

*This opinion is nonprecedential except as provided by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
A24-1564**

State of Minnesota,
Respondent,

vs.

Bounhom NA,
Appellant.

**Filed August 4, 2025
Affirmed
Connolly, Judge**

Ramsey County District Court
File No. 62-CR-22-443

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

John Choi, Ramsey County Attorney, Anna R. Light, Assistant County Attorney, St. Paul,
Minnesota (for respondent)

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

Considered and decided by Wheelock, Presiding Judge; Ross, Judge; and Connolly,
Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

On direct appeal from his 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

Appellant Bounhom NA¹ married C.M. in 2017. On January 24, 2022, appellant and C.M. were arguing at approximately 4:00 a.m. Appellant told C.M. to perform fellatio on him. When she refused, appellant pushed C.M.'s head onto his genitals. C.M. attempted to get away, but appellant pushed her onto the bed, held her arm down, forced her legs apart, and hit her with a flashlight. He then "shoved" the flashlight into her vagina. C.M. "didn't want it" and was moving and kicking appellant. Appellant hit C.M. on her arms, pelvis, and thighs using his fists, the flashlight, and a plastic hanger.

Later that day, C.M. underwent a sexual assault examination with a sexual assault nurse examiner. The nurse examiner noted numerous injuries on C.M., including redness on her cheek, shoulder, hip, buttocks, thighs, and bruising on her arms and vaginal opening. The nurse examiner "believed the injury was concurrent/conclusive of a forceful penetration."

Respondent State of Minnesota charged appellant with third-degree criminal sexual conduct.² The parties submitted the case to the district court for a stipulated evidence trial under Minn. R. Crim. P. 26.01, subd. 3. The stipulated evidence included, among other evidence, the sexual assault examination report, police reports, and a police interview with C.M. The district court found appellant guilty. Appellant moved for a downward

¹ The record indicates appellant's name is only "Bounhom" and some of the district court orders use "FNU Bounhom" in the case caption. However, we do not change the title of the action in the appeal. Minn. R. Civ. App. P. 143.01.

² Appellant was also charged with first-degree criminal sexual conduct, but this was later dismissed.

dispositional departure, arguing that he was particularly amenable to treatment in a probation setting. The district court denied appellant's motion, entered a conviction of third-degree criminal sexual conduct, and imposed a presumptive sentence of 48 months in prison.

This appeal follows.

DECISION

Appellant challenges the district court's denial of his motion for a downward dispositional departure. A district court has great discretion in sentencing, and we review the district court's sentencing decisions for an abuse of discretion. *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014). Only in a "rare case" will a reviewing court reverse a district court's imposition of the presumptive sentence. *State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006); *see also State v. Delk*, 781 N.W.2d 426, 428 (Minn. App. 2010) (stating that this court will rarely disturb a district court's decision to impose a sentence within the presumptive guidelines range), *rev. denied* (Minn. July 20, 2010).

The Minnesota Sentencing Guidelines establish presumptive sentences for criminal offenses and seek to "maintain uniformity, proportionality, rationality, and predictability in sentencing." Minn. Stat. § 244.09, subd. 5 (2020). "Consequently, departures from the guidelines are discouraged and are intended to apply to a small number of cases." *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016). A district court may depart from the presumptive sentence only when there are "identifiable, substantial, and compelling circumstances to support a departure." Minn. Sent'g Guidelines 2.D.1 (Supp. 2021). Even if there are factors that weigh in favor of a departure, the district court does not abuse its

discretion by denying a departure. See *State v. Kindem*, 313 N.W.2d 6, 8 (Minn. 1981) (stating that “while there may have been arguments for departing downward,” the decision to depart is discretionary).

A defendant’s particular amenability to probation can justify a downward dispositional departure from a presumptive sentence. *Soto*, 855 N.W.2d at 308. In determining whether a defendant is particularly amenable to probation so as to justify a downward dispositional departure, a district court may consider, among other things, the defendant’s age, prior record, remorse, cooperation, attitude while in court, and the support of friends or family. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). Mere amenability is not sufficient; “requiring a defendant to be *particularly* amenable to probation . . . distinguishes the defendant from most others and . . . presents the substantial and compelling circumstances that are necessary to justify a departure.” *Soto*, 855 N.W.2d at 308-09 (quotation omitted).

