

*This opinion is nonprecedential except as provided by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
A24-0579**

State of Minnesota,
Respondent,

vs.

Anthony Johnson Moliwulo,
Appellant.

**Filed February 10, 2025
Affirmed
Reyes, Judge**

Anoka County District Court
File No. 02-CR-22-4819

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

Brad Johnson, Anoka County Attorney, Kelsey R. Kelley, Assistant County Attorney,
Anoka, Minnesota (for respondent)

Andrew C. Wilson, Wilson & Clas, Minneapolis, Minnesota (for appellant)

Considered and decided by Larson, Presiding Judge; Reyes, Judge; and Bratvold,
Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

In this sentencing appeal following a conviction of third-degree criminal sexual conduct, appellant argues that the district court abused its discretion by denying his motion for a downward dispositional departure. We affirm.

FACTS

In early summer 2022, 15-year-old victim L.H. moved in with her grandmother and uncle. L.H.'s uncle was completely paralyzed from the shoulders down and required assistance to complete daily tasks. L.H.'s family hired appellant Anthony Johnson Moliwulo as a personal-care assistant to aid L.H.'s uncle with daily chores.

One day during appellant's shift, appellant went into L.H.'s room while she was lying down and began talking with her. He then lifted the blanket she had covering her, put his hands on her thighs, and began rubbing her legs. L.H. began taking pictures of appellant's hands on her legs because she felt uncomfortable with the way he was acting and moved her leg away from him. In response, appellant told L.H. that he liked her and to "give him a chance." After that encounter, L.H. sent the pictures of appellant's hand on her leg to her brother, who showed the photos to their grandmother. L.H.'s grandmother then reported the incident to the police.

Several days later, appellant came into the living room where L.H. had been sitting in a chair with a blanket, watching television and playing on her cell phone. Appellant sat next to L.H. and put his hands under the blanket that was covering her and began to touch her legs, trying to pull her pants down, and to perform oral sex on her. L.H. told appellant "no" several times and tried to push him away, but appellant persisted. He attempted to perform oral sex on her and inserted his penis into her vagina. L.H. recorded several parts of this second encounter on her cell phone on video and audio.

The Anoka County Sheriff's Office interviewed L.H., who showed law enforcement the videos and audio recordings of the incidents. Following L.H.'s report, respondent State

of Minnesota charged appellant with two counts of third-degree criminal sexual conduct in violation of Minn. Stat. § § 609.344, subd. 1a(c), and 609.344, subd. 1a(b) (2022).

The district court held appellant's jury trial in October 2023 over four days. The jury convicted appellant of both counts of third-degree criminal sexual conduct. Prior to sentencing, appellant completed an interview with probation for the presentence investigation (PSI) report and a psychosexual evaluation.

Appellant also moved for a downward dispositional departure. At the beginning of the sentencing hearing, the district court stated that it had "review[ed] everything" in the complaint, the PSI, the psychosexual evaluation, and appellant's motion for departure. The district court confirmed with appellant's trial counsel that there was nothing else to review. Appellant requested a downward dispositional departure to probation or alternatively a downward durational departure to 41 months in prison. In support of the downward dispositional departure, he argued that he was particularly amenable to probation because he (1) had no prior criminal history, drug abuse, alcoholism, or chemical-dependency issues; (2) had family support; (3) had been gainfully employed; and (4) had complied with the terms of conditional release. The state requested the district court sentence appellant to 57 months in prison.

After hearing the arguments of counsel and appellant, the district court found that there were no substantial and compelling circumstances to justify departure. The district court sentenced appellant to 48 months in prison on count I, which is within the presumptive range, and dismissed count II as a lesser included offense.

DECISION

Appellant argues that the district court abused its discretion by imposing a presumptive sentence because the record does not “instill confidence” that it deliberately considered all the factors, including those favoring a downward dispositional departure. We disagree.

