

*This opinion is nonprecedential except as provided by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
A23-1414**

State of Minnesota,
Respondent,

vs.

Jamez Antoine Powell,
Appellant.

**Filed October 14, 2024
Affirmed
Cochran, Judge**

Ramsey County District Court
File No. 62-CR-22-3331

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

Mary F. Moriarty, Hennepin County Attorney, Adam E. Petras, Senior Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Kathryn J. Lockwood, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Connolly, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

On appeal from his conviction of first-degree criminal sexual conduct, appellant argues that the district court abused its discretion by denying his motion for a downward dispositional departure from his presumptive prison sentence. We affirm.

FACTS

In June 2022, respondent State of Minnesota charged appellant Jamez Antoine Powell with first-degree criminal sexual conduct in violation of Minnesota Statutes section 609.342, subdivision 1(h)(iii) (2014), and second-degree criminal sexual conduct in violation of Minnesota Statutes section 609.343, subdivision 1(h)(iii) (2014). The complaint alleged that Powell repeatedly sexually abused his niece between 2016 and 2019 when his niece was age six through age nine.

According to the complaint, the victim disclosed the abuse to her parents in April 2022. The victim's mother, who is also Powell's sister-in-law, took the victim to Midwest Children's Resource Center for a medical examination. During the examination, the victim stated that Powell abused her "repeatedly" while he was babysitting her, which used to happen "a lot." Powell would take her "into a guest bedroom and have her pull down her pants" and "[s]ometimes he pulled her pants down himself." Powell also would "touch and lick her vagina" and "put his penis in [her] mouth." Powell told the victim "not to tell her brother because he was too young." Recounting the last time Powell abused her, the victim said Powell entered the shower with her, touched her chest, and commented to the effect of, "Wow! You've grown." The victim "kept the abuse a secret" until Powell followed her around at a family funeral, which made the victim "very uncomfortable" and gave her nightmares. The victim disclosed the abuse to her parents, and she told her older cousins "because she didn't want anything to happen to them."

Powell pleaded guilty to first-degree criminal sexual conduct without any agreement as to sentencing. At the March 2023 plea hearing, Powell reported that he had started a

long-term sex offender treatment program. Powell also acknowledged that his presumptive sentence for the offense would be 144 months unless the district court found a basis to depart. The district court deferred acceptance of the plea, ordered a presentence investigation (PSI) and psychosexual evaluation, and set the matter for sentencing.

PSI Report and Psychosexual Evaluation

The PSI report included details of Powell's criminal history. In 2018, Powell was convicted of gross misdemeanor indecent exposure for kissing his sixteen-year-old fiancée's sister, putting his face in her crotch, and grabbing her buttocks. In another incident from 2018, Powell gave a woman a ride to her apartment and, once there, he asked to use her restroom. When Powell entered the apartment, he pulled down his pants, exposed his penis, and asked, "Can you help me? Can we go into the bedroom?" The woman asked Powell to leave and called the police. Powell was then arrested and later convicted of misdemeanor disorderly conduct in relation to that incident.

The PSI report and psychosexual evaluation also reviewed Powell's treatment history. The psychosexual evaluation ordered in this case was not Powell's first; he had participated in an earlier evaluation after the 2018 indecent-exposure charge. That evaluation recommended that Powell attend and complete "full sex offender treatment," but he did not. Instead, Powell completed a course on "healthy sexual boundaries," which was required as a term of his indecent-exposure probation. In this psychosexual evaluation, Powell reported that he "ha[d] been attending outpatient sex offender treatment" for about two months. The psychosexual evaluation noted that "Powell has a significant personality disorder and paraphilic disorder which may impede his ability to change."

The PSI report recommended that Powell be sentenced in accordance with the Minnesota Sentencing Guidelines and committed to the Commissioner of Corrections for 144 months. The psychosexual evaluation reported that Powell “continues to be a high risk to reoffend against other females, adults and minors.” It recommended that Powell “[c]omplete reputable sex offender treatment programming” and noted that “[i]f he is sentenced to prison, he will be directed to complete treatment while incarcerated.” The PSI report and psychosexual evaluation were available to the district court at the sentencing hearing.

Motion for Downward Dispositional Departure

Approximately one month before the sentencing hearing, Powell filed a written motion for a downward dispositional departure. He argued that “he pleaded guilty and accepted responsibility” and that he “sought treatment, has been treated[,] and will continue to be treated.”

At the sentencing hearing, defense counsel argued in support of the motion. After a few introductory remarks, defense counsel stated, “We had a brief conversation in chambers and the . . . court told me as a courtesy what it was inclined to do and the reasons why and I understand that but I just want to make a couple of matters present for the record.” Defense counsel then argued that a downward dispositional departure was appropriate because Powell had been employed full-time at a dialysis center and had attended treatment for three months. Defense counsel acknowledged that Powell’s paraphilia disorder makes him “high risk,” but he contended that paraphilia is a “treatable disorder,” Powell “has been going to treatment,” and his treatment “goes on for much,

much longer.” Finally, defense counsel noted that Powell “has had no conditional release violations,” including “no incidents of contact with minors.” In closing, defense counsel stated, “I understand what the court is inclined to do but I simply wanted to make that argument for Mr. Powell.”

