

*This opinion is nonprecedential except as provided by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
A24-0762**

State of Minnesota,
Respondent,

vs.

Dustin Lavelle Smith,
Appellant.

**Filed April 21, 2025
Affirmed
Cochran, Judge**

Hennepin County District Court
File No. 27-CR-23-14404

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

Mary F. Moriarty, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Amy Lawler, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Slieter, Presiding Judge; Cochran, Judge; and Larson, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

On appeal from the final judgment of conviction for first-degree burglary and felony domestic assault, appellant argues that the district court abused its discretion by denying his motion for a downward dispositional departure. Because the record reflects that the

district court carefully considered appellant's argument for departure before imposing a presumptive sentence, we affirm.

FACTS

In January 2024, respondent State of Minnesota charged appellant Dustin Lavelle Smith with two counts of first-degree criminal sexual conduct in violation of Minnesota Statutes section 609.342, subdivisions 1(d) (actor uses force) and 1(c)(i) (actor causes personal injury and uses coercion) (2022), one count of first-degree burglary in violation of Minnesota Statutes section 609.582, subdivision 1(c) (2022), and one count of felony domestic assault in violation of Minnesota Statutes section 609.2242, subdivision 4 (2022). The complaint alleged that law-enforcement officers were dispatched to a residence to respond to a domestic-violence call. At the residence, a woman reported that Smith, the father of her children, had "barged into" her bedroom and started screaming at her. The woman alleged that Smith spat in her face; grabbed and pulled her hair; swung her around the room by her hair and limbs; put his hands into her mouth while she tried to get away; bit her ear, causing a laceration that bled down her neck; ripped off her underwear; and penetrated her vagina with his hand or an object in a manner that caused her pain and bleeding. The complaint also alleged that the woman's young children were present in the bedroom and pleaded with Smith to stop.

Smith reached a plea agreement with the state. Smith agreed to plead guilty to first-degree burglary and felony domestic assault and in exchange the state agreed to dismiss the criminal-sexual-conduct counts. At the plea hearing, Smith entered guilty pleas to the two charges consistent with the agreement. He also testified that he understood that,

at the sentencing hearing, the state would be seeking an executed prison sentence and that he would be asking the judge to sentence him to probation. Smith then provided a factual basis for his guilty pleas. The district court deferred its acceptance of Smith's pleas until the sentencing hearing and ordered a presentence investigation (PSI) and a psychosexual evaluation.

Before sentencing, Smith moved for a downward dispositional departure, arguing that his particular amenability to probation warranted probation in lieu of an executed prison sentence. Smith argued that he demonstrated his amenability to probation through his remorse and acceptance of responsibility, his cooperation with the court process, his desire for treatment, his support in the community, and the victim's desire for Smith to receive a stayed sentence.

At the sentencing hearing, the district court heard from the victim, counsel for the parties, members of Smith's and the victim's families, and Smith himself. The victim described Smith as a loving father whose absence was "traumatizing" for their joint children. The victim also discussed both Smith's and her own mental-health struggles and argued that Smith could receive better treatment outside of prison. The victim requested that Smith receive a stayed sentence with "strict probationary" terms.

Despite the victim's statement, the state disagreed that Smith was particularly amenable to probation and argued for an executed prison sentence of 69 months. The state pointed to the severity of the domestic-assault offense, which caused "significant genital injuries" to the victim. The state also emphasized that the assault occurred in front of Smith and the victim's joint children. And the state highlighted Smith's prior domestic-abuse

offenses and discussed the fact that Smith was on probation for domestic assault when this offense occurred. The state expressed concern not only for the victim, but also for Smith's future romantic partners.

In response, Smith, through counsel, reiterated the arguments raised in his motion for a downward dispositional departure. Smith's counsel also read excerpts from various letters in support of Smith. Smith's brother-in-law and the victim's mother, who were at the hearing, made statements in support of the motion. Smith's brother-in-law, who was also Smith's employer, spoke positively about Smith's character and work ethic. The victim's mother said that the offense stemmed from both the victim's and Smith's mental-health issues and that Smith's actions were "outside of his character."

Lastly, the court heard from Smith. Smith apologized for his actions and expressed his willingness to participate in treatment. Smith discussed his love for his sons and his desire to resume providing for them. Smith finished his statement by thanking the victim for her support and emphasizing his contributions to the community as both an employee and father.

After hearing from Smith, the district court denied the motion for a downward dispositional departure and explained its reasons to Smith. The district court told Smith, "This is particularly difficult because you obviously have a lot going for you." The district court acknowledged that Smith appeared to be a hard worker, valued his role as a father, and had a "really good support system." But the district court also observed that "[t]his wasn't an isolated incident," given Smith's prior "domestic-related convictions." The district court noted that Smith had completed domestic-violence programming before and

still “carried out this brutal assault.” Based on these considerations, the district court did not find that Smith was particularly amenable to probation. The district court sentenced Smith to executed sentences of 69 months in prison on the first-degree-burglary count and 15 months in prison on the felony-domestic-assault count, to run concurrently.¹

Smith appeals.

