This opinion is nonprecedential except as provided by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
A23-0272

State of Minnesota,
Respondent,

vs.

Bernard Wayne Quist,
Appellant.

Filed June 20, 2023
Affirmed
Bjorkman, Judge

Wabasha County District Court
File No. 79-CR-21-671

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

Matthew Stinson, Wabasha County Attorney, Jacob Barnes, Assistant County Attorney, Wabasha, Minnesota (for respondent)

Thomas R. Braun, Restovich Braun & Associates, Rochester, Minnesota (for appellant)

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

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant challenges his mitigated sentence for criminal vehicular homicide, arguing that the district court abused its discretion by (1) sentencing him to serve ten days

in jail for each year of his probation and (2) not finding him particularly amenable to probation under Minn. Stat. § 609.1056, subd. 4 (2022). We affirm.

FACTS

On August 31, 2021, appellant Bernard Quist, then 85 years old, drove with an alcohol concentration above the legal limit and collided with a skateboarder, causing her death. He was charged with and pleaded guilty to criminal vehicular homicide (CVH). Because he had no criminal history, he faced a presumptive sentence of 41 to 57 months' imprisonment. Minn. Sent'g Guidelines 4.A (2020). He moved for a downward dispositional departure, arguing that he is particularly amenable to probation as contemplated in the sentencing guidelines and in Minn. Stat. § 609.1056, subd. 4, which pertains to military veterans. In support of his motion, Quist presented evidence that he is a decorated retired colonel in the United States Air Force, suffers from post-traumatic stress disorder (PTSD) resulting from his service, and has self-medicated for his PTSD with alcohol. He also presented two doctors' opinions that incarceration could negatively impact his mental and physical health.

A presentence-investigation report (PSI) opined that Quist is particularly amenable to chemical-dependency treatment in a probationary setting and recommended a probationary sentence with a custodial component such as six months of consecutive weekends in jail, which would allow Quist to participate in veteran's court and therapy and attend medical appointments. The state also endorsed a staggered jail sentence as part of a probationary disposition but urged 30 days in jail annually and an option to convert the jail time to electronic home monitoring if Quist remained compliant with probation

conditions. Quist opposed staggered sentencing, reiterating concerns about his mental and physical health.

The district court granted the departure, imposing a stayed prison sentence of 57 months and placing Quist on probation for ten years. It also required him to serve 180 days in jail, then return on August 31 each year for the remainder of his probation to serve ten days in jail. It explained that it granted the departure only because it found Quist particularly amenable to probation based on his remorse and demonstrated commitment to treatment since the incident, not under the parameters of Minn. Stat. § 609.1056, subd. 4. But the court also noted the effect of the offense on the victim's family and community, as reflected in numerous victim-impact statements, and expressed concern about Quist's departure from the scene before law enforcement arrived. It reasoned that the sentence overall "is justice in this case."

Quist appeals.[1]

DECISION

A district court has "great discretion" in sentencing, including whether to depart from a presumptive sentence when substantial and compelling circumstances exist. *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014) (quotation omitted). This discretion extends to placing a person on probation and imposing conditions of probation. *State v. Hoskins*, 943 N.W.2d 203, 211 (Minn. App. 2020) (citing *Soto*, 855 N.W.2d at 307-08). We will not disturb a sentencing decision absent an abuse of discretion. *Id.* A district court

[1] Respondent State of Minnesota did not submit a brief. We nonetheless decide the appeal on the merits. Minn. R. Civ. App. P. 142.03.

abuses its discretion if it imposes a sentence that deviates from statutory requirements, lacks support in the court's factual findings, or is excessive, unreasonable, or inappropriate. Minn. Stat. § 244.11, subd. 2(b) (2022); *Soto*, 855 N.W.2d at 312.

I. The district court did not abuse its discretion by requiring Quist to serve ten days in jail annually.

Quist challenges his staggered sentence on three grounds. None of them persuade us that the district court abused its broad sentencing discretion.

First, Quist contends that requiring jail time is inconsistent with the district court's determination that he is particularly amenable to probation. We disagree. Minnesota law expressly contemplates that a defendant who is amenable to probation may nonetheless be required to serve up to one year of jail time. Minn. Stat. § 609.135, subds. 1, 4 (2022).

Second, Quist asserts that jail time will not serve a valid purpose, reasoning that it will not "curb recidivism" or rehabilitate; it will only punish. But deterrence, rehabilitation, *and punishment* are all valid sentencing considerations. *See* Minn. Stat. §§ 609.01, subd. 1 (including deterrence, rehabilitation, and "confinement" for public safety among purposes of criminal code), .03 (defining "punishment" for various offenses in terms of length of imprisonment) (2022); Minn. Sent'g Guidelines 1.A (2020) (stating policy of proportional "sanctions"); *see also State v. Johnson*, 744 N.W.2d 376, 380 (Minn. 2008) (observing that the purpose of incarceration is "punishment"). The sentencing guidelines recognize as much by presuming that people who commit serious offenses like CVH will be sentenced to multiple years' imprisonment, even if they, like Quist, have no prior criminal history. *See* Minn. Sent'g Guidelines 4.A.

Third, Quist argues that the staggered sentence is unreasonable because having to return to jail every year until he is 96 years old will exacerbate his PTSD and undermine his physical health. As support, he points to *State v. Wright*, 310 N.W.2d 461, 462-63 (Minn. 1981), which recognized that unamenability to prison may justify a downward departure to a probationary sentence. We are not persuaded. The district court heard ample evidence that confinement would likely undermine Quist's mental and physical health. Consistent with that evidence and *Wright*, it granted Quist's request to impose a probationary sentence rather than the presumptive prison term, which will allow him to participate in veteran's court, receive treatment, and attend to his medical care. But the district court also heard recommendations for staggered jail time—consecutive weekends for six months or 30 days annually—and no more contrary indication than a doctor's opinion that such an arrangement would "[p]ossibly" have a negative impact on Quist. On this record, we discern no abuse of discretion in the decision to require Quist to serve ten days in jail each year on the anniversary of the offense.

II. The district court did not abuse its discretion by basing the departure on the sentencing guidelines rather than Minn. Stat. § 609.1056 (2022).

Minn. Stat. § 609.1056 permits—but does not require—sentencing departures for military veterans who are "particularly amenable" to probation.[2] Minn. Stat. § 609.1056, subd. 4. The concept of particular amenability under the sentencing guidelines commonly

[2] The statute also affords certain military veterans deferred prosecution with the potential for discharge or dismissal of charges, but only for offenses with a severity level of 7 or lower. Minn. Stat. § 609.1056, subds. 1(2), 2-3. Quist was not eligible for deferred prosecution because CVH is a level 8 offense.

looks to factors like the defendant's treatment prospects, remorse, cooperation, and community support. *Soto*, 855 N.W.2d at 309-10. But in the context of Minn. Stat. § 609.1056, subd. 4, it means the defendant is a military veteran who has undertaken "rehabilitative efforts" since the offense and demonstrates that the offense occurred "as a result of" an applicable service-related condition. Quist challenges the district court's determination that he failed to demonstrate particular amenability under the statute's terms. But he identifies no resulting prejudice, as he must to garner reversal. Minn. R. Crim. P. 31.01. He received the sentencing relief he sought—a downward dispositional departure. And nothing in the language of Minn. Stat. § 609.1056, subd. 4, precludes a district court from imposing the staggered jail term that is the focus of this appeal. Accordingly, Quist is not entitled to relief based on the district court's analysis of that statute.

Affirmed.