

*This opinion is nonprecedential except as provided by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
A23-1836**

State of Minnesota,
Respondent,

vs.

Hunter Steven Hipp,
Appellant.

**Filed September 16, 2024
Affirmed
Ross, Judge**

Benton County District Court
File No. 05-CR-22-657

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

Kathleen L. Reuter, Benton County Attorney, Foley, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Max B. Kittel, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Ede, Judge; and Schmidt, Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

Hunter Hipp pleaded guilty to first-degree arson after intentionally setting fires in the kitchen and living room of his apartment. He notified the district court in writing of his intent to move “for a dispositional and/or durational departure from the presumptive sentence,” and at sentencing he argued exclusively that he was particularly amenable to

probation. The district court denied his departure motion. Hipp argues on appeal that the district court misconstrued his criminal record as applied to his dispositional-departure request and that it erroneously failed to decide his supposed durational-departure request. Although the district court misinterpreted the law when it assessed Hipp's criminal history for sentencing, the mistake did not affect the court's decision not to depart dispositionally because it found that Hipp's failure to appreciate and address his mental-health issues precluded a finding that he is amenable to probation. And after Hipp's notice to the district court that he would move "for a dispositional and/or durational departure," his eventual arguments in support of his motion focused only on the factors bearing on a dispositional departure. The district court therefore acted within its discretion by addressing only the dispositional-departure request and imposing the presumptive sentence. We affirm.

FACTS

In April 2022, then 19-year-old Hunter Hipp decided he needed to spend time in jail to effect a major change in his life and deal with his mental-health challenges. And to secure a trip to jail, Hipp turned on his apartment stove and put cardboard boxes on the burner. He piled clothes and furniture in his living room and transferred the stove fire to the pile. Then he dialed 9-1-1 and pounded on the doors of other units in the building to alert them to get out to safety. Police and firefighters arrived and doused the fire. Hipp told police that he started the fire, disclosing that he "wanted to be arrested, so [he] thought arson [was] the best thing to do."

The state charged Hipp with, and Hipp pleaded guilty to, first-degree arson in violation of Minnesota Statutes section 609.561, subdivision 1 (2020). He notified the

district court that he intended to move for a “dispositional and/or durational departure” from his presumptive prison sentence. At the sentencing hearing, Hipp’s attorney argued for a departure based only on the *Trog* factors as applied to a dispositional departure. He argued that Hipp’s age, remorse, social support, and criminal history all showed that Hipp is particularly amenable to probation. The attorney also observed that Hipp set fire to his apartment specifically to become jailed, not to commit insurance fraud or harm anyone.

The district court addressed the *Trog* factors as they relate to Hipp’s alleged particular amenability to probation. It denied Hipp’s downward-departure motion and imposed the 48-month presumptive prison sentence designated by the guidelines. In doing so, the district court reasoned that Hipp had failed to address his mental-health issues while he was incarcerated following his arrest and in the period immediately following his release on bail. The district court emphasized too that Hipp had told the presentence-investigation agent that he had lacked the support of friends and family. The district court stated also that Hipp’s criminal history “is, of course, already reflected in our sentencing guidelines.”

Hipp appeals the district court’s sentencing decision.

DECISION

Hipp challenges his sentence in two ways. He contends first that the district court should have granted his dispositional-departure request and second that it should not have failed to rule on his alleged durational-departure request. Neither contention succeeds.

The district court enjoys broad discretion to make sentencing decisions, and we will not reverse those decisions absent an abuse of that discretion. *State v. Soto*, 855 N.W.2d 303, 307–08 (Minn. 2014). We will affirm the district court’s imposition of the

presumptive sentence when the record shows that it “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 may, however, depart from the presumptive sentence under the guidelines when “identifiable, substantial, and compelling circumstances” justify a departure. Minn. Sent’g Guidelines 2.D (2020); *State v. Pegel*, 795 N.W.2d 251, 253 (Minn. App. 2011). We address Hipp’s challenge under this standard.

Hipp offers a two-pronged attack on the district court’s decision to deny his dispositional-departure request. He argues first that the district court misinterpreted the law regarding his criminal history, and he argues second that the district court erroneously found that no substantial and compelling circumstances warranted departing from imposing a prison term.

