

*This opinion is nonprecedential except as provided by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
A24-1932**

State of Minnesota,
Respondent,

vs.

David Choe Johnson,
Appellant.

**Filed August 25, 2025
Affirmed
Bjorkman, Judge**

Hennepin County District Court
File No. 27-CR-23-4217

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

Mary F. Moriarty, Hennepin County Attorney, Matthew D. Hough, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Maxwell Shek, Shek Law LLC, Minneapolis, Minnesota (for appellant)

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

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant challenges his mitigated prison sentence for criminal vehicular homicide, arguing that the district court abused its discretion by declining to depart dispositionally because it failed to consider offense-related factors. We affirm.

FACTS

Appellant David Choe Johnson pleaded guilty to criminal vehicular homicide for causing the death of E.P. while driving with an alcohol concentration of more than 0.08. In exchange for Johnson's guilty plea, respondent State of Minnesota agreed to recommend a downward durational departure to a sentence of 36 months' imprisonment and that Johnson could request a downward dispositional departure. Johnson participated in a presentence investigation (PSI) and probation staff recommended a stayed 48-month sentence.

Johnson moved for a downward dispositional departure. In a supporting memorandum, he argued that his offense was less severe than a typical criminal-vehicular-homicide offense because his alcohol concentration was less than typical; he showed remorse after the accident; and the victim had significant, preexisting health conditions that contributed to his death. Johnson pointed out that he completed substance-abuse treatment after the offense, and asserted that his age, remorse, cooperation, attitude, and criminal history make him particularly amenable to probation.

At the sentencing hearing, the district court acknowledged that it had reviewed the PSI report and Johnson's departure motion and supporting memorandum. It received impact statements from two of E.P.'s sisters and heard arguments from the prosecutor and defense counsel. Johnson's counsel maintained that a dispositional departure was warranted because (1) the offense was less severe than typical, noting that Johnson was not driving to or from a bar at the time of the accident; (2) E.P.'s preexisting health conditions contributed to his death; (3) Johnson stayed at the accident scene until police arrived; and

(4) Johnson expressed concern for the victim throughout the investigation. Defense counsel also argued that Johnson “has the environment necessary for him to sustain long-term sobriety.” The prosecutor argued for a downward durational departure to 36 months in prison based on the parties’ agreement and Johnson’s acceptance of responsibility. But they opposed Johnson’s dispositional-departure motion, noting that his admission of guilt and decision to remain at the scene to render aid were “offense-based characteristic[s]” that “do not justify” a downward dispositional departure.

The district court denied Johnson’s request for a downward dispositional departure, instead imposing the agreed-to 36-month prison sentence.

Johnson appeals.

DECISION

The Minnesota Sentencing Guidelines establish presumptive sentences for felony offenses. Minn. Stat. § 244.09, subd. 5 (2022). The guidelines seek to “maintain uniformity, proportionality, rationality, and predictability in sentencing.” *Id.* A district court generally must impose the presumptive sentence. Minn. Sent’g Guidelines 2.D.1 (2022). It has discretion to depart from the presumptive sentencing disposition or duration if “identifiable, substantial, and compelling circumstances” support a departure. *Id.* If such circumstances exist, a district court may—but is not required to—depart from the presumptive sentence. *Wells v. State*, 839 N.W.2d 775, 781 (Minn. App. 2013), *rev. denied* (Minn. Feb. 18, 2014). We afford district courts “great discretion in the imposition of sentences.” *State v. Soto*, 855 N.W.2d 303, 307 (Minn. 2014) (quotation omitted).

“A durational departure must be based on factors that reflect the seriousness of the offense, not the characteristics of the offender.” *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016) (emphasis omitted). “A downward durational departure is justified when a defendant’s conduct was significantly less serious than that typically involved in the commission of the offense.” *Id.* at 625 (quotation omitted).

A dispositional departure is typically focused on “characteristics of the defendant,” *id.* at 623, but a district court may consider offense-related factors when determining whether to grant a dispositional departure, *State v. Walker*, 913 N.W.2d 463, 468 (Minn. App. 2018). A defendant’s particular amenability to probation is a mitigating circumstance that may support a dispositional departure. Minn. Sent’g Guidelines 2.D.3.a(7) (2022); *State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006). Mere amenability is not sufficient; “requiring a defendant to be *particularly* amenable to probation . . . distinguishes the defendant from most others and truly presents the substantial and compelling circumstances that are necessary to justify a departure.” *Soto*, 855 N.W.2d at 308-09 (quotation omitted).

