

*This opinion is nonprecedential except as provided by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
A24-0404**

State of Minnesota,
Respondent,

vs.

Stefan Scott Tucker,
Appellant.

**Filed January 13, 2025
Affirmed
Schmidt, Judge**

Crow Wing County District Court
File Nos. 18-CR-22-1804, 18-CR-22-1806

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

Donald F. Ryan, Crow Wing County Attorney, Lindsey S. Lindstrom, Assistant County Attorney, Brainerd, Minnesota (for respondent)

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

Considered and decided by Frisch, Presiding Judge; Smith, Tracy M., Judge; and Schmidt, Judge.

NONPRECEDENTIAL OPINION

SCHMIDT, Judge

Appellant Stefan Scott Tucker argues that the district court abused its discretion in denying his motion for downward dispositional sentencing departures. Because the district court acted within its discretion by imposing guideline sentences, we affirm.

FACTS

Respondent State of Minnesota charged Tucker with a third-degree controlled substance crime in violation of Minn. Stat. § 152.023, subd. 2(a)(6) (2022), and petty misdemeanor possession of drug paraphernalia in violation of Minn. Stat. § 152.092(a) (2022).¹ Based on a separate incident, the state charged Tucker with felony driving while impaired (DWI)—test refusal in violation of Minn. Stat. § 169A.20, subd. 2(2) (2022), and driving after revocation in violation of Minn. Stat. § 171.24, subd. 2 (2022).

Tucker pleaded guilty to the third-degree controlled substance crime and felony DWI and the state dismissed the other charges. The district court accepted Tucker’s pleas and ordered that he complete a presentence investigation (PSI).

At the sentencing hearing, defense counsel moved for downward dispositional departures, arguing that drug court would provide the support and programming Tucker needs to be successful with his sobriety. Two witnesses testified about Tucker’s commitment to his sobriety, the need for a structured treatment setting, and Tucker’s acceptance of responsibility for his actions. Tucker addressed the court, acknowledging that he previously failed to take responsibility for his addiction but stating that he was ready for the intensity of drug court and asked the court for a “chance to change.”

The state opposed the motion, noting Tucker’s noncompliance while on supervision; his sporadic, short-term efforts at sobriety; the PSI author’s inability to find any mitigating—only aggravating—departure factors; and that acceptance into drug court

¹ The state later amended the complaint to add one count of felony fifth-degree controlled substance possession in violation of Minn. Stat. § 152.025, subd. 2(1) (2022).

could not be the basis for a departure. The state requested executed guideline prison sentences.

The district court considered the arguments and determined that without a formal acceptance into drug court it could not make an informed decision about whether Tucker was eligible for a dispositional departure. The district court continued the sentencing hearing to determine whether Tucker would be accepted into the treatment court.

The following day, the parties returned for the continued sentencing hearing. The district court informed the parties that Tucker would be eligible for drug court if he was no longer facing a presumptive commit to prison. The state reiterated its position that Tucker's potential acceptance into drug court could not justify a departure and that no substantial and compelling circumstances existed to support a departure. Defense counsel argued that Tucker's eligibility for the drug-court program constituted substantial and compelling circumstances that supported a departure.

In denying the motion for a departure, the district court noted that Tucker may be amenable to an intensive supervision program, but questioned whether intensive supervision would increase Tucker's likelihood of success enough to surpass the "high bar" of a substantial and compelling circumstance. The court then stated,

[A]nd that's the hard part about this process when the standard is substantial and compelling. It is a really high bar. And I have no doubt in my mind that a treatment court would increase your chances substantially and I frankly wish that there was an agreement that gave you the chance, but that isn't where we're at. That's not our reality. I can't change that. Because if there was an agreement I would have supported it, but we're here under a contested situation. I have to follow the law even though I may not like the result.

I can't reach the point that as much as I think that a treatment court which isn't one hundred percent automatic here, but I think if I departed that they would take you, but I can't guarantee that. It would increase your odds of success. I know that on regular probation I don't think you would be successful, and we would end up executing your sentence. I also think that if you got into the treatment court they would work with you, help you, but you would be on a relatively short leash, but I think you expect that.

And I keep coming back to this high bar that's set of substantial and compelling. I wish I had enough facts to be able to get you over that hurdle, Mr. Tucker, quite honestly. I just don't have them.

Finding that there were no substantial and compelling reasons to depart from the sentencing guidelines, the court sentenced Tucker to executed guideline sentences of 39 months for the third-degree controlled substance conviction and 57 months for the felony DWI, with five years of conditional release.

