

*This opinion is nonprecedential except as provided by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
A23-1590**

State of Minnesota,
Respondent,

vs.

Kenny Lenard Peaches,
Appellant.

**Filed September 23, 2024
Affirmed
Smith, John, Judge***

Ramsey County District Court
File Nos. 62-CR-22-2598, 62-CR-22-5304

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

John J. Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney,
St. Paul, Minnesota (for respondent)

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

Considered and decided by Worke, Presiding Judge; Larson, 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NONPRECEDENTIAL OPINION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 presumptive prison sentences of appellant Kenny Lenard Peaches for his convictions of unlawful possession of ammunition and violating a domestic-abuse no-contact order (DANCO) because the district court did not abuse its discretion by denying his motions for downward dispositional and durational departures.

FACTS

In May 2022, Peaches was charged with two counts of unlawful possession of a firearm or ammunition and with one count of violating a DANCO protecting R.B. In September of that year, he was charged, in a separate matter, with violating the DANCO protecting R.B.

In June 2023, Peaches pleaded guilty to one count of unlawful possession of ammunition and to the later-charged DANCO violation in exchange for the state's agreement to a dispositional departure, dismissal of the remaining charges in those matters, and dismissal of two other matters. The agreement was conditioned, in part, on Peaches "remaining law abiding with no new charges" between the guilty plea and sentencing the following month. The district court advised Peaches that if he violated that or any other condition of the agreement, it could sentence him to "something worse," which "could mean prison instead of probation." Peaches said he understood. In early July, Peaches was again charged with violating the DANCO protecting R.B.

At his sentencing hearing on July 26, Peaches moved to continue the hearing until the new charge was resolved, arguing that if he were acquitted, then "potentially the plea

agreement would be enforceable.” The district court denied the motion, explaining that Peaches agreed specifically to “pick up no additional charges.” Peaches then made an oral motion for downward dispositional departures for both offenses on the ground that he was participating in outpatient treatment and “[t]hings are going fairly well,” or for a downward durational departure for the ammunition offense on the ground that it did not involve any use of a firearm. The district court denied the departure motion and sentenced Peaches to presumptive sentences of 60 months’ imprisonment for the ammunition offense and a concurrent prison term of 29 months for the DANCO violation.

DECISION

A district court must impose the presumptive sentence indicated in the sentencing guidelines unless it finds substantial and compelling circumstances that justify a departure. Minn. Sent’g Guidelines 1.A, 2.D.1 (Supp. 2021); *State v. Rund*, 896 N.W.2d 527, 532 (Minn. 2017). “Whether to depart from the sentencing guidelines rests within the district court’s discretion, and the district court will not be reversed absent an abuse of that discretion.” *State v. Pegel*, 795 N.W.2d 251, 253 (Minn. App. 2011). Only in a “rare case” will we reverse the district court’s refusal to depart. *State v. Johnson*, 831 N.W.2d 917, 925 (Minn. App. 2013) (quotation omitted).

Dispositional Departure

A district court may grant a downward dispositional departure based on a defendant’s “particular amenability to individualized treatment in a probationary setting.” *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). The defendant must be “particularly” amenable, not “merely . . . amenable to probation,” to establish the substantial and

compelling circumstances that set him apart from others and justify a departure. *State v. Soto*, 855 N.W.2d 303, 308-09 (Minn. 2014). When determining whether the defendant is uniquely amenable to a probationary disposition, the district court should consider “the defendant’s age, his prior record, his remorse, his cooperation, his attitude while in court, and the support of friends and/or family.” *Trog*, 323 N.W.2d at 31. Even if a mitigating factor is present, a district court is not obligated to grant a departure. *State v. Wall*, 343 N.W.2d 22, 25 (Minn. 1984).

Peaches argues that the district court abused its discretion by declining his request for downward dispositional departures because he is particularly amenable to probation. To show such amenability, Peaches asserts that he (1) started outpatient treatment, (2) was working a job, and (3) took responsibility for his offenses.

The only one of these apparent from the record is Peaches’ participation in outpatient treatment. Although counsel also said that Peaches “was working,” that phrase immediately followed a reference to treatment and contains no employment details, meaning that Peaches was “working” on treatment rather than a job. And while Peaches pleaded guilty and stated that he was not “putting [his] problems on nobody else,” he also repeatedly declared his desire to “just . . . get it over with.” He never expressed remorse, and any such claim rings hollow given his repeated DANCO violations against the same victim—including the charged DANCO violation that undermined his plea deal. In short, the record demonstrates, at most, that Peaches had started treatment, which does little to demonstrate a particular amenability. Given this sparse record and Peaches’ failure to abide by the minimal requirement that he not incur additional charges in the one month

between his guilty plea and sentencing, the district court did not abuse its discretion by determining that Peaches failed to present substantial and compelling circumstances justifying a downward dispositional departure.

Durational Departure

A downward durational departure is justified only if the defendant's conduct was "significantly less serious than that typically involved in the commission of the offense." *State v. Solberg*, 882 N.W.2d 618, 624 (Minn. 2016) (quotation omitted).

Peaches contends the district court abused its discretion by denying his request for a durational departure because the state did not "rebut" his argument and the district court did not "discredit the offense-related characteristics that [he] presented in support of a durational departure." This argument is unavailing for two reasons.

First, Peaches appears to assign error to the district court's failure to explain its decision not to depart, but no explanation was necessary. "Although the district court is required to give reasons for 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).

Second, Peaches did not demonstrate a sufficient basis for departure. He argued that his unlawful possession of ammunition was less serious than the typical offense because even though there was evidence, he also unlawfully possessed a firearm in a separate room, there was no evidence of him "threatening people with firearms or using a firearm in any fashion, which sometimes would—we would see with charges like this."

This argument is essentially that he did not also commit a firearms offense. But just as the commission of such an additional offense would not have made the ammunition possession itself more serious, the absence of an additional offense does diminish the seriousness of the ammunition possession. *Cf. State v. Edwards*, 774 N.W.2d 596, 602 (Minn. 2009) (“[F]acts underlying an uncharged *separate* incident are an impermissible basis for departure because those facts do not show that the offense being sentenced was committed in a particularly serious way.”). Because Peaches failed to demonstrate that his offense was less serious than typical, the district court did not abuse its discretion by treating it as a typical offense and imposing a presumptive sentence.¹

Affirmed.

¹ In a pro se supplemental brief, Peaches asserts several arguments regarding the search of his home and the evidence against him. But “a valid guilty plea waives all non-jurisdictional defects arising prior to the entry of the plea.” *Dikken v. State*, 896 N.W.2d 873, 878 (Minn. 2017) (quotation omitted). He also contends he was not advised “about catching new charges” and deprived of the deal that he “signed” when it was revoked based on a charge rather than a conviction. The record defeats this argument because it plainly shows the district court’s advisory and Peaches’ acknowledgement that the plea agreement was conditioned on him not incurring additional criminal charges.