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 considered reasons for departure. *State v. Curtiss*, 353 N.W.2d 262, 263 (Minn. App. 1984); *see State v. Johnson*, 831 N.W.2d 917, 925 (Minn. App. 2013) (stating “the district court is not required to explain its reasons for imposing a presumptive sentence”), *rev. denied* (Minn. Sept. 17, 2013). We will not reverse the district court’s refusal to depart “as long as the record shows the [district] court carefully evaluated all the

testimony and information presented before making a determination.” *State v. Pegel*, 795 N.W.2d 251, 255 (Minn. App. 2011) (quotation omitted).

Johnson does not challenge the district court’s decision to depart durationally from the presumptive sentencing range of 41 to 57 months’ imprisonment. Minn. Sent’g Guidelines 4.A. (2022). But he argues that the district court abused its discretion because it “refused” to consider offense-related factors in denying his motion for a downward dispositional departure. We are not persuaded.

The record is clear that the district court considered both offender-related and offense-related sentencing factors. During the sentencing hearing, the district court stated that it had reviewed Johnson’s departure motion, supporting memorandum, and the PSI report. And it heard defense counsel’s oral argument. Each of these submissions discussed offense-related factors that could support a dispositional departure.¹ Specifically, Johnson identified his relatively low alcohol concentration, remorse, “attempt[] to render aid to the victim,” and E.P.’s preexisting health conditions as offense-related factors favoring a dispositional departure. In short, the record reflects that the district court exercised its discretion in declining to depart dispositionally.

Moreover, before imposing Johnson’s sentence, the district court expressly referenced both offender-related and offense-related factors:

I do feel that I need to say that there is—this action is a result of Mr. Johnson’s actions. It does not matter how vulnerable a

¹ Johnson also addressed the factors set out in *State v. Trog* to justify a downward dispositional departure. 323 N.W.2d 28, 31 (Minn. 1982). He does not cite these factors on appeal.

victim may or may not have been that contributed to their death.

The fact is that, in this case and many others, that, you know, but for the actions of the defendant in driving and causing this accident. I guess it would only be speculation, but we would believe that . . . [E.P.] would still be here today. So I think that is something that needs to be said based on the comments—the written comments and the comments today.

. . . I had an opportunity to review the report and all of the submissions that were here. And I think, like folks here have said, that there was—a struggle for me sometimes with these cases and coming up with what's right given that there is a death, and in some cases, given that—as I said, most of the time, people don't set out to engage in this criminal activity. And, you know, part of what I look at when I'm trying to figure this out is . . . how this affects the parties on both sides and what actions are taken.

. . . .

The State is correct that most of the factors that were identified by the defense are factors that relate to what we call a durational departure. And that is whether they get less of a sentence than what the [sentencing guidelines] call for, meaning less actual time in prison versus being placed on probation, and not whether or not he should be placed on probation.

. . . .

. . . [B]ased on the information provided to me, I do not find that Mr. Johnson is particularly amenable to probation. And there is information to indicate that he did get involved in treatment; however, it was, in my mind, very late in the process. I don't think that he has demonstrated that he understands the extent of the issues. I don't think that the support group that—or I don't mean AA or that kind of support group, but the support around him, based on the contacts or the collaterals, appreciates what he—what he needs.

Johnson contends that the district court’s statement that “most of the factors that were identified by the defense are factors that relate to what we call a durational departure” reflects a “refusal” to consider offense-related factors. We disagree for two reasons. First, the district court expressly stated that it considered Johnson’s departure motion and the other information submitted in connection with sentencing, and we see no reason not to take the district court at its word.

Second, the statement Johnson points to is consistent with caselaw—a dispositional departure “typically focuses on characteristics of the defendant” and a durational departure “must be based on factors that reflect the seriousness of the offense.” *Solberg*, 882 N.W.2d at 623 (emphasis omitted). Still, the district court specifically addressed Johnson’s arguments that his conduct and E.P.’s preexisting health problems made the offense less serious than a typical criminal vehicular homicide. The court stated that E.P.’s death “is a result of Mr. Johnson’s actions.” And it expressed the difficulty presented by cases like this, observing, “most of the time, people don’t set out to engage in this criminal activity.” The record persuades us that the district court exercised its broad sentencing discretion by weighing offense-related factors to favor a durational departure rather than a dispositional departure. We see no error or abuse of discretion because “[a] court may depart from the presumptive disposition without departing from the presumptive duration, and vice-versa,” and it need not depart even if a mitigating factor is present. Minn. Sent’g Guidelines 2.D.1.a.; *Pegel*, 795 N.W.2d at 253-54.

In sum, Johnson received the sentence that his plea agreement expressly allowed the state to request—a downward durational departure to 36 months in prison. We are not

convinced that the district court abused its discretion by declining to also depart dispositionally or that this is the rare case in which we would disturb a sentence imposed consistent with the applicable guidelines disposition. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981) (holding that appellate courts will rarely disturb a district court's refusal to depart).

Affirmed.