

*This opinion is nonprecedential except as provided by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
A23-1265**

State of Minnesota,
Respondent,

vs.

Matthew Lee Ford,
Appellant.

**Filed July 1, 2024
Affirmed
Smith, John, Judge***

Carver County District Court
File No. 10-CR-22-971

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

Mark Metz, Carver County Attorney, Cassandra K. Shepherd, Assistant County Attorney,
Chaska, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, John Patrick Monnens, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larson, Presiding Judge; Cochran, Judge; and Smith,
John, Judge.

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

NONPRECEDENTIAL OPINION

SMITH, JOHN, Judge

We affirm the district court’s denial of appellant Matthew Lee Ford’s motion for a downward dispositional departure from the presumptive sentencing guidelines because the district court applied the correct legal standard and did not abuse its discretion by imposing the presumptive sentence following Ford’s conviction of felony domestic abuse.

FACTS

In October 2022, Ford was driving in a car with his then romantic partner, S.N. According to the complaint, Ford began screaming at S.N. and she called the police. When police officers arrived, they saw that S.N. was upset and crying and that Ford had “his left arm tightly around S.N.’s back.” Ford initially refused to let go of S.N., but the police officer was eventually able to help S.N. get out of the car. S.N. told the officer that Ford threatened to punch her in the face and that she feared for her safety. Police arrested Ford.

Respondent State of Minnesota charged Ford by amended complaint with domestic assault-fear, domestic assault-harm, and obstruction of the legal process. The complaint noted that, at the time of the offense, Ford had “an extensive criminal history,” including two prior convictions for violating a domestic-abuse no-contact order. The state filed notice of its intent to seek an aggravated durational departure from the sentencing guidelines on the basis of Ford’s status as a repeat felony offender.

In February 2023, Ford entered a *Norgaard* plea of guilty to felony domestic assault-fear.¹ The remaining two offenses were dismissed. Ford acknowledged in the plea petition that the state was seeking an aggravated sentence and noted that the sentence would “be left to the judge to decide.” He also waived his right to have a jury determine whether aggravating sentencing factors existed for an upward sentencing departure. Ford admitted that he had prior felony convictions for: (1) violation of a domestic abuse no-contact order in 2019, (2) assault in 2016, (3) violation of a domestic abuse no-contact order in 2014, (4) domestic assault in 2013, (5) violation of an order for protection in 2006, and (6) violation of an order for protection in 2006. And he agreed that these convictions, along with the present offense, constituted a pattern of criminal activity.² The district court accepted Ford’s *Norgaard* plea and ordered a presentence investigation (the PSI).

Ford returned to court for sentencing in June 2023. The district court noted that it had reviewed the PSI, which indicated that the presumptive sentence for felony domestic assault for a person with Ford’s criminal history was a commitment to prison for 33 months, with a lower range of 29 months and an upper range of 39 months. At the hearing, the state moved for an upward departure to a 60-month prison sentence. The defense moved for a downward dispositional departure to allow Ford to receive treatment in a

¹ See *State ex rel. Norgaard v. Tahash*, 110 N.W.2d 867, 872 (Minn. 1961) (recognizing that a defendant may enter a valid plea of guilty despite a failure to recall specifics of the offense).

² See *Blakely v. Washington*, 542 U.S. 296, 303-05 (2004) (explaining that every fact that supports an enhanced sentence must be found by a jury or admitted by the defendant); see also Minn. Stat. § 609.1095, subd. 4 (2022) (allowing an aggravated departure from the presumptive sentence when the offender has five or more prior felony convictions, and the present offense is a felony committed as part of a pattern of criminal conduct).

probationary setting. The district court denied both departure motions and imposed the presumptive sentence of 33 months' imprisonment.

DECISION

Ford makes two arguments on appeal. First, he claims that the district court applied the incorrect legal standard when it addressed his motion for a downward dispositional departure. He asserts that, if the court had relied on the correct standard, it would have granted his motion. Second, he argues that the district court abused its discretion in denying his departure motion because substantial and compelling reasons support a departure to probation. For the reasons discussed below, we conclude that Ford is not entitled to relief on either ground.

I. The district court applied the correct legal standard.

The Minnesota Sentencing Guidelines prescribe a sentence or a range for the sentence that is “presumed to be appropriate.” *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014) (quotation omitted). The district court “must pronounce a sentence within the applicable range unless there exist identifiable, substantial, and compelling circumstances” distinguishing the case and overcoming the presumption in favor of the guidelines sentence. *Id.* Appellate courts afford a district court “great discretion in the imposition of sentences” and reverse only for an abuse of that discretion. *Id.* at 307-08 (quotation omitted). To maintain uniformity and proportionality in sentencing, departures from the guidelines sentence are discouraged. *State v. Rund*, 896 N.W.2d 527, 532 (Minn. 2017). As such, a reviewing court rarely holds that a district court has abused its discretion in sentencing. *Soto*, 855 N.W.2d at 305.

Ford argues that the district court misapplied the law because it impermissibly relied on offense-based factors, rather than offender-based factors, to conclude that he was not particularly amenable to treatment. “[T]o the extent a decision to depart turns on a question of law, reviewing the decision for an abuse of discretion . . . calls for resolving the legal question de novo.” *Id.* at 308 n.1.

There are two types of sentencing departures: dispositional and durational. *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016). Ford sought a downward dispositional departure. A downward dispositional departure occurs when the presumptive guidelines sentence calls for imprisonment “but the district court instead stays execution or imposition of the sentence.” *Id.* “A dispositional departure typically focuses on characteristics of the defendant that show whether the defendant is particularly suitable for individualized treatment in a probationary setting.” *Id.* (quotation omitted). A durational departure, by contrast, “is a sentence that departs in length from the presumptive guidelines range.” *Id.* A downward durational departure is “justified if the 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). A district court’s decision to impose a durational departure “must be based on factors that reflect the seriousness of the offense” rather than “the characteristics of the offender.” *Solberg*, 882 N.W.2d at 623 (emphasis omitted).

