

*This opinion is nonprecedential except as provided by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
A24-0422**

State of Minnesota,
Respondent,

vs.

Benjamin Gerald Litke,
Appellant.

**Filed March 3, 2025
Affirmed
Schmidt, Judge**

Anoka County District Court
File No. 02-CR-22-243

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

Brad Johnson, Anoka County Attorney, Carl E. Erickson, Assistant County Attorney,
Anoka, Minnesota (for respondent)

Melvin R. Welch, Welch Law Firm, LLC, Minneapolis, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Larkin, Judge; and Schmidt,
Judge.

NONPRECEDENTIAL OPINION

SCHMIDT, Judge

Appellant argues that the district court abused its discretion by not articulating that it carefully analyzed the record before denying his motion for a downward dispositional sentencing departure. Because we discern no abuse of discretion, we affirm.

FACTS

Respondent State of Minnesota charged appellant Benjamin Gerald Litke with one count of second-degree criminal sexual conduct for sexually abusing his five-year-old niece. Litke entered a *Norgaard*¹ plea. During the plea hearing, Litke stated that he did not recall the offense because he was under the influence of alcohol, but he agreed that the state's evidence would demonstrate that he sexually abused the victim. The district court found that there was sufficient evidence to support a guilty verdict.

Litke moved for a downward dispositional departure, arguing that several factors supported his particular amenability to probation. Litke also argued that he was a low risk to public safety and that a probationary sentence would allow him to seek proper treatment.

At the sentencing hearing, the victim's mother provided an impact statement, recounting the difficulties that the victim had experienced since the abuse. A representative from corrections highlighted concerns raised in the presentence investigation report and Litke's psychosexual evaluation and reiterated corrections' recommendation of a 90-month prison sentence. The state took no position on the departure motion but asked that the court impose a 365-day jail sentence and 25 years of probation if it granted a downward departure. Litke's counsel made arguments in support of the departure motion. Litke addressed the court and apologized to the victim and her family. The district court then

¹ *State ex rel. Norgaard v. Tahash*, 110 N.W.2d 867 (Minn. 1961). In a *Norgaard* plea, a defendant pleads guilty even though he or she is unable to remember the "facts of the offense because of intoxication or amnesia but is persuaded that he or she is likely to be convicted of the crime charged." *State v. Solberg*, 882 N.W.2d 618, 621 n.1 (Minn. 2016).

denied Litke's motion for a downward dispositional departure, explaining:

I'll just be blunt with everyone. I've gone back and forth in this matter all the time that I've considered it. But at the end of the day, I am here to do what I think is right and what is just and what is fair.

And while, Mr. Litke, you have said all of the right things on paper, you've done all the right things, none of that excuses what actually happened here. And, so, for that reason I am not going to give you a dispositional departure.

The district court then imposed the presumptive guidelines sentence of 90 months' imprisonment.

Litke appeals.

DECISION

On appeal, Litke challenges the district court's denial of his downward dispositional departure motion. District courts are afforded "great discretion in the imposition of sentences[.]" *State v. Soto*, 855 N.W.2d 303, 307 (Minn. 2014) (quotation omitted). But the Minnesota Supreme Court has held that the Minnesota Sentencing Guidelines limit a district court's discretion by prescribing a sentence or range of sentences that are "presumed to be appropriate." *Id.* at 308 (citing Minn. Sent'g Guidelines 2.D.1 (2014)). Per the supreme court, a district court "'must pronounce a sentence within the applicable range unless there exist identifiable, substantial, and compelling circumstances' that distinguish a case and overcome the presumption in favor of the guidelines sentence." *Id.* (quoting Minn. Sent'g Guidelines 2.D.1). A district court may, within its discretion, depart from a guidelines sentence "*only if* aggravating or mitigating circumstances are present and

those circumstances provide a substantial and compelling reason not to impose a guidelines sentence[.]” *Id.* (emphasis in original) (quotations and citation omitted).

Although a district court is required to articulate reasons if a departure is granted, a court need not give an explanation “when the court considers reasons for departure but elects to impose the presumptive sentence.” *State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985). If the record shows that the district court evaluated the testimony and information presented to it before making a determination, we “may not interfere with the sentencing court’s exercise of discretion[.]” *Id.* at 80-81. A district court’s refusal to depart will be reversed only in a “rare” case. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

Litke argues that the record does not reflect whether the district court carefully evaluated the information presented to it before denying his departure motion. But Litke’s request to remand his case for the district court to articulate all of the information it considered before denying his motion for a downward departure asks us to assume that the district court reviewed no materials, failed to listen to any of the sentencing hearing, and exercised no discretion in denying his motion. But we do not presume error on appeal. *White v. Minn. Dep’t of Nat. Res.*, 567 N.W.2d 724, 734 (Minn. App. 1997) (stating that error is never presumed on appeal), *rev. denied* (Minn. Oct. 31, 1997).

Instead, the record reflects that the district court was engaged during the sentencing hearing. During that hearing, the district court heard from the victim’s mother, a representative from corrections, defense counsel, and from Litke himself. Those individuals presented arguments and evidence for and against the motion to depart. In addition, the record reflects that the district court had before it a presentence investigation

report, a psychosexual evaluation, and Litke's written motion requesting a downward dispositional departure.

In declining to depart and in imposing the presumptive guidelines sentence, the district court noted, "I've gone back and forth in this matter all the time that I've considered it." This statement demonstrates that the district court spent time meaningfully considering Litke's arguments for a downward departure. The district court also stated that Litke had "said all of the right things on paper," which similarly demonstrates that the court read the documents in the record and considered the reasons supporting a departure. We conclude that the district court appropriately evaluated the information presented to it before denying the motion for a downward departure and imposing a presumptive guidelines sentence.

Litke also argues that the district court failed to consider factors that supported a downward dispositional departure. *See State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982) (articulating nonexclusive list of factors district courts may consider when deciding whether to impose a downward departure). Litke relies on *State v. Allen*, a nonprecedential case, where we reversed a district court's denial of a downward dispositional departure because the district court did not believe it could consider a defendant's age or lack of criminal history when ruling on the motion for a departure. No. A23-1094, 2024 WL 2266929, at *1 (Minn. App. May 20, 2024). We reversed because age and lack of criminal history are within the *Trog* factors that are appropriate for a district court to consider when deciding whether to grant a dispositional departure. *Id.* at *2. Unlike in *Allen*, the district court here did not explicitly rule out valid factors when ruling on the departure motion.

We are similarly unpersuaded by Litke's reliance on *State v. Curtiss*, 353 N.W.2d 262 (Minn. App. 1984). In *Curtiss*, the district court denied the appellant's motion for a downward durational departure and summarily concluded that "there is no justifiable reason to deviate." *Curtis*, 353 N.W.2d at 263. We reversed and remanded because the record had evidence that could support a departure, which the district court did not consider "alongside valid reasons for non-departure." *Id.* at 264 (quotation omitted). Unlike in *Curtiss*, the district court here stated that it went "back and forth" in considering Litke's motion, which demonstrates that the court considered reasons for, alongside the reasons against, granting a downward dispositional departure. Ultimately, the court denied Litke's motion and imposed the presumptive guidelines sentence. Based upon the record before us, this is not the rare case that requires reversal.

Affirmed.