

*This opinion is nonprecedential except as provided by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
A24-1929**

State of Minnesota,
Respondent,

vs.

Timothy Aaron Fierro,
Appellant.

**Filed October 20, 2025
Affirmed in part, reversed in part, and remanded
Larson, Judge**

Anoka County District Court
File No. 02-CR-22-2711

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

Brad Johnson, Anoka County Attorney, Carl E. Erickson, Assistant County Attorney,
Anoka, Minnesota (for respondent)

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

Considered and decided by Bentley, Presiding Judge; Wheelock, Judge; and Larson,
Judge.

NONPRECEDENTIAL OPINION

LARSON, Judge

Appellant Timothy Fierro challenges the district court's decision to sentence Fierro to a 74-month prison term. On appeal, Fierro argues the district court: (1) abused its discretion when it denied his motion for a downward dispositional departure; (2) abused

its discretion when it implicitly denied his motion for a downward durational departure; and (3) legally erred when it ordered restitution without expressly stating, orally or in writing, that it considered Fierro's ability to pay.

Because the district court did not abuse its discretion when it imposed a guidelines sentence, we affirm in part. But because the district court erred when it ordered restitution without expressly considering Fierro's ability to pay, we reverse in part and remand.

FACTS

On February 4, 2021, Fierro and J.M. (victim) exchanged several text messages regarding victim's interest in purchasing oxycodone. Fierro contacted J.H. (dealer) thinking he might have access to oxycodone. Acting as a facilitator between victim and dealer, Fierro arranged for victim to purchase twenty oxycodone pills from dealer.

On February 6, 2021, police discovered victim deceased in their apartment. Victim was found with a bag containing nineteen pills labeled as oxycodone. Subsequent laboratory testing revealed that these pills contained fentanyl. An autopsy report confirmed that the "toxic effects of fentanyl" caused victim's death.

In May 2022, respondent State of Minnesota charged Fierro with one count of third-degree murder under Minn. Stat. § 609.195(b) (2020) and one count of third-degree sale of a controlled substance under Minn. Stat. § 152.023, subd. 1(1) (2020). At a June 2024 hearing, Fierro entered a straight plea to third-degree murder.¹ Pursuant to a plea

¹ A defendant enters a "straight plea" when they "plead[] guilty to the offense but [do] not enter into any agreement regarding sentencing." *State v. Sanchez-Sanchez*, 879 N.W.2d 324, 327 (Minn. 2016).

agreement, the state dismissed the remaining charge. The district court deferred accepting Fierro's plea until the sentencing hearing.

At a September 2024 sentencing hearing, the district court acknowledged receiving and reviewing the presentence investigation report (PSI) and Fierro's motion to depart. The district court then heard victim-impact statements and arguments from the state and Fierro's counsel. The state requested that the district court impose the 86-month presumptive prison term. Fierro's counsel moved for a downward dispositional departure or, in the alternative, a downward durational departure. Fierro's counsel argued that Fierro was particularly amenable to probation and that his conduct was significantly less serious than a typical third-degree murder. The district court then heard from Fierro, who apologized for arranging the sale but attempted to minimize his role by stating he "just told [victim] about [the pills]" and he "didn't sell" or "give" the pills to victim.

The district court denied the departure motion. In doing so, the district court determined there were "no grounds to depart in this case" and it could not "find [Fierro] amenable to treatment." As the district court explained, it deferred accepting Fierro's guilty plea to allow him to seek treatment or complete a chemical-use assessment. The district court noted that Fierro had failed to do either between the plea hearing and sentencing hearing. The district court then accepted Fierro's guilty plea and sentenced him to a 74-month prison term, the bottom of the presumptive guidelines range.

At the sentencing hearing, the state requested restitution. The district court left the restitution issue open for thirty days following the sentencing hearing. On October 30, 2024, the district court entered an order for restitution in the amount of \$12,077.15.

Fierro appeals.

DECISION

On appeal, Fierro challenges the district court's sentencing decision and decision to order restitution. We address Fierro's arguments related to the two decisions below.

I.

