

*This opinion is nonprecedential except as provided by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
A24-0420**

State of Minnesota,
Respondent,

vs.

Kenneth Joseph Chrismen,
Appellant.

**Filed November 4, 2024
Affirmed
Schmidt, Judge**

Benton County District Court
File No. 05-CR-23-429

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

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

Cathryn Middlebrook, Chief Appellate Public Defender, Sara J. Euteneuer, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

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

NONPRECEDENTIAL OPINION

SCHMIDT, Judge

Appellant challenges his sentence for first-degree driving while impaired (DWI), arguing that the district court abused its discretion by denying his motion for a downward dispositional departure. We affirm.

FACTS

Respondent State of Minnesota charged appellant Kenneth Joseph Chrismen with first-degree DWI, threats of violence, fourth-degree assault, and violation of a restricted driver's license. According to the complaint, Chrismen consumed alcohol before driving. A sheriff's deputy pulled over Chrismen for a traffic violation. Later, the deputy arrested Chrismen after he performed poorly on field sobriety testing and was unable to perform a preliminary breath test. The deputy obtained a warrant for a blood sample to measure Chrismen's alcohol concentration. In the backseat of the deputy's squad car on the way to the hospital for a blood draw, Chrismen threatened the deputy. Once at the hospital, Chrismen headbutted the deputy after being removed from the squad car. On the way to the jail, Chrismen continued to threaten the deputy.

Chrismen pleaded guilty to first-degree DWI and the remaining counts were dismissed. The plea agreement contemplated Chrismen facing the 42-month presumptive prison sentence, but acknowledged that Chrismen would move for a downward departure.

Chrismen moved for a downward dispositional departure, arguing that he was particularly amenable to probation given his remorse and the positive steps he had taken since the offense occurred. Chrismen emphasized that the presentence investigation report noted he "would be a good candidate for sobriety in the community" and that he had only two speeding tickets and no criminal offenses in over 20 years.

The state opposed Chrismen's motion, arguing that this was not Chrismen's first felony DWI offense, Chrismen's claimed participation in treatment was unverified, and there was no support for Chrismen's assertion that he is amenable to probation.

The district court noted that it had reviewed all the materials, including a letter of apology Chrismen wrote to the deputy. The court acknowledged the struggles Chrismen has overcome, but noted concerns about the violent act towards the deputy and the possibility that similar violence could occur if Chrismen was intoxicated. The district court found that Chrismen was not particularly amenable to probation and sentenced him to serve the presumptive term of 42 months in prison with five years of conditional release.

Chrismen appeals.

DECISION

Chrismen argues that the district court abused its discretion by denying his request for a downward dispositional departure because he was particularly amenable to probation and substantial and compelling circumstances existed to justify the departure. He asks this court to reverse and remand for resentencing.

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).

A mitigating factor that may provide a substantial and compelling reason for departure is a defendant’s particular amenability to probation. Minn. Sent’g Guidelines 2.D.3.a(7) (2022); *State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006). Whether a

defendant is particularly amenable to probation depends on various factors, including the defendant's age, prior record, remorse, cooperation, attitude while in court, and the support of family and friends. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). But even if some of these factors exist, a district court need not grant a downward dispositional departure. *State v. Olson*, 765 N.W.2d 662, 663 (Minn. App. 2009) (holding that “even if there [was] evidence in the record that the defendant would be amenable to probation[,]” the district court did not abuse its discretion by refusing to depart from the presumptive sentence).

We review a district court's sentencing decision for an abuse of discretion. *Bertsch*, 707 N.W.2d at 668. We will only reverse a district court's refusal to depart from the presumptive sentence in the “rare” case. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

Chrismen argues that the district court failed to review the various *Trog* factors when evaluating his departure motion. He asserts that the court improperly focused on Chrismen's conduct toward the deputy rather than on his characteristics that support his amenability to probation, including his previous successful completion of supervised release, current progress on conditional release, age, community support, attitude during the proceedings, motivation for treatment, his remorse, and that his last offense—aside from this instant DWI—happened over 20 years ago. But the existence of those factors did not compel the district court to depart. *See State v. Abrahamson*, 758 N.W.2d 332, 337 (Minn. App. 2008) (“[T]he presence of factors supporting departure does not require departure.”), *rev. denied* (Minn. Mar. 31, 2009); *Bertsch*, 707 N.W.2d at 668 (affirming denial of departure motion despite presence of *Trog* factors).

In addition, the district court did address some offender-based *Trog* factors—his age and cooperation with law enforcement—during the sentencing hearing. The court, however, “[could not] get past [the] violent aspect of [Chrismen’s] behavior” towards the deputy, which the court weighed against finding him amenable to probation. Even if Chrismen’s conduct toward the deputy could be more properly characterized as offense-based, we have held that “[f]or a downward dispositional departure, a district court may consider both offender- and offense-related factors.” *Walker*, 913 N.W.2d at 468.

The record demonstrates that the district court carefully considered the arguments both for and against a downward dispositional departure, as well as other information in the record like the presentence investigation report and materials that addressed Chrismen’s record on probation, motivation to change, and remorse. And while we recognize the positive steps Chrismen has taken since his DWI conviction, this is not the “rare” case that requires us to reverse the district court’s decision to impose a presumptive sentence. *Kindem*, 313 N.W.2d at 7. The abuse-of-discretion standard gives the district court broad discretion in its sentencing decisions and we will “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.” *State v. Pegel*, 795 N.W.2d 251, 255 (Minn. App. 2011) (quotation omitted).

We conclude the district court did not abuse its discretion by denying Chrismen’s motion for a downward dispositional departure and imposing a presumptive sentence.

Affirmed.