

*This opinion is nonprecedential except as provided by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
A23-1226**

State of Minnesota,
Respondent,

vs.

Thomas Lee Murray,
Appellant.

**Filed July 1, 2024
Affirmed
Harris, Judge**

Crow Wing County District Court
File No. 18-CR-21-4013

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

Donald F. Ryan, Crow Wing County Attorney, Janine LePage, First Assistant County Attorney, Brainerd, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Schmidt, Judge; and Harris, Judge.

NONPRECEDENTIAL OPINION

HARRIS, Judge

Appellant challenges his sentence for second-degree criminal sexual conduct, arguing that the district court abused its discretion by denying his motion for a downward dispositional departure. We affirm.

FACTS

In October 2021, respondent State of Minnesota charged appellant Thomas Lee Murray with six counts of criminal sexual conduct. The complaint alleged that Murray and his girlfriend sexually abused the girlfriend's six-year-old daughter multiple times over an extended period of time.

In January 2023, the parties reached a plea agreement. Murray pleaded guilty to one count of second-degree criminal sexual conduct. In exchange, the state agreed to dismiss the remaining counts. The parties agreed that the state could argue for 108 months' imprisonment, and Murray could argue for a downward dispositional departure and a probationary sentence.

Murray filed a formal sentencing departure motion and memorandum. Murray relied on a sentencing memorandum from a dispositional advisor, the presentence investigation (PSI), psychosexual evaluation, and letters of support.¹ Murray argued that substantial and compelling circumstances justified a dispositional departure and that he was particularly amenable to probation. Murray stated the following facts to support his motion: he was 37 years old, he had no prior criminal history, he had no history of chemical-health disorders or mental-health diagnoses, he had been cooperative and respectful with the court process, he had a supportive family and friends, he had a stable living situation, he took responsibility for his actions by pleading guilty, and he completed the psychosexual evaluation and is on a waitlist for treatment.

¹ To protect the confidentiality of nonpublic information, we only include information presented in Murray's brief. Minn. R. Pub. Access to Recs. of Jud. Branch 4, subds. 1(b), 4.

The dispositional advisor recommended a probationary sentence to allow Murray to get the treatment he needs as soon as possible. The PSI did not support or oppose a departure. The PSI report described that Murray was willing to complete sex-offender treatment and was on a waitlist for the only in-person program available to him. The PSI also described that Murray had close, supportive relationships with his family and friends, had a stable living situation, and had a limited criminal history. Among other items, the psychosexual evaluation recommended that Murray “be required to complete a formal group treatment program focused on sexual offending.”

At the sentencing hearing, the state and the victim opposed Murray’s departure motion. The state requested the district court sentence Murray to 108 months in prison. The state argued that Murray is not particularly amenable to probation, stating that Murray took almost no responsibility, was not employed, and had not started treatment. The state also noted the impact on the victim and that her mother’s parental rights were terminated due to this offense.

Murray argued that he should receive a similar sentence to his co-defendant, who was likely to receive a departure. Murray addressed the district court, stating, “I would like to apologize for what I did, and what I did was wrong, and I will accept whatever you decide.”

The district court remanded Murray into custody and took the departure motion under advisement. In a written order, the district court denied Murray’s departure motion and imposed the presumptive sentence. Murray appeals.

DECISION

Murray argues that the district court erred in denying his motion for a downward dispositional departure because the record contains evidence that he is particularly amenable to probation and there are substantial and compelling reasons for a probationary sentence. We conclude that the district court did not abuse its discretion.

We review a district court's denial of a sentencing departure for an abuse of discretion. *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016). We may not interfere with a sentencing court's exercise of discretion, as long as the record shows the sentencing court carefully evaluated all the testimony and information presented before making a determination. *State v. Pegel*, 795 N.W.2d 251, 255 (Minn. App. 2011) (quotation omitted). “[I]t would be a rare case which would warrant reversal of the refusal to depart.” *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

The Minnesota Sentencing Guidelines prescribe a sentence or range of sentences that is “presumed to be appropriate.” *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014); Minn. Sent’g Guidelines 2.D.1 (2020). The district court must impose the presumptive sentence determined by those calculations, but it may depart from a presumptive guidelines sentence if it finds substantial and compelling reasons to do so. *Soto*, 855 N.W.2d at 308. Substantial and compelling circumstances are those circumstances that make a particular case different from a typical case. *State v. Olson*, 765 N.W.2d 662, 664 (Minn. App. 2009).