Ford argues that the district court relied on offense-based, rather than offender-based, criteria. But the record does not support this claim. At the sentencing hearing, the district court noted that it had received the sentencing worksheet, the PSI, memoranda from

the parties, a diagnostic assessment, letters from treatment facilities, and letters in support of Ford, all of which it considered when arriving at its sentencing decision. The district court gave a detailed explanation of its decision to impose a guidelines sentence. It stated:

All right. Mr. Ford, let me tell you how I look at sentencing. I take all the documentation well before the hearing, and I start reading it. I started probably reading [the] PSI . . . when it came out. I go over it. As things come in, I mull it over, and then I have [the materials printed]. I take it home with me, and I go over it and over it to try and decide what feels right until I get into the courtroom.

And your case is difficult for me because . . . you're right. When you just look at the numbers and you look at the offenses, all these person related offenses, it doesn't even seem like I should be considering other than exactly what [the prosecutor] is asking for. You fit right into [the aggravated departure that the prosecutor is] requesting. But I see you in court, and you seem like somebody who wants to do well. You seem like somebody who really does want to be a better person. And I certainly agree with [defense counsel] that your problems and your legal troubles always seem to surround alcohol use and what happens when you do.

Your work that you've done in the jail and the way you've handled it is the reason why I am not going to upwardly depart to 60 months. It's because of the work that you're doing and that I truly believe you do want to do well. You do not [meet] the particularly amenable to probation standard. You simply don't. The crime is too serious. Given your time on probation, it has not been shown to me that you meet the standard for me to do a downward departure. But your words here today, everything that you've said here I've taken into account and believe that you fit not even the top of the box but the presumptive sentence of 33 months.

Both the state and Ford urged the district court to depart from the guidelines sentence. The transcript reflects that the district court discussed these motions at the same time. It ultimately denied both motions and handed down a presumptive sentence. In doing

so, the district court addressed both offense- and offender-related reasons to explain its justification for declining to depart in either direction. This does not constitute error. Further, caselaw recognizes that, when considering a 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) (citing *State v. Behl*, 573 N.W.2d 711, 713 (Minn. App. 1998)). Because we are satisfied that the district court properly considered the relevant factors for departure, we conclude that it did not err in its application of the law.

II. The district court did not abuse its discretion by denying Ford’s departure motion.

Ford argues that the district court’s denial of his departure motion constitutes an abuse of discretion. When presented with a departure motion, a district court must determine whether “mitigating circumstances are present” and, if so, whether “those circumstances provide a substantial and compelling reason not to impose a guidelines sentence.” *Soto*, 855 N.W.2d at 308 (quotations omitted). A defendant’s “particular amenability to individualized treatment in a probationary setting” may justify a downward dispositional departure from a presumptive commitment to prison. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). Minnesota courts are guided by several factors, known as the *Trog* factors, to determine whether a defendant is particularly amenable to individualized treatment in a probationary setting. *Id.* These factors include the defendant’s age, prior criminal record, level of remorse, cooperation, attitude while in court, and support of friends or family members. *Id.*

Ford faults the district court for determining that he was not eligible for a departure under this test. He asserts that the record establishes several reasons why a probationary sentence was warranted, pointing specifically to his amenability to treatment and his past participation in chemical-dependency treatment. Although the district court did not explicitly address the *Trog* factors here, “an explanation is not required when the court considers reasons for departure but elects to impose the presumptive sentence.” *State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985); *see also State v. Pegel*, 795 N.W.2d 251, 254 (Minn. App. 2011) (providing that a district court is not required to discuss each *Trog* factor before imposing a sentence). Moreover, even if the record establishes certain facts showing that an offender is particularly amenable to probation, a district court is not obligated to depart from the guidelines. *Walker*, 913 N.W.2d at 468-69; *see also Pegel*, 795 N.W.2d at 253 (noting that the “mere fact that a mitigating factor is present in a particular case does not obligate the court to place [a] defendant on probation” (quotation omitted)).

Here, although no explanation was required, the district court explained that its decision to impose the presumptive sentence was based on Ford’s criminal-history score, his attitude in court, and the “work that [he had] done in jail” to address his chemical-dependency issues. The district court acknowledged Ford’s past progress and credited him as “somebody who really does want to be a better person.” But it noted that it had reviewed the parties’ arguments, the submitted materials, and the statements provided by the prosecution and the defense and ultimately concluded, based on this review, that Ford was not amenable to treatment in a probationary setting. The record reflects that the district

court “deliberately considered” the circumstances for and against departure and the relevant evidence and exercised its discretion to impose the presumptive sentence. *State v. Curtiss*, 353 N.W.2d 262, 264 (Minn. App. 1984); *see also Pegel*, 795 N.W.2d at 255 (determining that the district court did not abuse its discretion by denying a departure motion when “the record demonstrate[d] that the district court carefully considered circumstances for and against departure and deliberately exercised its discretion”).

In sum, the district court considered the circumstances for and against departure and determined that Ford was not entitled to a downward dispositional departure from the sentencing guidelines. Based on the record, we conclude that this is not a “rare” case requiring this court to disturb the presumptive sentence. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981) (noting that only in a “rare case” will a reviewing court overturn a presumptive sentence). Because the record supports the district court’s decision, and because appellate courts grant broad discretion to the district court in considering departure motions, we affirm.

Affirmed.