STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0408

State of Minnesota,
Appellant,

vs.

Raymond Carl Adams,
Respondent.

Filed August 28, 2023
Affirmed
Bryan, Judge

Itasca County District Court
File No. 31-CR-22-1692

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

Matti R. Adam, Itasca County Attorney, Justin J. Lee, Assistant County Attorney, Grand Rapids, Minnesota (for appellant)

Raymond Carl Adams (pro se respondent)

Considered and decided by Bryan, Presiding Judge; Smith, Tracy M., Judge; and Klaphake, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

BRYAN, Judge

In this sentencing appeal, the state argues that the district court abused its discretion when it granted respondent's motion for a downward dispositional departure. We affirm.

FACTS

On July 8, 2022, appellant State of Minnesota charged respondent Raymond Carl Adams with one count of failure to register as a predatory offender. The complaint alleged that the manager of a mobile home community found Adams sleeping in a vacant trailer home after being recently evicted from a different home on the property. The manager contacted law enforcement, and a responding officer arrested Adams based on an outstanding warrant. According to the complaint, Adams acknowledged to the responding officer that he had not updated his predatory offender registration since September 2021.

Adams pleaded guilty without a plea agreement.[1] He subsequently moved for a downward dispositional departure and a pre-sentence investigation report (PSI) was prepared. The PSI explained that in 2007 Adams received a stay of adjudication following his conviction of seven counts of third-degree criminal sexual conduct. His sentence was later executed, and he was eventually released from prison in 2012 but remained under supervision by the department of corrections through the time of his arrest. The PSI noted

[1] The appellate record does not contain a transcript from the plea hearing. At several points throughout the record, the parties and the district court reference facts from the plea hearing. For example, at sentencing, Adams argued, and the district court found, that he showed remorse during the plea hearing. Because the state has the burden of providing an adequate record, *see Mesenbourg v. Mesenbourg*, 538 N.W.2d 489, 494 (Minn. App. 1995), we decline to review the district court's factual findings.

that Adams had a history of multiple misdemeanor convictions, violations of probation, and violations of conditional release. The PSI also reiterated that Adams "admit[ted] to the offense" and told his supervising agent that he initially failed to make contact after their last meeting because he did not have a phone. Adams told the agent that by the time he could make contact, he assumed that there was a warrant and continued to avoid the agent because he was afraid of going to prison. The PSI recommended an executed guidelines sentence and opined that Adams "is not amenable to supervision at this time."

The district court held a contested sentencing hearing on January 3, 2023. Adams cited statistics from the Minnesota Sentencing Guidelines Commission showing that a large number of similarly situated defendants have received downward dispositional departures. He then made four arguments. First, Adams argued that he was not a danger to the public, noting that this was his first failure to register in fifteen years; that there were no allegations of drug or alcohol use; and that at the time of the offense, Adams was homeless, indigent, and not taking medication for previously diagnosed mental health problems. Second, Adams noted that he "accepted responsibility" in his initial statement to law enforcement, in the PSI interview, and during the plea hearing. Third, Adams argued that probation would allow for a longer period of supervision than the presumptive sentence, which would help ensure he does not pose a long-term public safety risk. Fourth, Adams argued that his criminal history score overstated his public safety risk because the majority of his criminal history points stemmed from "a multi-count complaint" in 2007. Adams expressly stated that he was not raising particular amenability as a basis for his departure motion.

The state argued that, based on the facts in the PSI, Adams was not particularly amenable to probation. After the parties presented arguments, Adams personally addressed the court. He acknowledged that he had "made a lot of bad choices in [his] life," stated that "being incarcerated really opened up [his] eyes a lot," and promised that it "would not ever happen again" because he wanted to be a part of his daughter's life.

The district court granted Adams's motion for a downward dispositional departure. In doing so, the district court began by making the following findings:

> Well, it's certainly a close call. What I'm going to do is grant the departure on the grounds of the defendant showing remorse for his actions, his conduct in court, and I think that while I'm not finding the amenable to probation factor, I do think that given his age, his level of remorse and motivation, that he is suitable for individualized treatment in a probation setting if he avails himself of that treatment . . .

The district court then addressed Adams directly, urging him to address his chemical dependency issues, complete sex offender treatment, and make "really radical changes." The district court made additional findings while addressing Adams, noting again that "the departure is based on you accepting responsibility and demonstrating remorse," "[y]ou haven't offered excuses," and "a longer period of more intensive supervision is likely to ensure compliance rather than sending you to prison and then not getting that treatment."

