

*This opinion is nonprecedential except as provided by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
A24-1637**

State of Minnesota,
Respondent,

vs.

Joseph Gene Hoberg,
Appellant.

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

Hennepin County District Court
File No. 27-CR-23-9935

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

Mary F. Moriarty, Hennepin County Attorney, Mark V. Griffin, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Eva F. Wailes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Harris, Presiding Judge; Bjorkman, Judge; and Bratvold, Judge.

NONPRECEDENTIAL OPINION

HARRIS, Judge

Appellant challenges the district court's denial of his motion for a downward dispositional departure or a downward durational departure from the presumptive guidelines sentence following his conviction of fleeing police in a motor vehicle. Because

the district court did not err in its application of the law or abuse its discretion by imposing a sentence within the presumptive range, we affirm.

FACTS

On May 11, 2023, police officers with the St. Anthony Police Department attempted to pull over appellant Joseph Gene Hoberg after noticing that the car he was driving had expired registration. Hoberg initially fled from the police, but officers were eventually able to stop his car. According to the complaint, Hoberg “was non-compliant and ignored all verbal commands,” and “fought officers in [an] attempt to prevent them from placing him in handcuffs.” Officers arrested Hoberg. Respondent State of Minnesota subsequently charged him with one count of fleeing the police in a motor vehicle, in violation of Minnesota Statutes section 609.487, subdivision 3 (2022).

The district court held a hearing in June 2023, at which time it instructed Hoberg to complete a substance-use-disorder assessment. The district court warned Hoberg that if he did not abide by the court’s conditions, there would “be a downside.” At the conclusion of the hearing, the district court told Hoberg, “All right. Mr. Hoberg, you can’t say I didn’t warn you.” Hoberg responded, “You warned me loud and clear.” In September 2023, Hoberg was assessed for treatment court but was found to be ineligible.

In October 2023, Hoberg’s conditional release was revoked, and a warrant was issued for his apprehension. A probation agent reported that Hoberg violated the terms of his conditional release because he was charged with two new criminal offenses and failed to remain in contact with probation. The probation agent indicated that Hoberg’s

immediate whereabouts were unknown. Hoberg failed to appear at a previously scheduled hearing on November 21, and the district court forfeited his bond.

The next hearing was held on February 1, 2024. The district court noted that Hoberg had bench warrants for failing to appear four times.

Hoberg returned for a pretrial hearing on February 22, 2024. The parties indicated that they had reached a plea agreement, and the district court set a future hearing date. The district court told Hoberg that it was “willing to take a plea” and stated, “you may be able to provide me with grounds for dispositional departure if you go, enter, and stay in treatment, because I’ll probably put out the sentencing until . . . June or some extended period of time.” But the district court cautioned Hoberg that he could have the entire sentence “hanging over [his] head.”

The parties returned to court on February 28, 2024, for the plea hearing. The plea agreement provided that Hoberg would plead guilty to the offense as charged and, in exchange, the state would recommend a 22-month stay of execution with five years of probation. Hoberg also agreed to enter and complete treatment and aftercare, and to comply with a presentence investigation (PSI). The state indicated that another case involving fifth-degree narcotics possession would also be dismissed at sentencing. Hoberg then provided a factual basis for his plea and admitted that he fled from the police when they tried to stop his car. The district court set a sentencing hearing three months into the future and advised Hoberg:

I’m willing to let you out to treatment [with] a whole bunch of conditions that you’re going to have to abide by in addition to cooperating with the PSI and remaining law

abiding. But you understand if you make good on those, I'll make good on this plea negotiation.

But the part I need you to understand . . . is if you don't comply, if you walk out of treatment, if you get picked up for a new offense supported by probable cause, if you don't show up for the PSI, don't show up for sentencing, . . . get caught with a gun, leave the State of Minnesota without permission, all the things that you've seen on the [conditional release] order in the past . . . I can give you any lawful sentence, which . . . could be 22 months in prison.

Hoberg indicated that he understood the district court's instructions.

The district court held the sentencing hearing as scheduled on May 29. Hoberg failed to appear, and the district court issued a warrant for his arrest and ordered bail.

The parties returned for sentencing on July 18. The state urged the district court to impose a 22-month prison sentence, arguing that "[t]he original agreement was . . . a dispositional departure conditioned on Mr. Hoberg succeeding in treatment and showing particular amenability to probation." The state argued that, because Hoberg failed to appear at sentencing and did not succeed in treatment, he was not particularly amenable to probation. Hoberg's attorney argued for a downward dispositional departure based on Hoberg's particular amenability to treatment in a probationary setting or, in the alternative, a downward durational departure.

