

*This opinion is nonprecedential except as provided by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
A23-1696**

State of Minnesota,
Respondent,

vs.

Jonathan Pierre Neita,
Appellant.

**Filed August 12, 2024
Affirmed
Florey, Judge***

Stearns County District Court
File No. 73-CR-23-3359

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

Janelle P. Kendall, Stearns County Attorney, Michael J. Lieberg, Chief Deputy County Attorney, St. Cloud, Minnesota (for respondent)

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

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

NONPRECEDENTIAL OPINION

FLOREY, Judge

Appellant pleaded guilty to violating an order for protection and the district court imposed a presumptive sentence of 29 months of imprisonment. Appellant argues in this

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

direct appeal that the district court abused its discretion by denying his motion for a downward dispositional departure. Because the district court acted within its discretion by imposing the presumptive sentence, we affirm.

FACTS

In January 2023, appellant Jonathan Pierre Neita was served with an order for protection (OFP) that prohibited him from contacting M.R.G. Three months later, M.R.G. reported to a police officer that she had received text messages from Neita asking her to visit him at his home in St. Cloud. M.R.G. reported that when she arrived Neita took her keys and trapped her in the house. When she attempted to escape by breaking a window, Neita pinned her to the ground and threatened to kill her. Based on M.R.G.'s report, the state charged Neita with one count of violating an OFP, in violation of Minn. Stat. § 518B.01, subd. 14(d)(1) (2022).

In May 2023, Neita pleaded guilty to the charged offense pursuant to a plea agreement. In exchange for Neita's guilty plea, the state agreed to dismiss the charges in another court file and not to charge certain other offenses. The parties, however, did not agree on the imposition of a particular sentence. Neita stated at the plea hearing that he intended to argue for a downward dispositional departure at sentencing. The district court released Neita pending sentencing, per his request, to participate in domestic violence court.

Before sentencing, a probation agent filed a detailed presentence investigation report (PSI). The report listed seven prior felony convictions since 2010 for first-degree aggravated robbery, simple robbery, third-degree assault, two violations of an OFP,

domestic assault by strangulation, and stalking. In four of those cases, Neita had been placed on probation and, each time, his probation was revoked. The report also included Neita's score on a domestic abuse risk assessment, which placed him in the highest risk category for recidivism. Based on this information, the probation agent concluded 31-year-old Neita had "not demonstrated amenability to supervision" and recommended that the district court impose a presumptive sentence of 29 months of imprisonment, specifically noting Neita's "poor choices" and "extensive history of violence."

Days after the PSI was filed, Neita filed a motion for a downward dispositional departure in which he stated that the probation agent had "done a very good job detailing [his] background" and argued that he should be placed on probation because prison had "not been able to make effective changes." Neita asserted that he had been compliant with the terms of domestic violence court in the approximately two months since he pleaded guilty and that he should be placed on probation so that he could continue to participate in the program.

In support of his motion, Neita filed a memorandum by a dispositional advisor. The dispositional advisor acknowledged Neita's "history of failure" on probation and that Neita is a "high-risk to re-offend." The dispositional advisor, however, recommended the district court place Neita on probation because sending him to prison "most likely will do very little and only address public safety for the duration of the sentence" but granting a dispositional departure would allow Neita to participate in domestic violence court and may "change future behavior."

At sentencing, Neita argued that the district court should order a downward dispositional departure on the ground that he is particularly amenable to probation. The state opposed the motion and argued for the imposition of the presumptive prison sentence.

The district court denied Neita's departure motion, stating that it had "reviewed everything" and that it did not believe him to be particularly amenable to probation. In making that determination, the district court reasoned that Neita had the second highest domestic abuse risk assessment score it had ever seen and that he had been "out of prison for a very short amount of time" when he committed the offense in this case. Finding no substantial and compelling reasons to depart, the district court imposed a sentence of 29 months of imprisonment.

Neita appeals.