We address both theories together. We agree that the district court misinterpreted the law concerning his record. Hipp raised, and the district court correctly focused on, Hipp’s personal characteristics, because dispositional departures focus on whether the defendant’s characteristics make him “particularly suitable for individualized treatment in a probationary setting.” *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016) (quotation omitted). Focus on these factors is therefore appropriate, and they include “the defendant’s age, his prior record, his remorse, his cooperation, his attitude while in court, and the support of friends . . . or family.” *Soto*, 855 N.W.2d at 310 (quotation omitted). Hipp is correct that the district court erroneously refused to consider Hipp’s clean criminal record based on the district court’s understanding that it is “already reflected in our sentencing

guidelines.” This is not so, as the supreme court has “specifically endorsed referring to a defendant’s criminal history” when determining whether he is particularly amenable to probation. *Id.* at 311 (citing *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982)). The district court’s incorrect understanding of the law does not, however, lead us to reverse its sentencing decision for the following reasons.

We will not reverse a sentencing decision based on an error that did not affect the decision. *See* Minn. R. Crim. P. 31.01 (stating that errors not affecting substantial rights are harmless). The record informs us that the district court would not have departed dispositionally in any event because particular amenability to probation is the only factor Hipp asserted to justify a dispositional departure, and the district court identified a circumstance that precluded it from departing. The district court indicated that it would decline to depart because of Hipp’s failure to address his mental-health issues while he was jailed and after his release on bail. The district court was concerned that Hipp had neither appreciated nor taken steps to address his mental-health issues. Specifically, the district court reasoned implicitly that these failures meant that Hipp is not particularly amenable to probation. Because “a defendant’s clean record does not *by itself* justify mitigation of a sentence,” *Soto*, 855 N.W.2d at 310, and because the district court carefully considered but was not persuaded by the other circumstances that Hipp highlighted, we reject Hipp’s contention that the district court’s finding that Hipp is not particularly amenable to probation is contrary to logic and the evidence. We therefore hold that the district court did not abuse its discretion by refusing to depart dispositionally from the guidelines sentence.

We are especially unpersuaded by Hipp's contention that the district court abused its discretion by failing to rule on his request for a durational departure. Substantial and compelling circumstances support a downward durational departure when the defendant's conduct in committing the crime was significantly less serious than typically involved in the commission of that crime. *State v. Abrahamson*, 758 N.W.2d 332, 337–38 (Minn. App. 2008), *rev. denied* (Minn. Mar. 31, 2009). Durational departures are therefore based on factors bearing on the seriousness of the offense and not the characteristics of the offender. *Solberg*, 882 N.W.2d at 623–24. But Hipp's argument at the sentencing hearing focused on offender characteristics that might support a dispositional departure, not offense circumstances that might support a durational departure. We acknowledge that Hipp's counsel began his remarks at the hearing by noting, "There is a motion for dispositional and durational" departures. But although he previously stated that he would argue for a dispositional departure "and/or" a durational departure, the argument that followed indicated that Hipp had decided to pursue only the "or" and not the "and" option—relying only on the chance of a dispositional departure. During the hearing, Hipp's counsel never mentioned the standard for a durational departure (significantly less serious than the typical offense), let alone argued that the circumstances met that standard. Hipp's counsel argued exclusively why the *Trog* factors support a probationary sentence. The only statement that suggests a reference to the offense itself was that Hipp did not try to recover insurance proceeds or intend to "harm people." But Hipp's counsel immediately tied that argument back to the *Trog* factors and a dispositional departure, stating, "[T]he dispositional departure rate regarding this is unusually high. . . . I can't believe that those situations have

all of the factors here, all of the *Trog* factors combined with such mitigating situations for such a serious crime.” And counsel for Hipp concluded by requesting that the district court “order [a] probationary sentence” with no mention of a lighter executed sentence. The prosecutor concluded likewise, arguing that the district court should grant no dispositional departure. It is obvious that the district court ignored Hipp’s fleeting references to a durational departure because he never presented a cogent argument for a durational departure. We see no abuse of discretion.

Affirmed.