The district court also referenced a comment from the sentencing guidelines which recognizes that an offender's criminal history score "does not differentiate between the crime spree offender who has been convicted of several offenses but has not been previously sanctioned . . . and the repeat offender who continues to commit new crimes." *See* Minn. Sent'g Guidelines cmt. 2.D.302 (2021) (noting "the [district] court is best able

to distinguish these offenders and can depart from the [g]uidelines accordingly"). The district court observed that it found this comment "relevant," telling Adams that "that puts your criminal history score in a little bit of context . . . the 10 and a half points you got from the initial crime when you were a very young individual." Finally, while announcing Adams's sentence, the district court reiterated:

> And just back to one other thing that I meant to raise with regard to my disposition . . . my departure . . . there does need to be a difference between him and other defendants, but I do find a difference in the—in the remorse aspect of things. And it's true that most people plead guilty that then ask for departures but I think that the way—the manner in which the plea was offered is somewhat—was somewhat unique and different in his manner and attitude.

The district court imposed a 39-month prison sentence but stayed execution of that sentence. The warrant of commitment specified the grounds for the downward departure as: "remorse, conduct in court, accepted responsibility, supervision to ensure compliance and rehabilitation." The state appeals the district court's sentencing decision.

DECISION

On appeal, the state argues that the district court abused its discretion when it departed from the guidelines sentence.[2] We conclude that the district court did not abuse its discretion in granting a departure.

The Minnesota Sentencing Guidelines establish presumptive sentences for felony offenses. Minn. Stat. § 244.09, subd. 5 (2022). "[A] district court may depart from the

[2] Adams did not file a responsive brief, and on April 5, 2023, this court ordered that the case would be determined on the merits pursuant to Minn. R. Civ. App. P. 142.03.

presumptive guidelines sentencing range only if there exist identifiable, substantial, and compelling circumstances to support a sentence outside the range on the grids." *Tucker v. State*, 799 N.W.2d 583, 586 (Minn. 2011) (quotation omitted). "Substantial and compelling circumstances are those circumstances that make the facts of a particular case different from a typical case." *State v. Peake*, 366 N.W.2d 299, 301 (Minn. 1985). The sentencing guidelines provide "a nonexclusive list of factors that may be used as reasons for departure." *State v. Hicks*, 864 N.W.2d 153, 157 (Minn. 2015) (quotation omitted); *see also* Minn. Sent'g Guidelines 2.D.3 (Supp. 2021). "For a downward dispositional departure, a district court may consider both offender- and offense-related factors." *State v. Walker*, 913 N.W.2d 463, 468 (Minn. App. 2018).

One recognized basis for departure is a defendant's "particular amenability to probation." *State v. Soto*, 855 N.W.2d 303, 308-09 (Minn. 2014) (emphasis omitted); *see also* Minn. Sent'g Guidelines 2.D.3.a(7). To determine a person's particular amenability to probation, courts have often considered "[n]umerous factors, 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).[3] In

[3] We observe that the *Trog* factors are often cited as factors for determining whether a defendant is particularly amenable to probation. *See*, *e.g.*, *Soto*, 855 N.W.2d at 310. However, *Trog* focused more specifically on "a determination whether a defendant is particularly suitable to individualized treatment in a probationary setting." *Trog*, 323 N.W.2d at 31; *see also* Minn. Sent'g Guidelines 2.D.3.a(7) (stating that a finding of particular amenability "may, but need not, be supported by the fact that the offender is particularly amenable to a relevant program of individualized treatment in a probationary setting"). We need not address the distinctions, if any, between particular amenability to probation and particular amenability to treatment because, here, the district court did not base the departure on particular amenability.

addition to particular amenability, the sentencing guidelines provide other, nonexhaustive, bases for departure, including when "the offender received all of his or her prior felony sentences during fewer than three separate court appearances," Minn. Sent'g Guidelines 2.D.3.a(4)(a) (for severity level 1 or 2 offenses), and when "[o]ther substantial grounds exist that tend to excuse or mitigate the offender's culpability, although not amounting to a defense," Minn. Sent'g Guidelines 2.D.3.a(5). As the state correctly notes, this court applies an abuse-of-discretion standard to a district court's decision whether to depart (assuming a proper basis for departure). *Soto*, 855 N.W.2d at 307-08 (quotation omitted) (stating that appellate courts "afford the [district court] great discretion in the imposition of sentences and reverse sentencing decisions only for an abuse of that discretion" (quotation omitted)); *Dillon v. State*, 781 N.W.2d 588, 595 (Minn. App. 2010) ("Once we determine as a matter of law that the district court has identified proper grounds justifying a challenged departure, we review its decision *whether* to depart for an abuse of discretion."), *rev. denied* (Minn. July 20, 2010).

