

*This opinion is nonprecedential except as provided by  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  
A24-0741**

State of Minnesota,  
Appellant,

vs.

Gary Joseph Littlewolf,  
Respondent.

**Filed November 12, 2024  
Affirmed  
Bjorkman, Judge**

Itasca County District Court  
File No. 31-CR-23-1019

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

Jacob Fauchald, Itasca County Attorney, Todd S. Webb, Chief Assistant County Attorney,  
Grand Rapids, Minnesota (for appellant)

Cathryn Middlebrook, Chief Appellate Public Defender, Richard Schmitz, Assistant Public  
Defender, St. Paul, Minnesota (for respondent)

Considered and decided by Larson, Presiding Judge; Worke, Judge; and Bjorkman,  
Judge.

**NONPRECEDENTIAL OPINION**

**BJORKMAN**, Judge

Appellant State of Minnesota challenges the district court's grant of a downward  
dispositional sentencing departure for second-degree assault. Because the record supports

the district court’s determination that respondent Gary Joseph Littlewolf is particularly amenable to probation, we affirm.

## **FACTS**

In February 2024, a jury found Littlewolf guilty of second-degree assault. Littlewolf had engaged in a physical altercation with his cousin’s neighbor following a contentious interaction. The district court ordered a presentence investigation. The presentence investigation report (PSI) recommended that the district court impose the presumptive 21-month executed prison sentence. At sentencing, Littlewolf orally moved for a downward dispositional departure, arguing that he is particularly amenable to probation and unamenable to prison due to significant medical issues. The state urged the district court to impose the presumptive prison sentence.

After considering the PSI and the arguments of counsel, the district court granted Littlewolf’s motion. The court found that Littlewolf is particularly amenable to probation, reasoning that his “lack of criminal history” and the “support from his friends particularly” support a dispositional departure. The district court imposed but stayed a 21-month prison sentence and placed Littlewolf on supervised probation for five years.

The state appeals.

## **DECISION**

A district court must impose a sentence within the Minnesota Sentencing Guidelines’ presumptive range unless “identifiable, substantial, and compelling circumstances” justify a departure. Minn. Sent’g Guidelines 2.D.1 (2022); *State v. Rund*, 896 N.W.2d 527, 532 (Minn. 2017). The sentencing guidelines provide a nonexclusive list

of mitigating factors that may warrant a downward departure, including that the “offender is particularly amenable to probation.” Minn. Sent’g Guidelines 2.D.3.a(7) (2022). This mitigating factor may be further supported by “the fact that the offender is particularly amenable to a relevant program of individualized treatment in a probationary setting.” *Id.*

Factors that may indicate an offender’s particular amenability to probation include his “age, his prior record, his remorse, his cooperation, his attitude while in court, and the support of friends and/or family.” *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). But the *Trog* factors “are not the only factors that can bear on a defendant’s amenability to probation, and they may not all be relevant in any given case.” *State v. Soto*, 855 N.W.2d 303, 310 (Minn. 2014). District courts may also consider whether placing an offender on probation would implicate public safety. *Id.* at 313. And an offender’s “apparent willingness to succeed in treatment is a ground for a dispositional departure in the form of a stay of execution of sentence.” *State v. Nelson*, 329 N.W.2d 827, 829 (Minn. 1983).

We afford district courts “great discretion” in sentencing and review departure decisions for abuse of that discretion. *Rund*, 896 N.W.2d at 532 (quotation omitted). A district court abuses its discretion when it relies on an invalid departure ground or “the evidentiary record is insufficient to justify the departure.” *State v. Vanengen*, 3 N.W.3d 579, 582 (Minn. 2024). When the district court’s reasoning for a downward departure is improper or inadequate, we may examine the record to determine whether “alternative grounds support the departure.” *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016).

At the sentencing hearing, the district court stated that it was departing from the sentencing guidelines because Littlewolf is particularly amenable to probation, noting his

lack of criminal history, anticipated participation in chemical-dependency treatment, and the support of friends. The state does not dispute the validity of this departure ground but argues that the district court abused its discretion because the evidence does not support a departure in three respects.<sup>1</sup> None of the state’s arguments persuade us to reverse.

First, the state assails the district court’s finding that Littlewolf’s prior record supports a departure, pointing to Littlewolf’s numerous past convictions. This argument is unavailing. At the time of sentencing, Littlewolf’s criminal-history score was zero. More than twenty years had passed since his lone prior felony conviction and ten years had passed since the last of his nine misdemeanor convictions. Given this record, we do not fault the district court’s determination that Littlewolf’s lengthy period of law-abiding behavior demonstrates particular amenability to probation.

Second, the state argues that nothing in the record establishes that Littlewolf has an “extraordinary relationship with family or friends” that would support a finding of particular amenability. But at the sentencing hearing, defense counsel advised that Littlewolf has the support of two sober friends who are willing to assist him, particularly

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<sup>1</sup> In his responsive brief, Littlewolf contends that the state waived its sentencing challenge because it (1) did not object to the imposed sentence at the sentencing hearing, and (2) failed to provide this court with a sufficient record when it did not order a transcript of his jury trial. The record reveals that the state advocated for a presumptive sentence. Littlewolf cites no authority for the proposition that the state also must specifically object to a requested (and imposed) sentencing departure. And because there is no indication or claim that the district court relied on evidence adduced at trial in making its sentencing decision, a trial transcript is not necessary for our review. *See State v. Bicek*, 429 N.W.2d 289, 293 (Minn. App. 1988) (stating “the lack of a trial transcript does not necessarily impede a review of a sentencing appeal based on legal issues”), *rev. denied* (Minn. Nov. 23, 1988).

with transportation to probation- and treatment-related appointments. And as the court noted, one of these friends consistently attended Littlewolf's court proceedings and provided support to him throughout the trial.

Third, the state argues that the district court did not consider the risk that Littlewolf poses to public safety, which weighs against a dispositional departure. We disagree. The PSI reveals that Littlewolf is 49 years old and experiences significant, chronic health problems. During the sentencing hearing, defense counsel explained that Littlewolf has heart issues, a seizure condition, and avascular necrosis. He has had six heart attacks and his physical limitations have required him to use a wheelchair on "multiple occasions." Imposition of a probationary sentence places Littlewolf under close supervision for five years, more than double the amount of time he would otherwise spend in prison. Based on this record, we are confident that the district court considered the public-safety implications and concluded that placing him on probation does not pose a threat to public safety.

We also note that, at the sentencing hearing, defense counsel advised that Littlewolf would obtain a chemical-use assessment and "follow all those recommendations, including abstaining from alcohol or controlled substances." The district court then conditioned Littlewolf's probation on completion of a comprehensive assessment and compliance with all recommended aftercare. Littlewolf has successfully completed probationary requirements in the past. His past amenability to probation further supports a downward departure.

In sum, the record contains evidence that weighs in favor and evidence that weighs against a dispositional departure. The district court has broad sentencing discretion; it is

not our role to substitute our judgment for that of the district court after it has weighed competing evidence. *State v. Sejnoha*, 512 N.W.2d 597, 601 (Minn. App. 1994), *rev. denied* (Minn. Apr. 21, 1994). Because the district court based the dispositional departure on a valid departure ground and the record supports it, we discern no abuse of discretion.

**Affirmed.**