

*This opinion is nonprecedential except as provided by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
A23-1507**

State of Minnesota,
Respondent,

vs.

Albert Lee Mahone, III,
Appellant.

**Filed August 26, 2024
Affirmed
Ross, Judge**

Anoka County District Court
File No. 02-CR-22-4875

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

Brad Johnson, Anoka County Attorney, Kelsey R. Kelley, Assistant County Attorney,
Anoka, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Lauermann, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Ross, Judge; and Florey,
Judge.*

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

NONPRECEDENTIAL OPINION

ROSS, Judge

Police found a semiautomatic 9-millimeter pistol and ammunition in Albert Mahone's apartment after his girlfriend reported that he twice struck her in the face and shoved the barrel of a gun into her abdomen. Mahone pleaded guilty to possessing a firearm as an ineligible person and unsuccessfully moved the district court to depart downward durationally or dispositionally from the presumptive executed prison sentence. Because the district court considered Mahone's motion based on the argument he presented and the relevant factors before it, we affirm its decision not to depart.

FACTS

A Columbia Heights police officer went to an apartment in August 2022 to investigate a reported domestic dispute. The officer spoke with a woman who reported that her boyfriend, Albert Mahone, smashed the driver's window of her car with a handgun after he ordered her to leave the apartment, choked her, pulled her backwards by her hair, punched her twice in the nose, and shoved the barrel of the gun into her abdomen while threatening to shoot her. Police obtained and executed a warrant to search the apartment, finding a loaded Beretta 9-millimeter semiautomatic handgun with an extended magazine and .40 caliber cartridges. The state charged Mahone with second- and third-degree assault, threats of violence, domestic assault by strangulation, possession of a firearm by an ineligible person, and possession of ammunition by an ineligible person.

Mahone pleaded guilty to possessing a firearm as an ineligible person in exchange for the state's agreement to dismiss the other charges. In providing a factual basis for his

plea, Mahone admitted that police found his wife's legally obtained firearm in his apartment, that he knew the gun was in his apartment, and that he at some point handled the firearm after having previously been convicted of aggravated robbery and a fifth-degree controlled-substance crime. After the district court accepted Mahone's guilty plea, he moved for a dispositional or durational sentencing departure, offering letters of support and a dispositional-advisor memorandum to support his request. The district court denied Mahone's motion and imposed the guidelines presumptive 60-month sentence. Mahone appeals.

DECISION

Mahone challenges his sentence, arguing that the district court should have granted his motion for a downward durational or dispositional departure. The district court sentenced Mahone in the context of Minnesota's policy preference favoring uniform sentencing. *State v. Soto*, 855 N.W.2d 303, 309 (Minn. 2014). The sentencing guidelines establish a system of uniform sentencing, and sentences that follow the guidelines are therefore presumed appropriate. Minn. Sent'g Guidelines 2.D.1 (2022). The district court's sentencing decision is entitled to broad discretion. *Soto*, 855 N.W.2d at 307–08. For the following reasons, we are satisfied that the district court acted properly within that discretion by denying Mahone's departure motion.

Mahone argues that the district court should have departed from the presumptive sentence either durationally or dispositionally. The district court must impose the presumptive sentence designated by the guidelines unless it finds “identifiable, substantial, and compelling circumstances” to justify a different sentence. Minn. Sent'g Guidelines

2.D.1.; *see also State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). And even when those circumstances are present, the district court is not required to depart. *State v. Walker*, 913 N.W.2d 463, 468 (Minn. App. 2018). We first address Mahone’s argument for a durational departure and then his argument for a dispositional departure.

Mahone fails to persuade us that he identified circumstances on which the district court could depart durationally from the presumptive sentence. The district court may depart durationally from the presumptive sentence if it finds that 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). Mahone points to three facts—the alleged negative effect of his continued incarceration on his son, his expressed remorse for his actions, and his merely constructive rather than actual possession of the firearm—as supposed compelling reasons supporting a durational departure. Neither the effect of his incarceration on his son nor his purported remorse is a factor relevant to the seriousness of his criminal conduct, and so they give us no ground to question the validity of the district court’s decision not to depart durationally.

And Mahone’s third alleged fact falls far short of justifying a departure. Mahone has provided no precedent that stands for the notion that constructively possessing a handgun illegally is significantly less serious than manually possessing a handgun illegally. A person previously convicted of a crime of violence violates the law by possessing a firearm. Minn. Stat. § 624.713, subd. 1(2) (2022). And illegal possession may be proved by either actual or constructive possession. *State v. Loyd*, 321 N.W.2d 901, 902 (Minn. 1982). The constructive-possession doctrine is simply a practical way to recognize that, in

some cases, the state might not be able to “prove actual or physical possession at the time of arrest” even though “the inference is strong that the defendant at one time physically possessed the [item] and did not abandon his possessory interest in” it. *State v. Florine*, 226 N.W.2d 609, 610 (Minn. 1975). Because illegal constructive possession is simply another way to prove prior, illegal actual possession, constructive possession is not less serious, let alone significantly less serious, than actual possession. In any event, the circumstances that led police to search Mahone’s apartment do not suggest that he merely constructively possessed the handgun. And Mahone answered affirmatively to the district court’s question, “[Y]ou handled that firearm at some point, true, after your prior felony convictions?” Mahone’s contention that his supposed constructive possession of the firearm makes his conduct significantly less serious than a typical offender’s conduct fails.

We are likewise unpersuaded by Mahone’s contention that the district court abused its discretion by denying his motion seeking a dispositional departure. Dispositional departures typically depend on the defendant’s characteristics demonstrating that he is particularly amenable to probation. *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016). Although several factors bear on a defendant’s amenability to probation, what really matters is that the defendant establish not just that he is a fitting candidate for probation but that he is *uniquely* suited, or *particularly* amenable, to probation. *See Soto*, 855 N.W.2d at 308–09. Mahone argues that his age, the time span between his prior convictions and his current conviction, his willingness to receive treatment and reform himself, and his remorseful and respectful manner in the district court support his dispositional-departure request. The record partly belies his argument. As to the supposedly lengthy period

between felony convictions, the record indicates that he was convicted of felonies in 2007, 2009, 2014, 2015, and 2020 before the current offense occurred in 2022. And contradicting his purported willingness to reform himself, Mahone denied having any difficulty controlling his anger despite multiple convictions of violent crimes and minimized his responsibility for acting violently against his girlfriend by describing his demeanor as “frustrated and stressed . . . not angry.” At the sentencing hearing, he blamed alcohol for his offense, but during his presentence investigation he denied that he had been drinking on the date of the offense. The district court therefore had little reason to believe that Mahone was prepared to reform himself. Although Mahone points to other circumstances to support his contention, none appears to be more relevant than those circumstances that indicate that he is not amenable to probation, and together they fall well short of establishing that he is particularly amenable to probation.

Affirmed.