

*This opinion is nonprecedential except as provided by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
A23-1913**

State of Minnesota,
Respondent,

vs.

James Chavers, Jr.,
Appellant.

**Filed October 7, 2024
Affirmed
Ross, Judge**

St. Louis County District Court
File No. 69VI-CR-23-509

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

Kimberly J. Maki, St. Louis County Attorney, Aaron Welch, Assistant County Attorney,
Virginia, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Peter H. Dahlquist, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

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

NONPRECEDENTIAL OPINION

ROSS, Judge

Police officers in Virginia, Minnesota, stopped a car driven by James Chavers Jr. under circumstances that led the state to charge Chavers with first-degree impaired driving, fifth-degree drug possession, and failure to register a motor vehicle. Chavers pleaded guilty to the impaired-driving and drug-possession charges, and he unsuccessfully moved the

district court to depart downward dispositionally from the presumptive 21- and 72-month executed cumulative prison terms designated by the sentencing guidelines. In this appeal from the district court's refusal to depart, we affirm Chavers's sentence because the district court acted within its discretion by imposing the presumptive sentence.

FACTS

Virginia, Minnesota, police officers stopped a car driven by James Chavers Jr. in May 2023 after they noticed that the license plate did not match the car's registration. The officers spoke with Chavers and suspected that he was impaired based on his bloodshot and watery eyes, dilated pupils, and rapid speech and movements. They confirmed their suspicion based on field sobriety tests and arrested Chavers. Police searched Chavers's car and found 3.7 grams of methamphetamine. Chavers said that he had used marijuana earlier in the day and that he used methamphetamine three times daily. (He later denied using marijuana that day but instead admitted, "I did a line of meth is all.")

The state charged Chavers with first-degree impaired driving, fifth-degree drug possession, and failure to register a motor vehicle. Chavers and the state entered into a plea agreement in which Chavers would plead guilty to the impaired-driving and drug-possession charges. The district court accepted Chavers's plea. It later received and considered for sentencing a presentence investigation report, which detailed Chavers's extensive criminal history dating back four decades. Chavers, who was 67 years old at the time of his sentencing, summarized his incarceration record to the district court, saying, "I did 30 years and four months so far already in jail." The report and his record included multiple impaired-driving convictions and convictions for theft, aggravated driving,

driving while canceled as inimical to public safety, and disorderly conduct. His criminal-history score resulted in a Minnesota Sentencing Guidelines presumptive executed sentence of 72 months for the impaired-driving offense and 21 months for the drug offense.

Chavers moved for a downward dispositional sentencing departure, asking that the district court stay execution of the presumptive sentence and instead place him on probation. He emphasized that four of his criminal-history points resulted from convictions that were about 20 years old and that the other three points resulted from convictions that were about 12 years old. Chavers also argued that his chemical-dependency assessment recommended in-patient treatment and that, because he had suffered a significant brain injury, he required mental-health services.

The district court denied the departure motion. It found that Chavers had been given “numerous chances” before his current offenses. It also responded to Chavers’s mental-health rationale for his departure request, observing that prisons also offer chemical-dependency and mental-health programs. The district court denied the departure motion and sentenced Chavers to the presumptive sentences for both charges, with the prison terms to be served concurrently.

Chavers appeals.

DECISION

Chavers challenges the district court’s refusal to depart downward from the presumptive sentence. Although the district court has broad discretion in sentencing, *State v. Soto*, 855 N.W.2d 303, 307–08 (Minn. 2014), it may not depart downward from the presumptive sentence designated by the sentencing guidelines unless substantial and

compelling mitigating circumstances exist, Minn. Sent’g Guidelines 1.A.6 (2022). We will reverse a presumptive sentence if the district court abused its broad sentencing discretion by refusing to depart. *State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006). Soon after the sentencing guidelines became effective as a tool to facilitate uniform sentencing of like offenders committing like offenses, the supreme court predicted (it has turned out, accurately) that an appellate court would reverse a presumptive sentence only in “rare” cases. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). Chavers does not dispute that his presumptive sentence is accurate under the guidelines, but he argues that he is entitled to a downward dispositional departure. His argument fails.

Chavers argues that the district court abused its discretion by refusing to depart downward from his presumptive sentence because he is particularly amenable to probation. Chavers accurately maintains that a convicted person’s particular amenability to probation is a factor that might lead a district court to exercise its discretion and depart downward dispositionally. Minn. Sent’g Guidelines 2.D.3.a(7) (2022); *see Soto*, 855 N.W.2d at 308–09. But the district court is not bound to depart from a presumptive sentence even if the circumstances would support a departure. *Bertsch*, 707 N.W.2d at 668. And we are unpersuaded by Chavers’s contention that the district court acted “against logic and the facts” when it found that he is not particularly amenable to probation. The district court judge heard or had the opportunity to observe all of Chavers’s asserted bases for a mitigated sentence—that Chavers was 67 years old at the time of sentencing, that his criminal history rests on older crimes, that he accepted responsibility, and that Chavers was respectful throughout the process—but nevertheless concluded, “I don’t see substantial and

compelling reasons to depart in this case.” The judge recognized, “I know some of the things are old, but this is your third felony DWI,” adding, “You’ve been given numerous chances on probation.” He considered whether Chavers is particularly amenable to probation and determined, “I don’t see that this is one of the cases that we will depart.” Ultimately, the district court concluded, “[T]his isn’t going to be [a] case that I’m going to depart in.” The district court demonstrated that it was exercising its discretion both in considering whether Chavers is particularly amenable to probation and deciding that, in any event, it wasn’t going to exercise its discretion in favor of departing. Our review of the record comports with the district court’s finding that no substantial and compelling circumstances exist that would support, let alone compel, a downward departure from the presumptive sentence.

We are not led to a different conclusion by Chavers’s contention that the district court did not expressly address all the probation-amenable factors outlined in *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). The district court is required neither to consider all the *Trog* factors in deciding a departure motion nor to explain its reasons for not departing from the presumptive sentence. *See State v. Van Ruler*, 378 N.W.2d 77, 80–81 (Minn. App. 1985). Our careful review of the record informs us that the district court acted within its discretion when it denied Chavers’s motion to depart.

Affirmed.