The state requested that the district court deny Powell’s downward dispositional departure motion because he has a prior sex offense from “several years ago” and Powell did not take the opportunity to “take full advantage” of treatment then. The state emphasized that Powell’s failure to get treatment led to “devastating consequences” for the victim and the victim’s family. The victim’s parents provided impact statements. Powell testified and expressed remorse.

Sentencing

The district court then sentenced Powell. Before announcing its decision, the district court acknowledged Powell’s admissions and that he has “made some efforts.” But the district court raised several concerns based on its review of the PSI and psychosexual evaluation: Powell did not express “a lot of insight into [his] impact on the victim”; Powell said the conduct “didn’t happen as long as [the victim] said it did”; Powell displayed “poor boundaries with the evaluator”; and Powell “share[s] characteristics with groups of offenders who reoffend . . . at a moderate to high level.” In particular, the district court flagged that Powell’s desire to find “work as a music minister in a church setting where [he is] going to have no doubt contact with children” caused the court to “question both [Powell’s] motivation and the sincerity of [his] concern.” The district court concluded that

“there aren’t substantial compelling reasons to depart from the Minnesota Sentencing Guidelines at this time.”

The district court then convicted Powell of first-degree criminal sexual conduct, committed Powell to the Commissioner of Corrections for 144 months, and imposed the mandatory ten-year conditional-release period. The district court also dismissed the second-degree criminal sexual conduct count.

Powell appeals.

DECISION

Powell argues that the district court abused its discretion by denying his motion for a downward dispositional departure because it decided his motion prior to the sentencing hearing. Alternatively, he argues that the district court abused its discretion by denying the motion because Powell demonstrated that he is particularly amenable to probation.

The Minnesota Sentencing Guidelines establish presumptive sentences for felony offenses. Minn. Stat. § 244.09, subd. 5 (2014). For any particular offense, the guidelines sentence is “presumed to be appropriate for all typical cases sharing criminal history and offense severity characteristics.” Minn. Sent’g Guidelines 1.B.13 (Supp. 2015). Accordingly, “[t]he court must pronounce a sentence . . . within the applicable range unless there exist identifiable, substantial, and compelling circumstances to support a departure.” Minn. Sent’g Guidelines 2.D.1 (Supp. 2015). A downward dispositional departure “occurs when the Guidelines recommend a prison sentence[,] but the court stays the sentence” and places the defendant on probation. Minn. Sent’g Guidelines 1.B.5.a(2) (Supp. 2015).

A district court has the discretion to grant a downward dispositional departure if the defendant is “particularly amenable to probation” but is not required to do so. Minn. Sent’g Guidelines 2.D.3.a(7) (Supp. 2015); *State v. Olson*, 765 N.W.2d 662, 664-65 (Minn. App. 2009). “By requiring a defendant to be particularly amenable to probation . . . we ensure that the defendant’s amenability . . . truly presents the substantial and compelling circumstances that are necessary to justify a departure.” *State v. Soto*, 855 N.W.2d 303, 309 (Minn. 2014) (quotation omitted). District courts consider “[n]umerous factors” in determining whether an offender is particularly amenable to probation. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). These factors, sometimes referred to as the *Trog* factors, include age, criminal history, remorse, cooperation, attitude in court, and support of friends and family. *Id.* If a district court departs from the presumptive sentence, the district court is required to state the reason or reasons for the departure. Minn. Sent’g Guidelines 2.D.1.c (Supp. 2015). But a district court need not explain its decision to impose a presumptive sentence. *State v. Johnson*, 831 N.W.2d 917, 925 (Minn. App. 2013), *rev. denied* (Minn. Sept. 17, 2013); *State v. Van Ruler*, 378 N.W.2d 77, 80-81 (Minn. App. 1985).

We review a district court’s decision to deny a motion for a dispositional departure for an abuse of discretion. *Soto*, 855 N.W.2d at 307-08. “An abuse of discretion occurs if the district court’s decision is against logic and the facts in the record or based on an erroneous view of the law.” *State v. Beganovic*, 974 N.W.2d 278, 287 (Minn. App. 2022), *aff’d on other grounds*, 991 N.W.2d 638 (Minn. 2023). We will affirm a presumptive sentence if the record establishes that “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). Only in a “rare case” will we reverse a district court’s departure decision. *Soto*, 855 N.W.2d at 305.

Powell’s Argument Regarding the Timing of the Decision

Powell first argues that the district court abused its discretion by “decid[ing] the motion before being presented with the testimony and information in support.” In his brief, Powell asserts that the district court “told the parties that it was going to deny the departure motion before the sentencing hearing even began.” And Powell contends that at the hearing, “after being presented with the facts in support of a departure, the court did not make any findings indicating that it had considered” the *Trog* factors. Accordingly, Powell maintains that the district court decided the motion prior to the hearing and “may have relied on improper reasons” in doing so. To support his argument, Powell cites two cases where this court reversed a district court’s decision denying a motion for a downward dispositional departure. *See State v. Curtiss*, 353 N.W.2d 262, 264 (Minn. App. 1984) (holding that a district court abuses its discretion by failing to weigh reasons for and against departure); *State v. Mendoza*, 638 N.W.2d 480, 484 (Minn. App. 2002) (holding that a district court abuses its discretion when it considers improper reasons for departure: immigration status and possible deportation), *rev. denied* (Minn. Apr. 16, 2002).

