

*This opinion is nonprecedential except as provided by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
A22-1821**

State of Minnesota,
Respondent,

vs.

John Paul Raymond Bye,
Appellant.

**Filed October 9, 2023
Affirmed
Segal, Chief Judge**

Hennepin County District Court
File No. 27-CR-21-9973

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

Mary F. Moriarty, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

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

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

In this appeal from a final judgment of conviction for unlawful possession of a firearm, appellant challenges the district court's denial of his motion for a downward

dispositional sentencing departure or, alternatively, a downward durational departure. We affirm.

FACTS

As described in the complaint, in the early morning hours of May 25, 2021, a homeowner called to report a suspicious vehicle parked in the homeowner's driveway with an unknown person sleeping inside. Police officers were dispatched to the home to investigate. They saw a parked truck with a person asleep in the driver's seat. After approaching the truck, one of the officers observed a handgun lying in plain view on the driver-side floorboard next to the sleeping person's feet. The sleeping person was later identified as appellant John Paul Raymond Bye. A search of the serial number of the handgun found near Bye's feet showed that it had been reported as stolen.

Because Bye has a prior conviction for a crime of violence that disqualifies him from possessing a firearm, respondent State of Minnesota charged Bye with one count of unlawful possession of a firearm under Minn. Stat. § 624.713, subd. 1(2) (2020). In January 2022, Bye pleaded guilty to the charge with no agreement on sentencing. The district court accepted the plea, ordered a presentence investigation, and conditionally released Bye pending sentencing. Bye was eventually released from jail straight to a chemical-dependency treatment program and his release conditions required him to complete treatment, remain law-abiding, and appear for all probation appointments and court hearings, among other conditions.

In April 2022, Bye's probation officer filed a report stating that Bye had violated the terms of his conditional release. The report cited as violations Bye's failures to

(1) remain law-abiding—Bye was charged a week before the report with fleeing a peace officer, fifth-degree drug possession, and driving after cancellation; (2) complete the treatment program—Bye was reported as leaving his treatment program two weeks before the new charges were filed; and (3) abstain from using unlawful drugs and alcohol—Bye admitted using methamphetamine and heroin, and methamphetamine was found in his backpack at the time of his arrest for the new offenses. On the basis of these allegations, the district court revoked Bye’s conditional release and held him in custody until sentencing.

At the sentencing hearing, the state sought imposition of the presumptive sentence of 60 months in prison based on Bye’s criminal-history score. Bye sought a downward dispositional departure or, in the alternative, a downward durational departure. Bye argued that a downward dispositional departure was appropriate because he had, on his own initiative, applied for and been accepted into a chemical-dependency program that could extend for a full year. Bye stressed that he had a long-term drug-addiction problem but that he was still young and that treatment outside of prison would be the most beneficial course to help him overcome that addiction. Bye also pointed out that, when in jail awaiting sentencing, he had demonstrated a willingness to “turn a corner” because he helped lead a Bible study group and was participating in a book club that was reading self-help books. Regarding a downward durational departure, Bye argued that his firearm-possession offense was less severe than other such cases and that the presentence investigation report had noted that, “[s]hould the Court determine this offense was less onerous, a durational departure may be appropriate.”

The district court denied Bye's motions for downward departures. The district court explained that it agreed with probation's recommendation that Bye was not particularly amenable to probation. The district court pointed to the number of violations that Bye had incurred while he was on conditional release, including picking up new offenses, and concluded that, "based on that," a dispositional departure was not warranted. As to the durational departure, the district court acknowledged probation's comment that a durational departure might be a possibility but concluded that the offense was not necessarily less severe than the typical unlawful-possession case. The district court noted that controlled substances were found in the vehicle with Bye along with the handgun, and that those circumstances and "how [Bye] w[as] found by the police," failed to convince the court that Bye's offense was less serious. The district court then sentenced Bye to the presumptive 60-month sentence with credit for time served.

