

*This opinion is nonprecedential except as provided by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
A23-1834**

State of Minnesota,
Respondent,

vs.

Leslie Nicole Moore,
Appellant.

**Filed September 3, 2024
Affirmed
Smith, Tracy M., Judge**

Ramsey County District Court
File No. 62-CR-23-688

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

John Choi, Ramsey County Attorney, Anna R. Light, Assistant County Attorney, St. Paul,
Minnesota (for respondent)

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

Considered and decided by Smith, Tracy M., Presiding Judge; Larkin, Judge; and
Harris, Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this appeal from a final judgment of conviction for unlawful possession of a
firearm, appellant argues that the district court abused its discretion by denying her motion

for a downward dispositional departure in sentencing. We discern no abuse of discretion, and we affirm.

FACTS

In February 2023, respondent State of Minnesota charged appellant Leslie Nicole Moore with unlawful possession of both a firearm and ammunition in violation of Minnesota Statutes section 624.713, subdivision 1(2) (2022).

According to the complaint, a gun was fired in Moore's apartment on or about February 4, 2023. The bullet traveled through the floor into the apartment directly below, passed through the kitchen wall, and struck the stove. Three people were in the lower apartment when the bullet entered it. Moore told the officers that she had a gun in her waistband. They located the gun and found two bullets in her sweatshirt pocket.

Within weeks after her first appearance, Moore pleaded guilty to unlawful possession of a firearm. Moore admitted that she knowingly possessed a firearm and that she had been convicted previously of terroristic threats—a crime of violence. Pursuant to the plea agreement, the remaining charge of unlawful possession of ammunition was dismissed and Moore was released to inpatient treatment pending sentencing.

Moore moved for a downward dispositional departure from the presumptive sentence under the Minnesota Sentencing Guidelines, requesting a stayed sentence. In support of her motion, Moore argued that her success in treatment, prior success on supervised release, commitment to recovery, age, remorse, and acceptance of responsibility demonstrated her particular amenability to probation. The state argued for imposition of

the presumptive sentence, citing multiple probation violations in other cases, a new charge of second-degree assault with a knife, and public-safety concerns.

The district court denied Moore's motion and sentenced her to the guidelines sentence of 60 months in prison.

Moore appeals.

DECISION

The Minnesota Sentencing Guidelines "prescrib[e] a sentence or range of sentences that is presumed to be appropriate." *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014) (quotation omitted). The district court must order the presumptive sentence provided in the sentencing guidelines unless "aggravating or mitigating circumstances are present, and those circumstances provide a substantial and compelling reason not to impose a guidelines sentence." *Id.* (quotations and citation omitted); *see also* Minn. Sent'g Guidelines 2.D.1.c (2022) (stating that court has discretion to depart from presumptive sentence only when "substantial and compelling circumstances" are present). The district court is not required to provide an explanation when it considers reasons for departure but chooses to impose the presumptive sentence. *State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985).

Appellate courts "will not ordinarily interfere with a sentence falling within the presumptive sentence range, either dispositionally or durationally, even if there are grounds that would justify departure." *State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006) (quotation omitted). Appellate courts "will affirm the imposition of a presumptive guidelines sentence when the record shows that the sentencing court carefully evaluated all the testimony and information presented before making a determination." *State v. Johnson*,

831 N.W.2d 917, 925 (Minn. App. 2013) (quotation omitted), *rev. denied* (Minn. Sept. 17, 2013). A district court has great discretion when making sentencing decisions, and appellate courts will reverse those decisions only when the district court abuses that discretion. *Soto*, 855 N.W.2d at 307-08. “Only in a rare case will a reviewing court reverse the imposition of a presumptive sentence.” *State v. Pegel*, 795 N.W.2d 251, 253 (Minn. App. 2011).

A downward dispositional departure may be based on a determination that the defendant is “particularly amenable to individualized treatment in a probationary setting.” *State v. Wright*, 310 N.W.2d 461, 462 (Minn. 1981). In evaluating a defendant’s particular amenability to probation, a district court may consider factors including the defendant’s age, prior record, remorse, cooperation, attitude while in court, and support of friends and family. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982).

