

*This opinion is nonprecedential except as provided by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
A24-0031**

State of Minnesota,
Respondent,

vs.

Breana Joan Donovan Siemers,
Appellant.

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

Benton County District Court
File No. 05-CR-21-2023

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

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

J. Matthew Holson, St. Cloud, Minnesota (for appellant)

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

NONPRECEDENTIAL OPINION

ROSS, Judge

Twenty-eight-year-old N.W. was found dead in his bed after he ingested one or more fentanyl pills he bought from Breana Siemers. Siemers pleaded guilty to second-degree manslaughter and unsuccessfully moved the district court for a downward dispositional or durational departure from the presumptive guidelines sentence of 48

months in prison. Siemers argues on appeal that the district court abused its discretion by denying her motion, asserting that she is particularly amenable to probation and that her conduct was less serious than the conduct typically involved in second-degree manslaughter. Because the district court acted within its discretion by imposing the presumptive guidelines sentence, we affirm.

FACTS

Benton County deputies were dispatched in July 2021 to the home of N.W., a 28-year-old man. According to the state's later statement of probable cause and other records, deputies found N.W. dead in his bed, and forensic testing revealed that the cause of death was fentanyl toxicity. Deputies found pills in N.W.'s bathroom with markings indicating oxycodone hydrochloride, but forensic testing revealed that they contained fentanyl. They also found communications from a week earlier on N.W.'s cellphone indicating that Breana Siemers had sold N.W. the pills and prior messages indicating that Siemers had been N.W.'s regular drug supplier. Cellphone data revealed that Siemers and N.W. had been together in the same place on July 5, the day she and N.W. communicated about her providing him 20 pills. Siemers denied she had sold N.W. the pills, but, confronted with the cellphone evidence, she admitted she sold him pills she thought were oxycodone.

The state charged Siemers with third-degree murder and third-degree controlled-substance crime. She pleaded guilty to an amended charge of second-degree manslaughter, and the state agreed to dismiss the remaining charge. Before sentencing, Siemers moved the district court to depart dispositionally or durationally from the presumptive guidelines sentence of 48 months in prison. The district court denied her motion, and Siemers appeals.

DECISION

Siemers argues that the district court abused its discretion by denying her departure motion. To facilitate uniform sentencing, district courts must impose the presumptive sentence designated by the sentencing guidelines unless substantial and compelling circumstances justify departing from that sentence. Minn. Sent’g Guidelines 2.D.1 (2020); *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014). We generally will not overturn a district court’s decision to impose the presumptive sentence, and we will do so only if the district court abused its discretion by basing its decision on an erroneous view of the law or deciding the issues against logic and the record facts. *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019). We see no abuse of discretion here.

I

For the following reasons, we are satisfied that the district court did not abuse its discretion by refusing to depart dispositionally to impose a mere probationary sentence. Siemers unconvincingly contends that the district court impermissibly considered her decision to post unconditional bail rather than follow the terms of conditional release. Siemers accurately points out that the district court mentioned Siemers’s prior choice to post unconditional bail and reasoned, “[B]y that choice [she was] telling [the court] that [she] would rather pay the unconditional bail than to follow the conditions that were established by the Court.” We would consider reversing based on this statement if we agreed that Siemers correctly interpreted this statement to mean that the district court was basing its sentencing decision on her exercise of her constitutional right to release on bail before conviction. *See* Minn. Const. art. I, § 7. But the record as a whole implies that the

district court was instead concerned about Siemers's "behavior and [the] choices [she made] since the offense occurred."

The district court had established conditions for release without bail, including refraining from nonprescribed, mood-altering chemicals and from alcohol. After posting bail for release without those conditions, Siemers continued to use alcohol and marijuana during the pendency of the case. Although the district court's phrasing was inartful, we do not believe that it demonstrates that its sentencing decision rested on Siemers's choice to exercise her rights, but on her choice to continue to use chemicals. A defendant's "particular amenability to individualized treatment in a probationary setting" may justify a departure from a presumptive commitment to prison. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). Siemers had argued that the district court should depart dispositionally from her guidelines sentence because she is particularly amenable to probation. In this case in which Siemers's bad judgment precipitated a crime that cost a man his life, we do not believe that the district court abused its discretion when it weighed Siemers's amenability to probation by considering whether she planned to continue to use judgment-impairing chemicals during the pendency of her case.