Fierro first challenges the district court's decision to sentence him to a prison term at the bottom of the presumptive guidelines range. Specifically, Fierro argues the district court abused its discretion when it denied his motion for a downward dispositional departure and implicitly denied his motion for a downward durational departure.

We review a district court's decision to impose a presumptive sentence for an abuse of discretion and will reverse that decision “[o]nly in a ‘rare’ case.” *State v. Olson*, 765 N.W.2d 662, 664 (Minn. App. 2009) (quoting *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981)). When “the record shows the [district] court carefully evaluated all the testimony and information presented before making a determination,” we “may not interfere with the [district] court's exercise of discretion.” *State v. Van Ruler*, 378 N.W.2d 77, 80-81 (Minn. App. 1985). A district court need not explain why it imposed a presumptive sentence when the record reflects that “the [district] court consider[ed the] reasons for departure but elect[ed] to impose the presumptive sentence” instead. *Id.* at 80.

The Minnesota Sentencing Guidelines establish presumptive sentencing ranges to “maintain uniformity, proportionality, rationality, and predictability in sentencing.” Minn. Stat. § 244.09, subd. 5 (2024). Therefore, “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 a presumptive sentence only if there are “identifiable, substantial, and compelling circumstances to support a departure.” Minn. Sent’g Guidelines 2.D.1 (2022). “Substantial and compelling circumstances are those circumstances that make the facts of a particular case different from a typical case.” *State v. Peake*, 366 N.W.2d 299, 301 (Minn. 1985).

With these principles in mind, we address Fierro’s arguments.

A. Downward Dispositional Departure

Fierro challenges the district court’s decision to deny his motion for a downward dispositional departure. “[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.” *Solberg*, 882 N.W.2d at 623. When evaluating whether to grant a downward dispositional departure, a district court “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). This inquiry considers “the defendant as an individual and . . . whether the presumptive sentence would be best for [the defendant] and for society.” *State v. Heywood*, 338 N.W.2d 243, 244 (Minn. 1983).

Here, Fierro argues the district court abused its discretion when it denied his motion for a downward dispositional departure because the record shows that he is particularly amenable to probation. A defendant’s particular amenability to probation may justify a downward dispositional departure. *State v. Soto*, 855 N.W.2d 303, 308-09 (Minn. 2014). District courts typically analyze the *Trog* factors to assess whether a defendant is

particularly amenable to probation, which include the defendant's age, prior criminal record, remorse, cooperation, attitude in court, and support of friends and family. *See State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). But the district court need not analyze every *Trog* factor before imposing a guidelines sentence. *State v. Pegel*, 795 N.W.2d 251, 254 (Minn. App. 2011). And, even if the district court determines a defendant is particularly amenable to probation, it still has the discretion to impose a guidelines sentence. *Olson*, 765 N.W.2d at 664-65.

We are not persuaded that the district court abused its discretion in this case. The record demonstrates that the district court carefully considered the evidence submitted before it imposed a guidelines sentence. The district court stated that it reviewed the PSI, the parties' submissions, the victim-impact statements, and Fierro's statement. The district court then specifically discussed its concern that Fierro had failed to seek treatment or complete a chemical-health assessment between the plea hearing and sentencing hearing. The district court also noted that Fierro did not take full responsibility for his crime, given his attempt to minimize his role in victim's death. We, therefore, conclude the district court appropriately exercised its discretion when it denied Fierro's motion for a downward dispositional departure.

B. Downward Durational Departure

Fierro also challenges the district court's decision to implicitly deny his motion for a downward durational departure. A downward durational departure occurs when the district court "departs in length from the presumptive guidelines range." *Solberg*, 882 N.W.2d at 623. "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). When deciding whether to grant a motion for a downward durational departure, the district court evaluates the “factors that reflect the seriousness of the offense, not the characteristics of the offender.” *Id.* at 623.

Fierro asserts that the district court abused its discretion because it did not affirmatively deny his motion for a downward durational departure. The state counters that the district court considered the facts and circumstances in Fierro’s case and was not required to state the reasons for imposing a guidelines sentence. We agree with the state.