Before concluding the hearing, the district court told Tucker:

I know it's with a heavy heart that I do this, but I'm obligated to follow the law. It isn't what I think is in your best interest, but best interest isn't the standard here. And I hope, I pray, that what you've learned and the change in your attitude and the change in your approach, and that you're tired of being in that rut that you take advantage of every single program you can.

And I think some of your clarity has been from the time you've spent in custody because you've been clean and it's not a factor. I don't get to consider it, but I will tell you that I have developed a fondness for a clean and sober Mr. Tucker, and I hope you find a way to stay that way. I just don't get to take it into consideration what I do here, but I've watched the transformation. And I frankly just wish that it was enough to get over that big hurdle. So, I wish you luck.

Tucker appeals.

DECISION

Tucker argues that the district court abused its discretion by denying his request for downward dispositional departures. A district court's denial of a motion for a downward dispositional departure is reviewed for an abuse of discretion. *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014). A district court need not provide an explanation for denying the departure if it "elects to impose the presumptive sentence." *State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985). Appellate courts "may not interfere with the sentencing court[']s exercise of discretion, as long as the record shows the sentencing court carefully evaluated all the testimony and information presented before making a determination." *Id.* at 80-81. Only in a "rare" case will this court reverse a district court's imposition of the presumptive sentence. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

The Minnesota Sentencing Guidelines establish presumptive sentences "to maintain uniformity, proportionality, rationality, and predictability in sentencing." Minn. Stat. § 244.09, subd. 5 (2022). A district court must impose a sentence within the presumptive range unless it finds that "substantial and compelling circumstances are present in the record." *State v. Barthman*, 938 N.W.2d 257, 270 (Minn. 2020) (quotation omitted). "Substantial and compelling circumstances are those that make a case atypical." *State v. Walker*, 913 N.W.2d 463, 468 (Minn. App. 2018).

Tucker relies on *State v. Misquadace*, 644 N.W.2d 65 (Minn. 2002), to argue that the district court improperly based its sentencing decision on an erroneous view of the law when the court considered the parties' lack of agreement as a reason for finding no substantial or compelling circumstances to depart. In *Misquadace*, the question presented

was “whether a plea agreement, standing alone, provides substantial and compelling justification for departure.” 644 N.W.2d at 69. The district court had imposed upward departure sentences “pursuant to the plea agreement” without stating any other reason for the departure. *Id.* at 66. In affirming this court’s reversal of the sentence, the supreme court held that all departures from the sentencing guidelines “must be supported by substantial and compelling circumstances, and that a plea agreement—standing alone—is not a sufficient basis to depart from the sentencing guidelines.” *Id.* at 72.

But unlike in *Misquadace*, the district court here did not grant a departure; it imposed presumptive guideline sentences. The record reveals that the district court wrestled with the substantial-and-compelling standard, but it noted that it did not have “enough facts” to make the findings that the standard was satisfied.

Tucker also argues that the district court abused its discretion because the court did have “substantial and compelling circumstances to support a departure beyond just the agreement of the state.” He argues that his amenability to community-based treatment, age, remorse, acceptance of responsibility, and community support were all substantial and compelling circumstances that supported departure. But “the presence of mitigating factors does not obligate the court” to grant a departure from the presumptive sentence. *Wells v. State*, 839 N.W.2d 775, 781 (Minn. App. 2013) (quotation omitted), *rev. denied* (Minn. Feb. 18, 2014). Instead, the district court retains the discretion whether to grant a departure. *See Soto*, 855 N.W.2d at 308.

The district court here carefully and deliberately considered circumstances for and against departure and properly exercised its discretion by imposing sentences within the

presumptive ranges. The record reveals that the district court struggled with its sentencing decision, even continuing the hearing to a second day to further deliberate. But after careful evaluation of all the testimony, arguments, and information presented, the court concluded that the circumstances did not rise to the level of substantial and compelling. We cannot “interfere with the sentencing court[’]s exercise of discretion, [when] . . . the record shows the sentencing court carefully evaluated all the testimony and information presented before making a determination.” *Van Ruler*, 378 N.W.2d at 80-81.

We acknowledge and commend the progress that Tucker has made. Maintaining sobriety through difficult life circumstances is not easy. While we are sympathetic to the positive impact the drug court might have had on Tucker’s ability to remain law abiding and sober, this is not a case so rare that warrants reversal. Just as the district court properly noted that it was bound to apply the substantial-and-compelling-reasons standard, binding precedent likewise compels our conclusion that the district court acted within its discretion by denying Tucker’s departure motion and imposing the presumptive guideline sentences.

Affirmed.