The state disagrees with Powell’s characterization of the district court’s decision-making process. The state notes that the district court was “already well-acquainted with the basis for [Powell’s] dispositional-departure argument” by the time of the sentencing hearing because it had received Powell’s written motion “over a month” before the hearing. The state also contends that the district court “explicitly considered [Powell’s] statements

and other relevant factors during the sentencing hearing,” including his progress in treatment, his risk of reoffending, and his attitude towards the harm he caused to the victim. The state emphasizes that these considerations align with the *Trog* factors.

We agree with the state that the record does not support Powell’s contention that the district court decided Powell’s departure motion prior to the sentencing hearing. We acknowledge that the transcript from the sentencing hearing does reflect that defense counsel said the following: “We had a brief conversation in chambers . . . and the court told me as a courtesy what it was *inclined* to do and the reasons why.” This statement reflects that the district court expressed its inclination, which is different from the district court deciding the motion before the hearing. And the transcript of the sentencing hearing demonstrates that the district court had not made a decision prior to the hearing. At the hearing, the district court heard argument from counsel, listened to two victim impact statements, and gave Powell a chance to address the court. After hearing from Powell, the district court complimented Powell for making some admissions “that not everyone in [his] circumstances would make” but noted that it was discouraged because Powell did not show much “insight into [Powell’s] impact on the victim.” The district court also expressed concern for public safety if the district court were to grant Powell’s motion for a downward dispositional departure because Powell was planning on working “as a music minister in a church setting where [Powell was] going to have . . . contact with children.” These comments reflect that the district court decided to deny Powell’s request for a downward dispositional departure at the sentencing hearing after carefully evaluating the relevant testimony and information in the record. Therefore, Powell’s first argument fails.

Powell's Argument Regarding his Particular Amenability to Probation

Powell next argues that the district court's decision to commit Powell to prison was against logic and facts in the record because Powell "proved his particular amenability to probation." In support of this argument, Powell asserts that he was making progress towards being cured of his paraphilia disorder and that "he will not receive the necessary treatment" in prison. Powell also notes that he admitted guilt, took responsibility for his conduct, complied with the conditions of his pretrial release, and maintained employment. We conclude that this argument is unavailing.

While Powell points to facts in the record that may support a finding that Powell is particularly amenable to probation, the district court's decision to impose the presumptive prison sentence is not against logic or the facts in the record. The transcript from the sentencing hearing reflects the district court acknowledged circumstances cited by Powell as supporting his request for probation such as his progress in treatment. But the transcript also reflects that the district court was concerned by Powell's moderate to high risk of reoffending, his criminal history, the elements of the particular offense, his lack of insight into his impact on the victim, and his desire to be employed in a position that would likely place him in contact with children. These concerns are supported by facts in the record, including the PSI report and psychosexual evaluation as well as Powell's statements to the court. Thus, the district court's decision to impose the presumptive prison sentence is not contrary to logic or facts in the record.

We are not persuaded otherwise by Powell's reliance on two decisions of this court. *See State v. Hickman*, 666 N.W.2d 729, 732 (Minn. App. 2003) (observing that admitting

guilt is a “critical factor in an offender’s amenability to treatment”); *State v. Malinski*, 353 N.W.2d 207, 209 (Minn. App. 1984), *rev. denied* (Minn. Oct. 16, 1984) (reciting the district court’s observation that imprisonment will “entrench the defendant further into the life of criminal conduct”). Neither case concludes that the district court abused its discretion, as Powell asks us to do now. *See Hickman*, 666 N.W.2d at 731-33; *Malinski*, 353 N.W.2d at 209-11. Nor does either case establish that the district court must grant a motion for dispositional departure when a defendant is amenable to treatment in the community. *See Hickman*, 666 N.W.2d at 731-33; *Malinski*, 353 N.W.2d at 209-11. To the contrary, “the mere fact that a mitigating factor is present in a particular case” does not require the district court to grant a downward dispositional departure. *Pegel*, 795 N.W.2d at 253-54; *see also Wells v. State*, 839 N.W.2d 775, 781 (Minn. App. 2013), *rev. denied* (Minn. Feb. 18, 2014) (stating that a court need not depart even if the district court finds the existence of one or more *Trog* factors).

In sum, because the record reflects that the district court carefully considered the testimony and information presented at the sentencing hearing before making its decision, the district court did not abuse its discretion by denying Powell’s motion for a downward dispositional departure. *Johnson*, 831 N.W.2d at 925. This is not the “rare” case requiring reversal. *See Soto*, 855 N.W.2d at 305.

Affirmed.