Appellant contends that the district court abused its discretion by concluding that he is not particularly amenable to probation. He argues the district court improperly weighed two of the *Trog* factors, specifically age and lack of remorse, against a finding of particular amenability to probation. He does not take issue with the district court’s conclusions that other *Trog* factors weigh in favor of a departure, including his prior record, his cooperation, his attitude while in court, and the support of his friends and family. We are not persuaded.

While a district court is required to give reasons for granting a departure, it need not explain its decision to impose a presumptive sentence so long as the record is clear that the district court has considered reasons for departure. *State v. Van Ruler*, 378 N.W.2d 77, 80

(Minn. App. 1985). Accordingly, we will not disturb the district court's exercise of discretion in imposing "a presumptive guidelines sentence when the record shows that the sentencing court carefully evaluated all the testimony and information presented before making a determination." *State v. Johnson*, 831 N.W.2d 917, 925 (Minn. App. 2013) (quotation omitted), *rev. denied* (Minn. Sept. 17, 2013).

The record reflects that the district court appropriately considered each of the *Trog* factors "as a whole" and noted that "[n]o one factor decides anything." In doing so, it reviewed the presentence investigation, the psychosexual evaluation, the victim-impact statement, a letter signed by 7 of the victim's children, 15 letters from appellant's family and friends, appellant's statement to the court, and the arguments of the attorneys.

Appellant argues that the district court improperly weighed his age against him. The district court found that appellant's age of 37 years old weighed against finding particular amenability. The district court compared this case to *Soto*, in which the Minnesota Supreme Court reiterated that age is a factor for the district court to consider when determining a defendant's particular amenability to probation. 855 N.W.2d at 310. The supreme court concluded that *Soto*'s age of 37 did not make him particularly amenable to probation. *Id.* Because a defendant's age must support a conclusion that he is *particularly* amenable to probation, the district court did not abuse its discretion in its finding. Appellant asserts that his age should not be weighed against him because he was raised in a different country and received a middle-school education. The record reflects that the district court considered the presentence investigation and argument of his counsel, which both noted appellant's cultural and educational background. Moreover, "educational

attainment” is a factor that “should not” be used as a reason for a departure. Minn. Sent’g. Guidelines 2.D.2.d.(1).

Appellant next asserts that the district court’s conclusion that he showed no remorse is contrary to the record and was improperly weighed against him. We are not persuaded. As noted by the district court, during the presentence investigation and the psychosexual evaluation appellant denied committing the offense. As evidence of his remorse, appellant points to a letter submitted by a church member that discusses his remorse. The district court considered the letters submitted by appellant’s friends. Because it did so, the district court did not abuse its discretion in concluding that appellant showed no remorse.

Lastly, appellant contends that the record demonstrates he is amenable to treatment in a probationary setting, because the psychosexual report and the mitigation report submitted by the defense stated that appellant could complete outpatient sex-offender treatment. The mitigation report submitted by the defense also identified a specific outpatient sex-offender treatment that would be available to appellant. While reports such as these may contain useful information in determining whether to depart, recommending probation or outpatient treatment does not necessarily support a conclusion that appellant is particularly amenable to probation. *See Soto*, 855 N.W.2d at 309-10. Appellant also notes statistics indicating that persons with third-degree criminal sexual conduct convictions often receive a dispositional departure. But these statistics are unpersuasive because a district court’s decision to grant a dispositional departure is based on the nature of the individual. *Solberg*, 882 N.W.2d at 623.

On this record, it is clear that the district court weighed the reasons for and against a downward dispositional departure. *See Kindem*, 313 N.W.2d at 8. The district court did not abuse its discretion in imposing the presumptive sentence, and this is not a rare case in which we disturb the sentence.

Affirmed.