Appellate courts “afford the district court great discretion in the imposition of sentences and cannot substitute [their] judgment for that of the district court.” *State v. Vang*, 847 N.W.2d 248, 264 (Minn. 2014). The Minnesota Sentencing Guidelines permit a district court to depart from a presumptive sentence only if “identifiable, substantial, and compelling circumstances are present.” *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014) (quotations omitted). “Substantial and compelling circumstances are those circumstances that make the facts of a particular case different from a typical case.” *Taylor v. State*, 670 N.W.2d 584, 587 (Minn. 2003) (quotations omitted).

“The Sentencing Guidelines contain a ‘nonexclusive list’ of mitigating circumstances that can justify a downward departure.” *Soto*, 855 N.W.2d at 308. “A dispositional departure typically focuses on characteristics of the defendant that show whether the defendant is particularly suitable for individualized treatment in a probationary setting.” *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016) (quotations omitted). In evaluating a motion for a downward dispositional departure, the district court may consider “[n]umerous factors, including the defendant’s age, [] prior record, [] remorse, [] cooperation, [] attitude while in court, and the support of [] friends and/or family.” *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). But even if some *Trog* factors are present, the

district court is not obligated to depart. *See State v. Pegel*, 795 N.W.2d 251, 253-54 (Minn. App. 2011) (stating presence of mitigating factor does not obligate district court to place defendant on probation or impose term shorter than presumptive term).

The district court “must exercise [its] discretion by deliberately considering circumstances for and against departure.” *State v. Mendoza*, 638 N.W.2d 480, 483 (Minn. App. 2002), *rev. denied* (Minn. Apr. 16, 2002); *see also State v. Curtiss*, 353 N.W.2d 262, 263-64 (Minn. App. 1984)). When the record shows that the district court carefully considered and evaluated the testimony and information presented to it, this court “may not interfere” with its imposition of a presumptive sentence. *State v. Van Ruler*, 378 N.W.2d 77, 80-81 (Minn. App. 1985).

Appellant argues that the district court did not consider the factors that weigh in favor of a downward dispositional departure because it did not go through each of those factors on the record and instead only noted his “lack of responsibility, the denial of the offense.” In support of his argument, appellant relies on *Curtiss* and *Mendoza*. Neither case is persuasive or analogous to the facts of this case. In *Curtiss*, we remanded the case for resentencing because the district court summarily determined that there was “no justifiable reason to deviate” before sentencing Curtiss. 353 N.W.2d 262 at 263. We further acknowledged that our intervention in that case was solely due to the district court’s lack of its exercise of discretion. *Id.* at 264. In *Mendoza*, we remanded because “we [could not] conclude from the record” that the district court imposed a presumptive range sentence “by weighing reasons for and against departure” and because it improperly considered the

defendants' immigration status and possible deportation consequences. 638 N.W.2d at 484.

By contrast, this record shows that the district court thoroughly considered the factors for and against departure before imposing a presumptive sentence. At the beginning of the sentencing hearing, the district court stated that it had "review[ed] everything," including the complaint, PSI, psychosexual evaluation, and motion for departure. These documents include information such as appellant's age, his biographical history from his childhood to adulthood, criminal history, and employment history. The district court also heard arguments from both parties. Moreover, a district court is not required to explain its reasons for imposing a presumptive sentence. *See Van Ruler*, 378 N.W.2d 77 at 80 (stating that if district court "considers reasons for departure but elects to impose the presumptive sentence," an explanation for denying departure is not required).

Appellant further argues that the presence of some of the *Trog* factors "established [his] particular amenability to probation and presented substantial and compelling reasons for a departure." However, the district court need not depart even if some *Trog* factors are present. *See State v. Olson*, 765 N.W.2d 662, 664-65 (Minn. App. 2009).

Because the district court carefully considered the circumstances weighing in favor of and against a departure, it did not abuse its discretion by denying appellant's request for a downward dispositional departure and imposing a presumptive sentence.

Affirmed.