Siemers also argues that the district court impermissibly relied on offense-based, rather than offender-based, characteristics when it denied her motion to depart dispositionally. She is correct that "a dispositional departure *typically* focuses on characteristics of the defendant." *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016) (emphasis added). But the district court need not focus exclusively so. *See State v. Walker*, 913 N.W.2d 463, 468 (Minn. App. 2018) (recognizing that, when considering a

dispositional departure, “a district court may consider both offender- and offense-related factors”). Siemers unpersuasively argues that the district court ignored the offender-based factors listed in *Trog*, 323 N.W.2d at 31. She specifically observes that the district court characterized her crimes as a “series of events” rather than an act of passion, which, she contends, goes to the elements of the offense. We do not read the record the same way. The district court highlighted that Siemers made “multiple bad choices” by providing N.W. with drugs not just once, “but a number of times.” The district court exercised its discretion by reasoning that this circumstance bears on Siemers’s level of dangerousness in the community, a proper factor to consider in determining whether to depart dispositionally. *See State v. Carpenter*, 459 N.W.2d 121, 128 (Minn. 1990). We see no abuse of discretion.

Siemers contends finally that the district court wrongly found that she was not remorseful for her actions. Remorse is a relevant factor in deciding whether to depart downward dispositionally. *Soto*, 855 N.W.2d at 310. Although Siemers said that she was “immensely remorseful” for her actions, the district court was not bound to believe her testimony. *See State v. McCoy*, 631 N.W.2d 446, 452 (Minn. App. 2001). The district court found that Siemers “minimized [her] role and [her] behavior” leading to N.W.’s death and that the minimization “is not indicative of someone who has remorse for what they have done.” Because we rely on the district court’s credibility assessment, its finding that Siemers lacked remorse stands, and Siemers has not shown that the district court abused its discretion by refusing to treat her alleged remorse as a factor favoring a sentencing departure.

We are not persuaded to a different conclusion by Siemers's argument that the district court did not explicitly address all the *Trog* factors that go into a departure analysis. A district court need not discuss those factors if it exercises its discretion by considering the reasons both for and against a departure. *See State v. Pegel*, 795 N.W.2d 251, 254 (Minn. App. 2011). The district court advised the parties that it considered the circumstances for and against departure and the relevant evidence. We are satisfied that it exercised its discretion when it considered the motion. Siemers has not shown that the district court abused its discretion by denying her dispositional-departure request.

II

We are also not persuaded by Siemers's challenge to the district court's denial of her request for a downward durational departure. A downward durational departure is justified only if the defendant's conduct in committing the offense is significantly less serious than the conduct typically involved in the offense. *State v. Mattson*, 376 N.W.2d 413, 415 (Minn. 1985). Siemers contends that the district court improperly relied on an element of the offense (N.W.'s death) as a basis to refuse to depart durationally. A "district court may not base an upward departure on facts necessary to prove elements of the offense being sentenced" or "on facts that, while not necessary to satisfy the elements of the offense in question, were nonetheless contemplated by the legislature when it set the punishment for the offense being sentenced." *State v. Edwards*, 774 N.W.2d 596, 602 (Minn. 2009). But the district court did not base an upward departure on facts necessary to prove elements of the offense; it did not depart upward at all. The district court considered and rejected Siemers's assertion that she committed the crime in a significantly less serious manner than

the conduct typically involved in second-degree manslaughter, observing that Siemers had repeatedly sold drugs to N.W. The district court concluded by saying, “I cannot in good conscience say that this crime was any less serious than usual.” Siemers does not convincingly explain why the district court’s conclusion is wrong. That the district court immediately added, “Somebody died,” suggests simply that the district court saw this as a typically serious case of manslaughter. The district court provided an explanation, but an explanation is not required when it considers reasons for the requested departure but elects to impose a presumptive sentence. *State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985). Siemers has pointed to no abuse of discretion in the district court’s decision to deny her durational-departure request.

Affirmed.