The Minnesota Sentencing Guidelines contain a “nonexclusive list” of factors that may be used as reasons for a departure. Minn. Sent’g Guidelines 2.D.203 (2020). A defendant’s particular amenability to probation is a mitigating factor that may provide a

substantial and compelling reason for departure. Minn. Sent’g Guidelines 2.D.3.a(7) (2020); *State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006). A defendant’s amenability to probation can be demonstrated by factors such as the defendant’s age, prior record, remorse, cooperation while in court, and the support of friends and family (*Trog* factors). *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). “[M]erely being amenable to probation—as opposed to being *particularly* amenable to probation”—does not justify a departure from a presumptive sentence. *Soto*, 855 N.W.2d at 308.

Murray asserts that the *Trog* factors weigh in favor of a departure. He contends that a review of the *Trog* factors and the sentencing guidelines, in conjunction with the record, demonstrates that the district court abused its discretion. Specifically, Murray argues that the district court abused its discretion because (1) he was on the waitlist for sex-offender treatment; (2) he had the support of family and members of the community; (3) he was remorseful, pleaded guilty, and took responsibility; (4) he had no prior felony or gross misdemeanor convictions; (5) he was living in the community and complying with conditions of release, and (6) that his co-defendant was likely to receive a departure.² We are not persuaded.

Even if a district court finds the existence of one or more *Trog* factors based on the record, the district court is not required to depart from the presumptive sentence. *See Wells v. State*, 839 N.W.2d 775, 781 (Minn. App. 2013) (stating that a district court always has

² The district court noted that it was not assigned the co-defendant’s matter and the co-defendant’s sentence was unknown. A defendant is not entitled to a reduction in his sentence merely because a co-defendant received a lesser sentence. *Olson*, 765 N.W.2d at 665.

discretion to impose a presumptive sentence), *rev. denied* (Minn. Feb. 18, 2014); *Pegel*, 795 N.W.2d at 253-54 (stating that a district court is not required to grant a departure, even if mitigating circumstances are present); *Olson*, 765 N.W.2d at 663 (holding that the district court did not abuse its discretion by refusing to depart from a presumptive sentence, “even if there [was] evidence in the record that the defendant would be amenable to probation”).

Here, the district court considered mitigating factors in the record. The district court noted that Murray has had physical health concerns, had acknowledged his participation in the offense, was on the waitlist for sex-offender treatment, and was willing to comply with any probation and treatment recommendations or requirements. Yet, the district court ultimately imposed the presumptive sentence, determining:

The Court does not find that the information in the record rises to the level of demonstrating substantial and compelling reasons to depart from the Sentencing Guidelines. The Sentencing Guidelines recognize the severity of the offense by creating a presumptive sentence, even for persons that have no criminal history. The departure is not supported by the State or the victim’s family. The PSI and Psychosexual evaluation note Defendant’s failure to fully take responsibility for his offense and/or minimizing his role. Defendant was identified as being in the “Average risk of sexual reoffending.”

The district court carefully evaluated all the evidence. In its written order, the district court referenced the PSI, psychosexual evaluation, victim-impact statements, the dispositional-advisor memorandum, Murray’s memorandum of law, Murray’s letters of support, and the arguments at the sentencing hearing. Although the district court did not articulate all possible reasons for departure raised by Murray, any failure to expressly consider factors supporting departure is not grounds for reversal. *See State v. Van Ruler*,

378 N.W.2d 77, 80 (Minn. App. 1985) (“[A]n explanation is not required when the [district] court considers reasons for a departure but elects to impose the presumptive sentence.”); *Pegel*, 795 N.W.2d at 253-54. Therefore, based on this record, we discern no abuse of discretion in the district court’s denial of Murray’s motion for a downward dispositional departure.

Affirmed.