally from the presumptive executed prison sentences of 36 months for the assault offense and 60 months for the firearm-possession offense, as designated by the sentencing guidelines. The district court reasoned that, although Haskins's prior offenses made him ineligible to possess a firearm, those felonies were more than 20 years old, and Haskins had complied with conditions of the court and had committed only "minimal offenses" since then. The district court reasoned that Haskins had shown remorse and that he was cooperative and acted appropriately in court. It also commented that Haskins "gained some additional supports in the community as far as therapy and therapists and services to assist [him] moving forward," after recognizing that Haskins's support system was otherwise essentially unchanged since he committed the May 2021 offenses.

Based on this reasoning, after the district court convicted Haskins of second-degree assault and possession of a firearm as an ineligible person, it sentenced him to 36 and 60 months in prison but stayed execution of both prison terms. It placed Haskins on probation, a dispositional departure from the guidelines presumptive sentences.

The state appeals.

DECISION

The state argues on appeal that the district court abused its discretion in sentencing by departing dispositionally from the presumptive sentence without a sufficient basis. It

also argues that the district court erred by not ordering Haskins to register as a predatory offender. For the following reasons, we reverse the dispositional sentencing departure and remand for the district court to impose a corrected sentence. Based on the result of that decision, we address the substance of neither the state’s related argument that the district court stayed Haskins’s sentence for longer than the sentencing guidelines allow nor its contention that the district court erred by failing to require Haskins to register as a predatory offender.

I

We first consider the state’s argument that the district court erroneously departed from the presumptive sentence under the sentencing guidelines. Although the district court has great discretion in imposing a criminal sentence, we will reverse if the district court abuses that discretion, meaning that its reasons are “improper or insufficient and there is insufficient evidence of record to justify the departure.” *State v. Soto*, 855 N.W.2d 303, 307–08 (Minn. 2014) (quotations omitted). We conclude that the district court abused its discretion here.

The state argues that, because Haskins is not particularly amenable to probation, the district court lacked a sufficient reason to depart from the presumptive sentence. A departure from the presumptive sentence under the guidelines is permitted only when the district court identifies and articulates substantial and compelling circumstances justifying the departure. Minn. Sent’g Guidelines 2.D.1 (2020). The district court relied on Haskins’s asserted amenability to probation as the reason to depart. Particular amenability to probation is a circumstance that can support a dispositional departure. *State v. Trog*, 323

N.W.2d 28, 31 (Minn. 1982). In evaluating a defendant’s particular amenability, a district court considers various factors, like “the defendant’s age, his prior record, his remorse, his cooperation, his attitude while in court, and the support of friends and/or family.” *Id.* But mere amenability, rather than *particular* amenability, is not enough to support a decision to depart dispositionally from a presumptive sentence. *Soto*, 855 N.W.2d at 308. The supreme court explained the critical distinction:

“Particular” means “exceptional” or “[d]istinctive among others of the same group,” and “particularly” means “especially” or “specifically.” By requiring a defendant to be *particularly* amenable to probation, therefore, 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.

Id. at 309 (citations omitted). This distinction guides our analysis. And it informs us that the circumstances the district court relied on in dispositionally departing do not sufficiently distinguish Haskins from other defendants so as to make him *particularly* amenable to probation.

In determining that the defendant was not particularly amenable to probation in *Soto*, the supreme court applied the *Trog* factors in a manner that directs how we must apply them here. *Id.* at 310–12 (citing *Trog*, 323 N.W.2d at 31). It held that Soto’s age, 37, did not make him particularly amenable to probation compared to other defendants. *Id.* at 310. Nor did his criminal record, which included five prior convictions. *Id.* at 310–11. It deferred to the district court’s decision to not mention Soto’s remorse or lack thereof, recognizing that remorse is not a prerequisite for particular amenability to probation but is

one of the factors courts can appropriately consider. *Id.* at 311. The court determined that Soto’s bargained-for guilty plea did not support probation, and that his respectful attitude in court was an appropriate consideration but was “far outweighed” by the other factors. *Id.* at 312. And it considered Soto’s relationships and determined that the record supported the district court’s finding that he had “some family support.” *Id.* The supreme court held that “those factors, individually and collectively, provide very little support for the further conclusion that Soto had any *particular* amenability to probation relative to other defendants.” *Id.* at 313. The *Soto* court therefore held that the district court abused its discretion by departing. We reach the same conclusion here after reviewing the district court’s application of the *Trog* factors.

The district court first concluded that Haskins’s age did not weigh in his favor. The district court next considered criminal history. It emphasized that Haskins’s felonies, which made him ineligible to possess a firearm, occurred more than 20 years ago, implying that having the felony actually works in Haskins’s favor when analyzing his amenability to probation because of the felony’s age coupled with the characterization that he had only “minimal offenses since that time.” The district court also observed that Haskins had previously succeeded on probation, though it did not specify the offenses for which Haskins was purportedly successful. The reasoning cannot clear two hurdles. First, no precedential appellate decision we are aware of stands for the proposition that having old felonies with “minimal” subsequent offenses generally suggests particular amenability to probation. Second, the district court did not explain what it meant by “minimal offenses,” and Haskins committed multiple offenses—all of which are serious—in the period between

his burglary felonies and the felonies he committed in this case. It was apparently during this period (and possibly before his May 2021 arrest, based on a police report summarized in the presentence investigation) that Haskins began flouting the prohibition that made it unlawful for him to possess a single firearm, amassing the arsenal that police found in his home. It was also during this period that Haskins was twice convicted of drunk driving and once of resisting or obstructing a police officer. That Haskins supposedly committed minimal offenses in the 20 years between his former felonies and current felonies is not a substantial and compelling circumstance sufficient to distinguish him from other defendants who have committed the same offense with the same criminal-history score. The district court erroneously concluded that his criminal history favors holding that he is particularly suited for probation.

The district court next considered remorse, and it concluded that Haskins was remorseful. We defer to the district court's finding of remorse, *State v. Solberg*, 882 N.W.2d 618, 626 (Minn. 2016), and we agree that remorse is an appropriate factor when determining amenability to probation. Our review also informs us that the record supports the district court's finding of remorse here.

The district court determined that Haskins cooperated with police and was cooperative and appropriate in court, conclusions supported by the record but neither specific nor compelling enough to show why they made Haskins particularly, rather than merely, amenable to probation. The record lacks the necessary information for us to address the state's contention that Haskins was not cooperative because he allegedly submitted a positive alcohol test while on supervised release. But even if Haskins fully cooperated, we

conclude that a baseline appropriateness in court and expected cooperativeness with the judicial process can be outweighed by other relevant factors. *See Soto*, 855 N.W.2d at 312. This factor does not substantially support a determination of particular amenability to probation in this case.

The district court finally determined that, although it was concerned that Haskins had the same support system at the time of sentencing that he had when he committed the crimes, he had gained additional support through therapy and other services. Haskins adds that he completed an anger-management course and two chemical-use assessments. We commend Haskins for his efforts to seek counseling and treatment to address what he has identified as the cause of his actions leading to his May 2021 crimes. But we again disagree that these treatment relationships are distinctive so as to place Haskins in the category of unique defendants especially suited for probation.

We conclude that, on the record as a whole, the circumstances do not support the district court's conclusion that Haskins is *particularly* amenable to probation rather than merely amenable to probation. We repeat the supreme court's admonition that "insisting on *particular* amenability to probation limits the number of departures and thus fosters uniformity in sentencing, which is a primary purpose of the Sentencing Guidelines." *Id.* at 309 (emphasis added). Following the guidelines appropriately, departing from a presumptive sentence requires truly substantial and compelling reasons. And following *Soto* appropriately, dispositionally departing on the ground of particular amenability to probation requires genuinely exceptional circumstances making the defendant especially suited for probation, distinctly removed from the common characteristics of most others in

the offender class. The circumstances the district court identified here do not support a departure. We therefore remand for resentencing.

II

We are not convinced by the state's assertion that we must correct the district court's alleged error in not ordering Haskins to register as a predatory offender at sentencing. "The duty to register as a predatory offender is a regulatory rather than punitive consequence." *Kaiser v. State*, 641 N.W.2d 900, 907 (Minn. 2002). It is true that the district court "shall tell the person [required to register] of the duty to register" and "require the person to read and sign a form" verifying that the duty has been explained. Minn. Stat. § 243.166, subd. 2 (2022). But the registration statute also states that, if the court does not provide notice of the duty to register, the person's assigned corrections agent must provide it. *Id.* In light of the alternative means that a person may receive notice of the predatory-offender registration duty and in light of our decision requiring resentencing, we need not address the alleged error here.

Reversed and remanded.