The district court noted that it had reviewed the details provided by the probation agent. The PSI report indicated that the presumptive sentence for fleeing a police officer for a person with Hoberg's criminal history was a commitment to prison for 22 months, with a lower range of 20 months and an upper range of 25 months. As the district court explained, Hoberg was "released post-plea with . . . an extended sentencing date to give

[him] an opportunity to make the case for a dispositional departure hoping for success in treatment.” But the district court found that while it “gave [Hoberg a] chance” to get treatment, Hoberg was “particularly un-amenable to probation.” The district court then imposed a sentence of 20 months’ imprisonment.

Hoberg appeals.

DECISION

The Minnesota Sentencing Guidelines prescribe a sentence or a range for the sentence that is “presumed to be appropriate.” *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014) (citation omitted). The district court “must pronounce a sentence within the applicable range unless there exist identifiable, substantial, and compelling circumstances” distinguishing the case and overcoming the presumption in favor of the guidelines sentence. *Id.*; *see also State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016) (noting that sentencing guidelines seek to “maintain uniformity, proportionality, rationality, and predictability in sentencing of felony crimes”). We afford a district court “great discretion in the imposition of sentences” and reverse only for an abuse of that discretion. *Soto*, 855 N.W.2d at 307-08 (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.” *Riley v. State*, 792 N.W.2d 831, 833 (Minn. 2011). We rarely hold that a district court abused its discretion in sentencing. *Soto*, 855 N.W.2d at 305. To maintain uniformity and proportionality in sentencing, departures from the guidelines sentence are discouraged. *State v. Rund*, 896 N.W.2d 527, 532 (Minn. 2017).

There are two types of sentencing departures: dispositional and durational. *Solberg*, 882 N.W.2d at 623. A downward dispositional departure occurs when the presumptive guidelines sentence calls for imprisonment, “but the district court instead stays execution or imposition of the sentence.” *Id.* 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.” *Id.* (quotation omitted). A durational departure, by contrast, is a sentence that departs in length from the presumptive guidelines range. *Id.* It is “justified if the defendant’s conduct is significantly less serious than that typically involved in the commission of the offense.” *State v. Mattson*, 376 N.W.2d 413, 415 (Minn. 1985). A district court’s decision to impose a durational departure “must be based on factors that reflect the seriousness of the offense” rather than “the characteristics of the offender.” *Solberg*, 882 N.W.2d at 623.

Hoberg raises two arguments on appeal. First, he asserts that the district court abused its discretion by concluding that there were no substantial or compelling reasons for a downward dispositional departure. Second, he argues that the district court abused its discretion by failing to consider his motion for a downward durational departure. We address each argument in turn.

I. The district court did not abuse its discretion by denying Hoberg’s motion for a downward dispositional departure.

Hoberg challenges the district court’s denial of his motion for a downward dispositional departure. A defendant’s “particular amenability to individualized treatment in a probationary setting” may justify a downward dispositional departure from a

presumptive commitment to prison. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). Minnesota courts are guided by several factors, known as *Trog* factors, to determine if a defendant is particularly amenable to individualized treatment in a probationary setting. *Id.* These factors include the defendant's age, prior record, remorse, cooperation, attitude while in court, and the support of the defendant's friends or family. *Id.*

Here, the district court considered the circumstances for and against departure before imposing a sentence within the presumptive range. The district court explained that it had spoken with Hoberg in previous hearings and "gave [him] this chance" to show that he was amenable to probation. The district court recognized that Hoberg was "very much caught up in the grips of an addiction" and "hope[d]" Hoberg could resolve his addiction. Nevertheless, the district court noted that Hoberg had a "history" of criminal activity, repeatedly failed to appear in court, and had previous revocations of probation and violations of release conditions. The district court therefore concluded that Hoberg was "particularly un-amenable to probation" and imposed a sentence within the presumptive range.