DECISION

On appeal, Bye argues his 60-month sentence for unlawful possession of a firearm should be reversed because the district court abused its discretion in denying his motion for a downward dispositional departure or, alternatively, a downward durational departure.

District courts are afforded broad discretion in sentencing and a sentence will only be reversed on appeal for an abuse of that discretion. *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014). But the scope of a district court's discretion in sentencing is limited, as the supreme court emphasized in *Soto*, by the Minnesota Sentencing Guidelines. *Id.* at 308. A sentence that is imposed in accordance with the guidelines is presumed to be appropriate. Minn. Sent'g Guidelines 2.D.1 (2020). A sentencing court must find

“identifiable, substantial, and compelling circumstances” to depart from imposing such a sentence. *Id.*; see also *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). And even if such circumstances are present, “[a] departure is not mandatory, and an appellate court will reverse a sentencing court’s refusal to depart only in a ‘rare’ case.” *State v. Walker*, 913 N.W.2d 463, 468 (Minn. App. 2018) (quoting *Kindem*, 313 N.W.2d at 7).

A district court may order a downward dispositional departure upon a determination that the offender is “particular[ly] amenab[le] to individualized treatment in a probationary setting.” *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). The relevant factors in assessing amenability include “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.*

Bye argues that his background presents a strong case for a downward dispositional departure. Bye points to the fact, as set out in the presentence investigation report, that he grew up “surrounded by violence, drug use, and turmoil.” Additionally, while Bye acknowledges he has a long-term drug-addiction problem, he maintains that he is young (at the time of the offense, Bye was 20 years old) and, as set out in the presentence investigation report, “therefore, presents to be someone who would benefit from engaging in a long-term treatment program.” Bye maintains that his new offenses in April 2022 were merely an understandable relapse of his chemical dependency. But the fact remains that the district court considered Bye’s argument, exercised its discretion to deny Bye’s motion for a dispositional departure, and imposed a presumptive sentence. Moreover, it is undisputed that Bye violated the terms of his conditional release in this case and engaged in conduct that caused his probation to be revoked in at least three other felony cases in

2021. Under these circumstances, we discern no abuse of discretion by the district court. *See State v. Johnson*, 831 N.W.2d 917, 925 (Minn. App. 2013) (stating that, if the district court “carefully evaluated all the testimony and information presented before making a determination,” the district court did not abuse its discretion (quotation omitted)), *rev. denied* (Minn. Sept. 17, 2013).

We also reject Bye’s challenge to the district court’s denial of his motion for a downward durational departure. In assessing a motion for a downward durational departure, the relevant inquiry is whether a “defendant’s conduct is significantly less serious than that typically involved in the commission of the offense.” *State v. Mattson*, 376 N.W.2d 413, 415 (Minn. 1985) (citing *State v. Cox*, 343 N.W.2d 641, 643 (Minn. 1984)). And, as with dispositional-departure motions, even if an offense is less serious, appellate courts “generally will not interfere with the exercise of [the district court’s] discretion.” *Kindem*, 313 N.W.2d at 7.

Bye argues that his offense is less serious than the typical unlawful-possession case based on his claim that he had only borrowed the handgun from a friend for “protection purposes” because he was traveling to an “unsafe area” in Hennepin County. Bye also argues that he was not using the handgun in a manner that was threatening to society. The district court, however, considered Bye’s argument that he “w[asn’t] actively using the gun or waving the gun around.” The district court also acknowledged the statement in the presentence investigation report that, “[s]hould the Court determine this offense was less onerous, a durational departure may be appropriate.” But the district court nevertheless determined that the offense was not less serious than a typical unlawful-possession case.

See In re Welfare of S.J.J., 755 N.W.2d 316, 319 (Minn. App. 2008) (noting unlawful possession of a firearm by individuals who have committed crimes of violence is a “threat to society” regardless of whether possession is fleeting or without a threat). The district court’s determination was within its discretion and we discern no basis to reverse the denial.

Affirmed.