

*This opinion is nonprecedential except as provided by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
A25-0607**

State of Minnesota,
Respondent,

vs.

Cherry Lynn Osborne,
Appellant.

**Filed February 2, 2026
Affirmed
Smith, Tracy M., Judge**

Cass County District Court
File No. 11-CR-24-949

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

Benjamin T. Lindstrom, Cass County Attorney, Chelsea Langton, Assistant County
Attorney, Walker, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sara J. Euteneuer, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Slieter, Presiding Judge; Smith, Tracy M., Judge; and
Harris, Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

Appellant Cherry Lynn Osborne appeals from the judgment of conviction for
attempted first-degree drug sale, arguing that the district court abused its discretion in
denying her motion for a downward dispositional sentencing departure. We affirm.

FACTS

In July 2024, respondent State of Minnesota charged Osborne with first-degree sale of a controlled substance (over 17 grams of methamphetamine), in violation of Minnesota Statutes section 152.021, subdivision 1(1) (2024), based on a report that law enforcement recovered 907 grams of methamphetamine from Osborne's vehicle following a traffic stop. Pursuant to a plea agreement, Osborne pleaded guilty to an amended count of first-degree attempted sale of a controlled substance. At the plea hearing, Osborne admitted that she drove to the Twin Cities to pick up methamphetamine, that she was the primary person who made the arrangements, that the police found two pounds of methamphetamine in her vehicle, and that she intended to distribute or sell the methamphetamine.

A presentence investigation was conducted and a report filed before sentencing. The report addressed Osborne's income, childhood, mental and physical health, chemical use, treatment, and sobriety.

Osborne moved for a downward dispositional departure based on particular amenability to probation and treatment. At the sentencing hearing, her counsel argued that Osborne's history, characteristics, and rehabilitative potential warranted a probationary sentence. Osborne testified, expressing her remorse and describing her commitment to chemical-dependency treatment. The district court denied Osborne's motion and sentenced her to 28 months' imprisonment—the bottom of the presumptive range of imprisonment for 28 to 39 months. Osborne appeals, seeking reversal and remand for resentencing with a downward dispositional departure.

DECISION

Appellate courts review a district court's decision whether to grant a sentencing departure for an abuse of discretion. *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014). "A 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). "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." *State v. Pegel*, 795 N.W.2d 251, 255 (Minn. App. 2011) (quotation omitted).

The Minnesota Sentencing Guidelines establish presumptive sentences for felony offenses. Minn. Stat. § 244.09, subd. 5 (2024). Reasons to depart from the presumptive range must be "substantial, and compelling." Sent'g Guidelines 2.D.1 & cmt. 2.D.103 (Supp. 2023). