

*This opinion is nonprecedential except as provided by  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  
A24-1735**

State of Minnesota,  
Respondent,

vs.

Kelvin Armando Figueroa-Millan,  
Appellant.

**Filed September 15, 2025  
Affirmed in part and remanded  
Slieter, Judge**

Olmsted County District Court  
File No. 55-CR-23-6791

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

Michael T. Walters, Olmsted County Attorney, James E. Haase, Senior Assistant County Attorney, Rochester, Minnesota (for respondent)

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

Considered and decided by Slieter, Presiding Judge; Frisch, Chief Judge; and Ede, Judge.

**NONPRECEDENTIAL OPINION**

**SLIETER, Judge**

In this appeal of the district court's sentence for second-degree assault, appellant argues that the district court abused its discretion by denying his motion for a downward dispositional departure and imposing restitution without considering his ability to pay.

Because the district court acted within its discretion in imposing the mandatory-minimum sentence, we affirm in part. But because the district court did not expressly consider appellant's ability to pay when awarding restitution, we remand for additional findings.

## **FACTS**

In October 2023, respondent State of Minnesota charged then-18-year-old appellant Kelvin Armando Figueroa-Millan with second-degree assault with a dangerous weapon in violation of Minn. Stat. § 609.222, subd. 1 (2022), and reckless discharge of a firearm in violation of Minn. Stat. § 609.66, subd. 1a(a)(3) (2022). Figueroa-Millan entered a guilty plea to the second-degree assault charge, and the state agreed to dismiss the remaining charge.

During Figueroa-Millan's guilty-plea colloquy, he testified that he was at the Olmsted County fairgrounds in September 2023 when he "got into an altercation with another group of people" and engaged in a fight. Figueroa-Millan explained that he approached the victim, they separated, and then he "fired three shots at him[,] [t]owards him, not at him, towards him." Figueroa-Millan admitted that the "victim in this case was actually walking away" and "the fight had kind of broken up" at the time he fired the three shots. The district court accepted his plea.

Prior to sentencing, Figueroa-Millan moved the district court for a downward dispositional departure. In support of his motion, Figueroa-Millan noted that he was raised in a New Jersey community which involved "a constant environment of violence, where guns were just accepted and commonly held and used by multiple people." Figueroa-Millan asserted that his age, his plan to obtain his GED, his full-time

employment, and his lack of criminal history made him “particularly amenable to probation.” The state opposed the dispositional departure based on the severity of the crime and that Figueroa-Millan was “unapologetic” for the offense.

The district court indicated that it considered the presentence investigation report (PSI) along with the sentencing worksheet, Figueroa-Millan’s memorandum supporting the downward dispositional departure, the victim impact statement, and the parties’ arguments for and against the motion. The district court denied the departure motion, explaining that “this was a very dangerous offense,” that Figueroa-Millan “got this gun illegally,” that he “shot [the] gun multiple times into a group of people,” and that, “with this record,” it did “not see[] substantial and compelling reasons to depart.”

The district court imposed the mandatory-minimum sentence of 36 months’ imprisonment and ordered restitution in the amount of \$1,532.44.

Figueroa-Millan appeals.

## **DECISION**

### **I. The district court acted within its discretion by denying a downward dispositional departure.**

Figueroa-Millan asserts that the district court failed to fully consider the *Trog* factors in denying his motion for a downward dispositional sentencing departure. *See State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). Specifically, Figueroa-Millan argues that the district court relied on the facts of the offense without considering his characteristics as the offender. He claims that his youth, lack of criminal history, remorse, attitude, cooperation, and motivation to reform support a dispositional departure.

Figueroa-Millan’s conviction of second-degree assault with a dangerous weapon carries a mandatory-minimum sentence of 36 months in prison. *See* Minn. Stat. § 609.11, subds. 5(a) (2022), 9 (Supp. 2023). A departure from a mandatory-minimum sentence is a departure under the Minnesota Sentencing Guidelines and is appropriate only “if the court finds substantial and compelling reasons to do so.” *Id.*, subd. 8(a) (2022). Substantial and compelling circumstances are those “that distinguish a case and overcome the presumption in favor of a guidelines sentence.” *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014). The presence of a mitigating factor, however, does not require that a district court depart. *State v. Pegel*, 795 N.W.2d 251, 253-54 (Minn. App. 2011). And departures “are discouraged and are intended to apply to a small number of cases” because “[t]he sentencing guidelines seek to maintain uniformity, proportionality, rationality, and predictability in sentencing of felony crimes.” *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016) (quotation omitted). We review a district court’s decision regarding whether to grant a sentencing departure for an abuse of discretion and will reverse the decision to impose the presumptive sentence only in a “rare” case. *State v. Musse*, 981 N.W.2d 216, 220 (Minn. App. 2022) (quotation omitted), *rev. denied* (Minn. Dec. 28, 2022).