The district court explained that it was denying Moore’s motion for a downward dispositional departure because Moore was not particularly amenable to probation. It stated:

[T]here are six prior felony convictions. There are five probation violations, that are recorded at least. There is a new charge in this matter that is a concern for public safety. And I also see that within the last five years, you’ve already received a dispositional departure, and yet these continue. So I do not find you particularly amenable to probation.

Moore asserts that the district court abused its discretion in determining that she was not particularly amenable to probation for two reasons: (1) because the district court

“erroneously held her successful probation history against her” and (2) because the district court “failed to consider other factors showing her amenability.”

Probation History

Moore asserts that the district court abused its discretion in considering her probation history. She contends that her successful completion of probation in other cases demonstrates her particular amenability to probation.

As an initial matter, Moore contends that the district court made a factual mistake about her probation violations. She asserts that the district court mistakenly attributed a probation violation to her felony conviction for violating a no-contact order. The record shows that Moore was convicted of a gross misdemeanor in 2017 for violating a domestic-abuse no-contact order and had two probation-violation hearings related to this conviction. It further shows that she was convicted of a felony in 2019 for violating a no-contact order and had no probation violations associated with this conviction. The district court correctly attributed a probation violation to Moore’s gross-misdemeanor conviction—not to her felony conviction—when it stated that “there was a probation violation hearing in a domestic abuse violate no contact order from 2017.”

Apart from that asserted mistake, Moore argues that the district court incorrectly weighed her probation history. She contends that the district court “apparently believe[ed] her alleged violations resulted in her probation being revoked,” which is “contrary to the facts in the record.” She also argues that the decision is “contrary to logic” because “[s]uccessfully completing probation on multiple occasions demonstrates amenability, not unamenability, to probation.” These arguments are unconvincing.

The sentencing transcript shows that the district court recognized that Moore's probation was not revoked. After Moore stated that she completed probation in other cases, the district court acknowledged that she had done so. And, while success on probation could certainly weigh in favor of a determination of a defendant's particular amenability to probation, we discern no abuse of discretion in considering violations of probation as an indicator against particular amenability to probation.

Other Factors

Moore also contends that "[t]he district court failed to deliberately consider factors both for and against imposing a probationary sentence."

Moore first asserts that the district court did not consider that four of her six felonies were 20 to 30 years old and decayed. But this information was contained in the presentence investigation report, which the district court reviewed before making its decision.

Moore next asserts that the district court did not consider that she successfully completed treatment, secured stable housing, quickly took responsibility, and expressed remorse, or that short-term public safety concerns could be addressed through local jail confinement rather than prison. Moore cited her success in treatment, acceptance of responsibility, and remorse in her motion for a downward dispositional departure and acknowledged at the sentencing hearing the district court's potential views on her motion. Further, at the sentencing hearing, defense counsel "ask[ed] the court to consider the request for a dispositional departure in this case based primarily upon her success in the treatment program." Defense counsel continued, "Perhaps if the court was inclined to give her an additional local correctional consequence as a part of that, that would be

appropriate.” There is no evidence in the record showing that Moore secured stable housing. Contrary to Moore’s argument, the record shows that the district court considered the other factors cited by Moore.

Finally, Moore argues that the district court must have considered only factors against departure because the court began pronouncing her sentence before allowing defense counsel to argue for probation and denied Moore’s departure motion before affording her the right of allocution. The district court acknowledged and immediately corrected its mistakes, listening to defense counsel’s oral presentation of Moore’s written motion and listening to Moore’s statements. The oral argument from defense counsel mirrored the argument presented in Moore’s motion papers. And Moore’s statement about having completed probation was conveyed in the presentence investigation report. These records were before the district court, and the district court’s initial oversights at the sentencing hearing do not demonstrate a failure to fully consider the factors for and against departure. The record demonstrates that the district court considered factors for a departure before exercising its broad discretion to impose a guidelines sentence.

Affirmed.