

*This opinion is nonprecedential except as provided by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
A23-1571**

State of Minnesota,
Respondent,

vs.

Abdoulay Sackor,
Appellant.

**Filed September 3, 2024
Affirmed
Ede, Judge**

Dakota County District Court
File No. 19HA-CR-21-2318

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

Kathryn M. Keena, Dakota County Attorney, Jessica Bierwerth, Assistant County Attorney, Hastings, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sharon E. Jacks, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ede, Presiding Judge; Frisch, Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

EDE, Judge

In this appeal from a final judgment of conviction for unlawful possession of a firearm, appellant challenges the district court's denial of his motion for a downward dispositional departure. Because we discern no abuse of discretion in the district court's

imposition of the presumptive guidelines and mandatory-minimum sentence for this offense, we affirm.

FACTS

Respondent State of Minnesota charged appellant Abdoulay Sackor with one count of unlawful possession of a firearm, in violation of Minnesota Statutes section 624.713, subdivision 1(2) (2020). The complaint alleges that, on an afternoon in October 2021, police officers were patrolling a mall based on reports that a man and woman had committed theft at that location. The officers conducted a traffic stop after identifying a vehicle carrying occupants who matched an employee's description of the theft suspects. After identifying the driver as Sackor and searching the vehicle, the officers ultimately discovered a pistol containing a bullet in the chamber and a loaded magazine in the spare tire of his vehicle.

After Sackor pleaded guilty to the charged offense, the district court ordered that probation complete a presentence investigation report (PSI) with a chemical-dependency evaluation. The PSI stated that Sackor had six criminal-history points, a score that was based in part on the fact that Sackor was on probation at the time of the instant offense. And the PSI recommended that the district court impose the presumptive guidelines sentence based on the absence of mitigating or aggravating factors. Sackor moved for a downward dispositional departure.

At the sentencing hearing, the state opposed Sackor's motion. The state argued that Sackor had a "lengthy" criminal history and lacked remorse for the charged crime. The state highlighted that the "number one takeaway from the PSI is that Mr. Sackor accepted

zero responsibility for this offense” and instead “blame[d] the police for stopping his vehicle.” The state also argued that Sackor was not amenable to treatment, noting that he had received an unsuccessful discharge from a chemical-dependency program after less than a month. Finally, the state noted that “the PSI does not find any factors that would support a departure” and that Sackor’s “behavior and his responses in the PSI indicate none.”

Defense counsel contended that a departure was justified because Sackor had no prior offenses involving guns and “there was no allegation that the gun herein was used in any way as it relates to this particular charge.” Counsel also argued that Sackor is the sole caregiver to his young child and that, following his prior discharge from treatment, he had been accepted into another chemical-dependency program. Counsel further maintained that Sackor’s history supported a departure, explaining that Sackor was born in Liberia and that his family was tortured and killed because of civil unrest.

Sackor spoke on his own behalf and told the district court: “I was wrong what I did.” The district court asked Sackor to explain his offense conduct because Sackor had denied committing the crime to the probation agent who had prepared the PSI. Sackor responded:

No, I didn’t deny. [The probation agent] asked me a question, and I was just telling him exactly what happened. I mean, me denying it is like—I know what happened that way. The way they stopped me was really wrong, but I cannot say—they were against my word, you know? But if they would have to bring out cameras like I asked for, I wouldn’t be staying here right now. They were against my word.

After hearing from Sackor, the district court acknowledged the trauma arising from his experiences in Liberia. The district court also noted that, although chemical-

dependency treatment is difficult, the court did not find that Sackor was “at a point where treatment would work for” him based on his conduct. The district court imposed the presumptive guidelines and mandatory-minimum sentence of 60 months in prison.

Sackor appeals.

DECISION

Sackor challenges the district court’s denial of his motion for a downward dispositional departure and the imposition of the presumptive guidelines and mandatory-minimum sentence. He asserts that the district court abused its discretion by “failing to consider his offense conduct” and to account for his “personal circumstances demonstrating he is particularly amenable to probation.” More specifically, Sackor contends that his offense was less serious than a typical felon-in-possession case and that his acceptance of responsibility, enrollment in a chemical-dependency program, and motivation to change show that he is particularly amenable to probation. These arguments do not persuade us to reverse.

We review a district court’s sentencing decision for an abuse of discretion. *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014). 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). And we will reverse a district court’s refusal to depart only in a “rare case.” *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

Sackor was convicted of possession of a firearm by an ineligible person, in violation of Minnesota Statutes section 624.713, subdivision 1(2). The mandatory-minimum

sentence for this offense is five years in prison. Minn. Stat. § 609.11, subd. 5(b) (2020). A district court may “sentence the defendant without regard to the mandatory minimum sentences established by this section if the court finds substantial and compelling reasons to do so.” *Id.*, subd. 8(a) (2020) (explaining such a sentence is a departure under the Minnesota Sentencing Guidelines). But a district court may depart only if “there exist identifiable, substantial, and compelling circumstances that distinguish a case and overcome the presumption in favor of a guidelines sentence.” *Soto*, 855 N.W.2d at 308 (quotation omitted). In addition, “the mere fact that a mitigating factor is present in a particular case does not obligate the court to place defendant on probation or impose a shorter term than the presumptive term.” *Pegel*, 795 N.W.2d at 253–54 (quotation omitted). And even though a district court must provide an explanation when granting a departure, “an explanation is not required when the court considers reasons for departure but elects to impose the presumptive sentence.” *State v. Musse*, 981 N.W.2d 216, 220 (Minn. App. 2022) (quotation omitted), *rev. denied* (Minn. Dec. 28, 2022).

At the sentencing hearing, Sackor argued in support of his downward dispositional departure motion by citing his offense conduct and his personal circumstances. After hearing from the state, defense counsel, and Sackor, the district court asked Sackor about his denial of the offense conduct during his PSI interview with the probation agent. Despite that opportunity, Sackor continued to disclaim responsibility and instead focused on law enforcement’s conduct. The district court later acknowledged Sackor’s assertions about his personal history and the difficulty of completing chemical-dependency treatment but explained that Sackor’s behavior did not evince amenability to treatment.

We conclude that the district court's lack-of-amenable determination is supported by the record, which reflects that Sackor committed this offense while on probation, denied responsibility for possessing the gun, and had received an unsuccessful discharge from a chemical-dependency program prior to completion. The district court "carefully evaluated all the testimony and information presented before making a determination." *Pegel*, 795 N.W.2d at 255 (quotation omitted). This case does not qualify as a "rare case" warranting reversal. *Kindem*, 313 N.W.2d at 7.

In sum, because "the record demonstrates that the district court carefully considered circumstances for and against departure and deliberately exercised its discretion," we discern no abuse of that discretion in the court's imposition of the presumptive guidelines and mandatory-minimum sentence. *Pegel*, 795 N.W.2d at 255.

Affirmed.