In this case, the district court, in its oral findings, identified a total of six grounds for granting the departure: (1) Adams's demonstration of remorse; (2) Adams's conduct in court; (3) Adams's age; (4) Adams's motivation; (5) the value of "a longer period of more intensive supervision," which would not apply absent a departure; and (6) Adams's criminal history score largely stemmed from an "initial crime when [Adams was] a very young individual." The state argues that the district court abused its discretion when it considered some of the "*Trog* factors" relating to particular amenability as sufficient to

justify a departure when the district court declined to make the determination that Adams was particularly amenable. We disagree with the state for two reasons.

First, the state directs us to no binding authority prohibiting a district court from considering relevant *Trog* factors when deciding whether one of the other valid grounds for departure listed in the guidelines was sufficient and compelling.[4] The state is correct that many of the factors noted by the district court are listed in *Trog*, 323 N.W.2d at 31, and are typically used to determine whether a defendant is particularly amenable to probation. However, Adams did not request a departure based on his particular amenability and the district court declined to determine whether Adams was particularly amenable to individualized treatment or to probation, finding instead that "[Adams] is suitable for individualized treatment in a probation setting if he avails himself of that treatment." The state cites to no authority to support the legal proposition underlying its argument: that the *Trog* factors are only to be considered when deciding particular amenability. Nor does the state direct us to any binding authority limiting or restricting the open-ended, "nonexclusive list of mitigating circumstances that can justify a downward departure." *Soto*, 855 N.W.2d at 308 (quotation omitted); *see also* Minn. Sent'g Guidelines 2.D.3. Absent such authority in the state's brief to this court, the state has not established a basis

[4] In reaching this conclusion, we acknowledge that "sometimes factors that may not be directly considered as reasons for departure occasionally bear indirectly" on a defendant's particular amenability to probation, *Soto*, 855 N.W.2d 303 at 310-11 (quotation omitted), and we are not concluding that each individual *Trog* factor alone necessarily supports a departure. Instead, we are focused on the specific *Trog* factors identified by the district court, in combination with the additional grounds for departure that the district court identified and that are not challenged on appeal.

for us to reverse the district court, which is permitted to depart when there exist some "identifiable, substantial, and compelling circumstances to support a departure." Minn. Sent'g Guidelines 2.D.1 (Supp. 2021); *Tucker*, 799 N.W.2d at 586.

Second, the state overlooks certain aspects of the district court's decision. Contrary to the state's argument, the district court did not rely only on *Trog* factors when it granted the departure request. The district court also relied on other offender-related factors not listed in *Trog*. Importantly, the state does not challenge these factors on appeal. In particular, the district court compared the relative lengths of possible executed and stayed sentences, finding that "a longer period of more intensive supervision [through probation] is likely to ensure compliance" in this case. The district court also contextualized Adams's criminal history score pursuant to the text and comments of the sentencing guidelines, concluding that Adams's criminal history score was skewed by "an initial crime" that Adams committed when he was "a very young individual."

Our conclusion that the district court did not abuse its broad sentencing discretion is informed by the analysis contained in a nonprecedential opinion of this court, *State v. Wetzel*, No. A19-0091, 2019 WL 4409410 (Minn. App. Sept. 16, 2019). In *Wetzel*, as in this case, the district court referenced several of the *Trog* factors, including the defendant's age, family support, and remorse, but never explicitly found that the defendant was particularly amenable to probation. *Wetzel*, 2019 WL 4409410 at *3. On appeal, this court noted that "the *Trog* factors are typically used to support a finding that a defendant is particularly amenable to probation (or the inverse)," but reasoned that the lack of such a finding was "not fatal to the departure" because other circumstances can support a

departure. *Id.* This court concluded that the district court did not abuse its discretion because the *Trog* factors noted by the district court combined with other factors—"the victims' desire that Wetzel not be prosecuted" and the fact that the offense was less serious than usual—created substantial and compelling circumstances that could justify a departure. *Id.* at *3-4. Although *Wetzel* is nonprecedential, *see* Minn. R. Civ. App. P. 136.01, subd. 1(c), we find it to be persuasive.

The district court properly addressed the specific offender-related circumstances of Adams's case—including some pertinent *Trog* factors (remorse, conduct in court, motivation, and age) as well as factors not listed in *Trog* (the effect of the sentencing options on Adams's ability to comply with the law in the long-term, and on reducing the long-term public safety risk that Adams might present). As in *Wetzel*, based on the district court's consideration of this combination of factors, we discern no abuse of discretion in the decision to depart.

Affirmed.