The record supports the district court's findings. Before pleading guilty, Hoberg failed to appear in court on multiple occasions, violated the conditions of probation, and had a warrant issued for his arrest after committing new criminal offenses and failing to remain in contact with probation. And after pleading guilty, Hoberg again failed to appear in court, resulting in a warrant for his arrest. The probation agent conducting the PSI reported that although the district court ordered Hoberg to participate in chemical-treatment

programming, he left two different treatment programs stating, “I don’t want [treatment]” and “I’m doing just fine, on my own.” The PSI report indicated that:

[The probation] agent cannot find any substantial or compelling Guideline-based reasons to support a dispositional departure to probation. [Hoberg] has minimized his use of substances, refused to test as directed, has made constant excuses, and avoided treatment at all costs. Additionally, he was on supervised release when the instant offense occurred; he has had several restructures due to continued use of substances, failing to comply with treatment directives, and failing to meet with his agent. He does not present as particularly amenable to probation, nor treatment at this time.

Because the district court considered the circumstances for and against departure and its decision is supported by the facts in the record, we discern no abuse of discretion.

To persuade us otherwise, Hoberg argues that the district court’s ruling was “cursory” and failed to fully consider each *Trog* factor. However, a district court need not make express findings on each factor before imposing a guidelines sentence. *State v. Pegel*, 795 N.W.2d 251, 254 (Minn. App. 2011). Rather, the district court must consider the circumstances for and against departure and deliberately exercise its discretion. *Id.* at 255. While a district court “is required to give reasons for departure, an explanation is not required 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); *see also Pegel*, 795 N.W.2d at 254 (rejecting appellant’s argument that the district court failed to discuss each *Trog* factor and observing that “there is no requirement that the district court must do so”). Furthermore, a district court is not required to grant a downward dispositional departure even if a defendant is particularly amenable to probation. *State v.*

Olson, 765 N.W.2d 662, 664-65 (Minn. App. 2009). Thus, “the mere fact that a mitigating factor is present in a particular case does not obligate the [district] court to place [a] defendant on probation.” *Pegel*, 795 N.W.2d at 253 (quotation omitted). Thus, even if the district court did not specifically address each *Trog* factor raised by Hoberg before imposing the presumptive sentence, it was not required to do so. *See id.* at 254.

The record demonstrates that the district court considered the circumstances for and against departure, along with the arguments of counsel and Hoberg’s own statements to the court, before imposing a guidelines sentence. The district court found that Hoberg had a history of failing to follow the conditions of probation and was not particularly amenable to probation, and the record supports these findings. As such, no further explanation was required. *See Van Ruler*, 378 N.W.2d at 80; *see also Wells v. State*, 839 N.W.2d 775, 781 (Minn. App. 2013) (stating that district court always has discretion to impose a presumptive sentence), *rev. denied* (Minn. Feb. 18, 2014). We therefore determine that the district court did not abuse its discretion by denying Hoberg’s request for a downward dispositional departure from the presumptive sentence.

II. The district court did not abuse its discretion by denying Hoberg’s motion for a downward durational departure.

We next turn to Hoberg’s argument that he is entitled to a downward durational departure. A “durational departure is a sentence that departs in length from the presumptive guidelines range.” *Solberg*, 882 N.W.2d at 623-24. “A downward durational departure is justified only if the defendant’s conduct was significantly less serious than that typically involved in the commission of the offense.” *Id.* at 624 (quotation omitted). The district

court evaluates the “factors that reflect the seriousness of the offense, not the characteristics of the offender.” *Id.* at 623. We review the district court’s denial of a sentencing departure for an abuse of discretion. *Id.*

Hoberg asserts that the district court failed to address his motion for a downward durational departure. He contends that “the district court did not address the motion and arguments, let alone consider whether [his] offense was significantly less serious” than the typical offense. In response, the state argues that the district court considered the facts and circumstances of Hoberg’s case and was not required to state the reasons for imposing a presumptive sentence. We agree with the state.

The record demonstrates that the district court considered Hoberg’s request for a downward durational departure and then exercised its discretion to impose a sentence within the presumptive range. The district court began the hearing by noting that the case had “a bit of a history to it.” The district court indicated that it released Hoberg from custody after his plea with an extended sentencing date to give Hoberg an opportunity to be successful in treatment. And it noted that the probation agent who conducted the PSI had “detailed” Hoberg’s history for the court.

The district court then offered the state and Hoberg’s attorney an opportunity to make arguments in regard to sentencing. Hoberg’s attorney stated that if the district court was not inclined to grant a dispositional departure, then Hoberg “would be asking for a durational departure.” He argued that Hoberg’s offense was “less serious than a typical case” because “no one was injured” and “[t]here were a lot of factors at the time.” He also stated, “Hoberg was not in treatment, [and] he took responsibility, and so I believe that a

durational departure would also be appropriate in this case.” After reviewing the record and the arguments of counsel, the district court imposed a sentence within the guidelines range, implicitly denying the durational-departure request.