Even though the district court did not explicitly deny Fierro’s motion for a downward durational departure, the record reflects that the district court considered all of Fierro’s argument and then exercised its discretion to impose a guidelines sentence. At the sentencing hearing, Fierro argued that his offense was “different than the typical case” because he was a “facilitator” rather than a dealer and he “certainly didn’t know that [dealer] was surreptitiously selling fentanyl.” Fierro claimed that although being a “facilitator” does not absolve him from criminal liability, “it certainly mitigate[d] his culpability.” Thereafter, the district court imposed a sentence within the guidelines range, emphasizing that Fierro was the connection between victim and the fentanyl—despite Fierro’s attempts to minimize his role in victim’s death. The record, therefore, demonstrates the district court reviewed the record, listened to the arguments of counsel

and Fierro’s statement, and then decided to impose a presumptive sentence.² *See State v. Hoberg*, No. A24-1637, 2025 WL 2205670, at *5 (Minn. App. Aug. 4, 2025) (affirming on similar grounds where district court did not explicitly deny motion for downward durational departure).³

Fierro disagrees, arguing our decisions in *State v. Curtiss*, 353 N.W.2d 262 (Minn. App. 1984), and *State v. Mendoza*, 638 N.W.2d 480 (Minn. App. 2002), require a different result. In *Curtiss*, we remanded for resentencing when the district court failed to exercise its discretion because it ignored factors that supported a 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.

We are not persuaded that either case requires a different result in this case. Here, the district court considered Fierro’s departure request in light of the record before imposing a sentence within the guidelines range. While the district court could have provided more explanation, we do not require a district court to provide analysis or explanation for its decision when it “considers reasons for departure but elects to impose”

² Fierro argues his conduct was significantly less serious than that typically involved in the commission of the offense. But even if we agreed with Fierro’s argument, the district court was under no obligation to depart from the guidelines range. *See Pegel*, 795 N.W.2d at 253-54 (stating that “the mere fact that a mitigating factor is present in a particular case does not obligate the court to . . . impose a shorter term than the presumptive term” (quotation omitted)).

³ This opinion is nonprecedential and, therefore, not binding. We cite nonprecedential opinions only as persuasive authority. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c).

a sentence within the guidelines range. *Van Ruler*, 378 N.W.2d at 80; *see also Pegel*, 795 N.W.2d at 255 (discerning no abuse of discretion when record shows district court “carefully evaluated all the testimony and information presented before making a determination” (quotation omitted)). Because the district court considered all the information and testimony presented before imposing a guidelines sentence, we conclude the district court did not abuse its discretion when it implicitly denied Fierro’s motion for a downward durational departure.

II.

Fierro next challenges the district court’s decision to order restitution. Specifically, Fierro argues the district court erred when it ordered restitution without expressly stating, either orally or in writing, that it considered Fierro’s ability to pay. We review this issue *de novo*. *See State v. Wigham*, 967 N.W.2d 657, 662 (Minn. 2021).

A district court must comply with the requirements set forth in Minn. Stat. § 611A.045 (2024) when ordering restitution. *Id.* Under section 611A.045, subdivision 1(a), a district court must consider “the income, resources, and obligations of the defendant” before deciding whether ordering restitution is appropriate. “[A] district court fulfills its statutory duty . . . when it expressly states, either orally or in writing, that it considered the defendant’s ability to pay.” *Wigham*, 967 N.W.2d at 664-65.

Here, the district court failed to fulfill its statutory duty to expressly consider Fierro’s income, resources, and obligations before ordering him to pay restitution. Nowhere in the sentencing transcript did the district court consider Fierro’s ability to pay restitution. The district court did not hold a restitution hearing, so there was no additional

opportunity for the district court to make an oral record. Furthermore, the restitution order did not include any written statements indicating the district court considered Fierro's ability to pay. Therefore, as the state concedes, the district court failed to fulfill its statutory obligation under section 611A.045, subdivision 1(a), to expressly consider Fierro's ability to pay before ordering restitution.

For this reason, we reverse and remand the district court's restitution decision. In considering restitution on remand, the district court may in its discretion reopen the record and order an updated PSI to include information on Fierro's income, resources, and obligations. As a result, we need not consider whether this record contains sufficient information about Fierro's income, resources, and obligations to allow the district court to consider his ability to pay.

Affirmed in part, reversed in part, and remanded.