

*This opinion is nonprecedential except as provided by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
A23-0538**

State of Minnesota,
Respondent,

vs.

Ryan Adam Burbul,
Appellant.

**Filed January 29, 2024
Affirmed
Kirk, Judge***

Pine County District Court
File No. 58-CR-22-105

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

Reese Frederickson, Pine County Attorney, Michelle R. Skubitz, Chief Deputy County Attorney, Pine City, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Angela Larsen (certified student attorney), St. Paul, Minnesota (for appellant)

Considered and decided by Schmidt, Presiding Judge; Segal, Chief Judge; and Kirk,
Judge.

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

NONPRECEDENTIAL OPINION

KIRK, Judge

Appellant Ryan Adam Burbul challenges his 126-month prison sentence, arguing that the district court abused its discretion by denying his motion for a downward dispositional departure. We affirm.

FACTS

In February 2022, respondent State of Minnesota charged Burbul with first-degree controlled substance sale and first-degree controlled substance possession. Burbul pleaded guilty as charged and moved for a downward dispositional departure, seeking probation. The district court denied the motion and sentenced Burbul to serve 126 months in prison on the intent-to-sell count. The district court dismissed the possession count. In imposing the presumptive, top-of-the-box sentence, the district court emphasized that Burbul was already on probation at the time of his offense, that Burbul had four prior felony convictions, and that Burbul had initially failed to comply with his presentence investigation and drug treatment program.

Burbul appeals.

DECISION

A sentencing court may exercise its discretion to depart from the Minnesota Sentencing Guidelines “*only if* aggravating or mitigating circumstances are present, and those circumstances provide a substantial and compelling reason not to impose a guidelines sentence.” *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014) (citations and quotations omitted). One circumstance that permits a district court to depart from the sentencing

guidelines is a defendant's particular amenability to probation. *See State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). In *Trog*, the supreme court recognized factors that district courts may consider when assessing whether a defendant is particularly amenable to probation, 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." *Id.* But a district court is not required to depart from the guidelines even if mitigating factors are present. *See State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006). When the record reflects that the district court carefully considered and evaluated the information and testimony presented, we will not disturb a district court's exercise of discretion. *State v. Van Ruler*, 378 N.W.2d 77, 80–81 (Minn. App. 1985).

The record does not support Burbul's contention that the district court abused its discretion in denying his motion for a downward dispositional departure. While Burbul did introduce letters from friends and family in support of his motion and cooperated with police and the district court throughout the process, he was also already on probation for a drug offense at the time of the current offense and had four prior felony convictions. We also note that although Burbul's father's health caused him difficulties in complying with his presentence investigation, he additionally failed to complete his drug treatment program at first, despite knowing that he would be asking for a downward dispositional departure.

Taken as a whole, the record supports the district court's conclusion that no substantial and compelling circumstances supported a dispositional departure. This is not

the “rare case” compelling this court to disturb the district court’s imposition of the presumptive sentence. *See State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

Affirmed.