Hoberg argues that the district court did not explicitly state that it was denying the durational-departure request. He relies on *State v. Curtiss*, 353 N.W.2d 262 (Minn. App. 1984), and *State v. Mendoza*, 638 N.W.2d 480 (Minn. App. 2002), in support of his argument that remand is appropriate when a district court fails to articulate its reasons for denying a defendant’s departure request. But these cases are distinguishable. In *Curtiss*, we remanded for resentencing when the district court failed to exercise its discretion by ignoring factors that supported departure. 353 N.W.2d at 264. And in *Mendoza*, we remanded because it was not clear from the record whether the district court reviewed the appropriate factors for and against departure when the district court improperly considered the defendant’s immigration status and possible deportation consequences. 638 N.W.2d at 484.

Unlike *Curtiss* and *Mendoza*, the district court in this case considered Hoberg’s departure request in light of the record, the recommendation from probation, and the arguments of counsel and Hoberg, before imposing a sentence within the guidelines range. While the district court could have provided a more detailed explanation in this case, a district court need not provide analysis or explanation for its decision when it “considers reasons for departure but elects to impose” a sentence within the presumptive range. *Van Ruler*, 378 N.W.2d at 80; *see also Pegel*, 795 N.W.2d at 255 (discerning no abuse of discretion when the record shows that the district court “carefully evaluated all the

testimony and information presented before making a determination” (quotation omitted)). Because the district court considered the circumstances as demonstrated in the record before imposing a sentence within the presumptive range, it did not abuse its discretion.

Hoberg also argues that his offense was less serious than the typical fleeing offense. At the hearing, defense counsel argued that “no one [was] injured,” there were “a lot of factors,” Hoberg was “not in treatment,” and Hoberg “took responsibility.” On appeal, Hoberg further argues that he did not lead the police in a lengthy, high-speed chase, and did not injure anyone or damage property. Hoberg’s assertions that he was not in treatment and took responsibility relate to the characteristics of the offender, not the seriousness of the offense, and are not relevant when considering a durational-departure request. *See Solberg*, 882 N.W.2d at 622-23 (instructing district court to consider the factors related to the seriousness of offense, not the offender, in evaluating a request for a durational departure). And Hoberg’s remaining arguments are similarly unpersuasive.

When a defendant’s conduct “fits squarely within” the conduct prohibited by the statute, the offense is not “less serious” than the typical offense. *Rund*, 896 N.W.2d at 534; *Solberg*, 882 N.W.2d at 626-27. A person is guilty of fleeing a police officer when the person uses a motor vehicle to “flee[] or attempt[] to flee a peace officer who is acting in the lawful discharge of an official duty, and the perpetrator knows or should reasonably know the same to be a peace officer[.]” Minn. Stat. § 609.487, subd. 3. To “flee” means “to increase speed, extinguish motor vehicle headlights or taillights, refuse to stop the vehicle, or use other means with intent to attempt to elude a peace officer following a signal given by any peace officer to the driver of a motor vehicle.” *Id.*, subd. 1 (2022). Here,

Hoberg admitted that “officers attempted to . . . pull [him] over” by activating their police lights, but that he “ignored those police officers attempting to pull [him] over” and “continued to drive and tried to avoid being pulled over by the police.” Here, Hoberg’s own admissions establish that his actions fit squarely within the conduct prohibited by the statute. *See Rund*, 896 N.W.2d at 534. Hoberg argues that his crime was less serious than the typical fleeing offense because there were no injuries, damage, or high-speed chase, which are mitigating factors. While these could be mitigating factors, the district court is within its discretion to find that they are not substantial and compelling reasons to depart.

A review of the record shows that the district court evaluated the evidence and the information presented at sentencing and executed a sentence within the presumptive range. We will not disturb a presumptive sentence if “the record shows that the [district] court carefully evaluated all the testimony and information presented,” even if there were grounds that would justify a departure. *State v. Johnson*, 831 N.W.2d 917, 925 (Minn. App. 2013) (quotation omitted), *rev. denied* (Minn. Sept. 17, 2013). Because this is not the “rare case” requiring reversal, *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981), we conclude that the district court did not abuse its discretion by denying Hoberg’s request for a downward durational departure.

Affirmed.