DECISION

Neita argues that the district court abused its discretion by denying his motion for a downward dispositional departure on the ground that he is particularly amenable to probation.

The Minnesota Sentencing Guidelines establish presumptive sentences for felony offenses that are "presumed to be appropriate for all typical cases sharing criminal history and offense severity characteristics." Minn. Sent'g Guidelines 1.B.13 (2022); *see also State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016). The guidelines are intended to "maintain uniformity, proportionality, rationality, and predictability in sentencing." Minn. Stat. § 244.09, subd. 5 (2022). Consequently, a district court must impose a guidelines

sentence “unless there exist identifiable, substantial, and compelling circumstances to support a departure.” Minn. Sent’g Guidelines 2.D.1 (2022).

Substantial and compelling circumstances may support a downward dispositional departure if a defendant is “particularly amenable to probation.” *State v. Soto*, 855 N.W.2d 303, 309 (Minn. 2014). When considering whether to grant a dispositional departure, a district court may consider factors such as “the defendant’s age, his prior record, his remorse, his cooperation, his attitude while in court, and the support of friends and/or family.” *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982).

District courts have “a great deal of discretion” in sentencing matters, including the decision to depart or not depart from a presumptive sentence. *Soto*, 855 N.W.2d at 305. Accordingly, we review a district court’s decision to grant or deny a departure from the presumptive sentence for an abuse of that discretion. *Id.* If substantial and compelling circumstances exist, a district court has discretion to order a downward departure. *Id.* at 308; *State v. Best*, 449 N.W.2d 426, 427 (Minn. 1989). But the presence of substantial and compelling circumstances does not obligate a district court to depart, and the court may still impose the presumptive sentence. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). We will affirm a district court’s departure decision so long as the record demonstrates the court “carefully evaluated all the testimony and information presented before making a determination.” *State v. Van Ruler*, 378 N.W.2d 77, 81 (Minn. App. 1985). Only in a “rare case” will an appellate court reverse a district court’s refusal to depart from the presumptive sentence. *Kindem*, 313 N.W.2d at 7.

In this case, Neita does not argue that the district court did not consider all the evidence or argument before making its decision. Rather, Neita challenges the district court's determination itself: that he is not particularly amenable to probation. But the record belies his assertion. Not once has Neita successfully completed probation despite four opportunities, and he expressly acknowledges this. In support of his departure motion, Neita submitted evidence documenting his "history of failure" on probation and that he is a "high-risk to re-offend." In fact, his primary argument to the district court for a departure rested on the ineffectiveness of both probation and prison at reducing his criminality. Thus, by his own evidence and argument, Neita demonstrates that he is not amenable to probation, and certainly is not *particularly* amenable to probation.

Neita contends that the district court should not have considered his "long criminal history" in deciding not to depart from the presumptive sentence, asserting that "the test for amenability to probation is not a cumulative examination of a defendant's storied past." Instead, Neita contends that the district court should have concluded that he is particularly amenable to probation because he admitted guilt, engaged in domestic violence and mental-health programing, maintained his sobriety, and complied with the requirements of domestic violence court. In this regard, he is simply incorrect. The district court was permitted to consider Neita's criminal history in determining whether he was particularly amenable to probation. *See Soto*, 855 N.W.2d at 311 (stating "we have specifically endorsed referring to a defendant's criminal history" for purposes of determining amenability to probation); *Trog*, 323 N.W.2d at 31. And, as stated above, there is evidence in the record that would permit the conclusion that Neita is not particularly amenable to

probation. Neita's actions in the approximately two months following the plea hearing do not necessitate that the district court find that he is particularly amenable to probation in light of more than a decade of criminal activity and non-compliance with probation.

As we are satisfied that the district court thoroughly considered all the evidence before denying Neita's motion, we conclude the district court did not abuse its discretion by imposing the presumptive sentence. *See Van Ruler*, 378 N.W.2d at 81.

Affirmed.