A dispositional sentencing departure “typically focuses on characteristics of the defendant.” *Solberg*, 882 N.W.2d at 623. “[A] defendant’s *particular* amenability” to probation may warrant a departure from a presumed prison sentence. *Soto*, 855 N.W.2d at 308 (quotation omitted). Mere amenability to probation is insufficient; the defendant must be amenable to probation in a way that “distinguishes [the defendant] from most others and truly presents the substantial and compelling circumstances that are necessary to justify a

departure.” *Id.* at 308-09 (quotation omitted). Factors that may indicate particular amenability to probation include “age, . . . prior record, . . . remorse, . . . cooperation, . . . attitude while in court, and the support of friends and/or family.” *Trog*, 323 N.W.2d at 31. However, 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).

A review of the record demonstrates that the district court considered the circumstances for and against departure before imposing the mandatory-minimum sentence. The district court stated that it reviewed all the relevant material in the record, including the departure motion, the dispositional advisor’s memorandum in support of the departure request, the PSI, the sentencing worksheet, and the parties’ arguments for and against departure. *See Pegel*, 795 N.W.2d at 255 (“A reviewing court may not interfere with the sentencing court’s exercise of discretion, as long as the record shows the sentencing court carefully evaluated all the testimony and information presented before making a determination.” (quotation omitted)).

The district court explained that it agreed with aspects of Figueroa-Millan’s request for downward departure by stating: “There’s a lot of statistics, in the dispositional memorandum that [Figueroa-Millan’s counsel’s colleague] wrote, and I agree with everything in there. You know, your brain is developing. I don’t think prison does anybody any good.” But the court also recognized that, though Figueroa-Millan was employed at the time of sentencing, he had only been employed for one month and “[t]hat’s not a real great track record for work.” The district court concluded: “[W]ith this record,

I’m just not seeing substantial and compelling reasons to depart. You just haven’t done enough between the offense and now to convince the Court that you really are serious about wanting to change your life.”

As to Figueroa-Millan’s argument that the district court did not explicitly consider all the *Trog* factors, it is not required to do so when denying a dispositional departure motion. Though 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 the appellant’s argument that the district court failed to discuss each of the *Trog* factors and observing that “there is no requirement that the district court must do so”). And, as noted, the district court carefully considered all the arguments for a departure and provided its reasoning for denying the departure.

The district court acted within its discretion by denying Figueroa-Millan’s departure motion.

**II. The district court failed to make the necessary ability-to-pay findings as part of its restitution order.**

“A victim of a crime has the right to receive restitution as part of the disposition of a criminal charge . . . against the offender if the offender is convicted . . . .” Minn. Stat. § 611A.04, subd. 1(a) (2024). “And it is the court’s duty to vindicate a victim’s statutory right to restitution.” *State v. Davis*, 907 N.W.2d 220, 226 (Minn. App. 2018) (quotation omitted), *rev. denied* (Minn. Apr. 17, 2018).

“[Appellate courts] generally review a restitution order for an abuse of the district court’s broad discretion. That discretion, however, is constrained by the statutory requirements set forth in Minn. Stat. § 611A.045 (2020).” *State v. Wigham*, 967 N.W.2d 657, 662 (Minn. 2021) (quotation and citation omitted).<sup>1</sup> Under Minn. Stat. § 611A.045, subd. 1 (2024), the district court, “in determining whether to order restitution and the amount of the restitution, *shall* consider . . . the income, resources, and obligations of the defendant.” (Emphasis added.) “[A] district court fulfills its statutory duty to consider a defendant’s income, resources, and obligations in awarding and setting the amount of restitution when it expressly states, either orally or in writing, that it considered the defendant’s ability to pay.” *Id.* at 664-65.

A review of the record indicates that the district court did not expressly consider Figueroa-Millan’s ability to pay. Despite this, the state claims that the district court accounted for Figueroa-Millan’s ability to pay when discussing the waiver of “any fines, fees and surcharges due to your indigency.” This statement by the district court does not satisfy the statutory requirement for the district court to consider a defendant’s ability to pay prior to ordering restitution. *See State v. Baker*, 20 N.W.3d 897, 900-01 (Minn. App. 2025) (a district court that fails to state, either orally or in writing, that it considered the defendant’s ability to pay abuses its discretion when ordering restitution).

We therefore remand for additional findings regarding Figueroa-Millan’s “ability to pay based on an adequately developed record in accordance with *Wigham*.” *Id.* at 901. We

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<sup>1</sup> Minn. Stat. § 611A.045 (2020) is identical to Minn. Stat. § 611A.045 (2024).

provide no opinion as to whether, once the district court makes findings regarding Figueroa-Millan's ability to pay, restitution is to be ordered.

**Affirmed in part and remanded.**