DECISION

We “afford the [district] court great discretion in the imposition of sentences and reverse sentencing decisions only for an abuse of that discretion.” *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014) (quotation omitted). A district court abuses its discretion “when its decision is based on an erroneous view of the law or is against logic and the facts in the record.” *State v. Glover*, 4 N.W.3d 124, 134 (Minn. 2024) (quotation omitted).

The Minnesota Sentencing Guidelines establish presumptive sentences for felony offenses “to establish rational and consistent sentencing standards.” Minn. Sent’g Guidelines 1.A (2022). Each presumptive sentence carries a “presumptive disposition,” which is “the recommendation for either a commitment or a stayed sentence.” Minn. Sent’g Guidelines 1.B.13.a (2022). The guidelines provide that a district court “must pronounce a sentence of the applicable disposition . . . *unless* there exist identifiable,

¹ The presumptive sentence for the first-degree-burglary offense was an executed sentence with a range of 50 to 69 months. Minn. Sent’g Guidelines 4.A (2022). The presumptive sentence for the felony-domestic-assault offense was a stayed 15-month sentence. *Id.* The district court executed the felony-domestic-assault sentence at Smith’s request.

substantial, and compelling circumstances to support a departure.” Minn. Sent’g Guidelines 2.D.1 (2022) (emphasis added).

The sentencing guidelines include a nonexclusive list of nine mitigating factors that “may be used as reasons for departure.” Minn. Sent’g Guidelines 2.D.3.a (2022). Here, the only factor at issue is whether “[t]he offender is particularly amenable to probation.” Minn. Sent’g Guidelines 2.D.3.a.(7) (2022). In *State v. Trog*, the supreme court stated that “numerous factors” are relevant to determining if a defendant is particularly amenable to probation, including “the defendant’s age, his prior record, his remorse, his cooperation, his attitude while in court, and the support of friends and/or family.” 323 N.W.2d 28, 31 (Minn. 1982). But a defendant’s mere amenability to probation is insufficient to justify a downward dispositional departure. *Soto*, 855 N.W.2d at 308. Instead, the defendant must be particularly amenable. *Id.* “By requiring a defendant to be *particularly* amenable to probation . . . we ensure that the defendant’s amenability to probation distinguishes the defendant from most others and truly presents the substantial and compelling circumstances that are necessary to justify a departure.” *Id.* at 309 (quotation omitted).

Smith asserts that the district court abused its discretion by determining that he is not particularly amenable to probation. In support of this position, Smith notes that he admitted guilt; he took responsibility for his criminal conduct; he committed himself to change; he has support from his family, the victim, and the victim’s family; and he has maintained employment. While these factors may support determining that Smith is particularly amenable to probation, the district court relied on other circumstances in support of its conclusion that Smith is not particularly amenable to probation. For example,

the district court explained that Smith had multiple prior “domestic-related convictions” and had already “take[n] advantage of domestic violence programming.”² A district court does not abuse its discretion when, as here, it carefully weighs “valid reasons” for departing against reasons for not doing so. *State v. Kindem*, 313 N.W.2d 6, 7-8 (Minn. 1981). And the district court’s refusal to depart comports with the guidelines’ emphasis on the defendant’s *particular* amenability to probation. *See Soto*, 855 N.W.2d at 308-09.

We also emphasize that the district court imposed a presumptive sentence here—both dispositionally and durationally. Appellate courts are reluctant to “interfere with a sentence falling within the presumptive range, either dispositionally or durationally, even if there are grounds that would justify departure.” *State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006) (quotation omitted). It is therefore “a rare case which would warrant reversal of the refusal to depart.” *Kindem*, 313 N.W.2d at 7. Given the district court’s explanation of its concerns about Smith’s history of committing domestic violence, this is not the rare case that requires this court to interfere with the district court’s broad discretion in sentencing.

Lastly, we address Smith’s argument that the district court “failed to fully consider the factors under [*Trog*].” We have previously held that a district court need not discuss each of the *Trog* factors on the record before deciding to impose the presumptive sentence.

² We note that Smith’s confidential PSI is relevant here. *See* Minn. R. Pub. Access to Recs. of Jud. Branch 4, subd. 1(b)(2) (providing that records on an individual that are ordered by a court to assist in sentencing are not publicly accessible). While we need not disclose the confidential details contained in Smith’s PSI, we have reviewed the document and conclude that it supports the district court’s statements regarding Smith’s prior convictions and participation in programming.

State v. Pegel, 795 N.W.2d 251, 254 (Minn. App. 2011). In fact, when a district court “considers reasons for departure but elects to impose the presumptive sentence,” the district court need not explain its decision to impose the presumptive sentence. *State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985). As discussed above, the record reflects that the district court considered Smith’s arguments for departure before imposing the presumptive disposition, an executed prison sentence. Contrary to Smith’s assertion, the district court did not have to explain its decision or explicitly consider each of the *Trog* factors.

In sum, the district court carefully considered Smith’s motion for a downward dispositional departure and did not abuse its discretion when it denied the motion.

Affirmed.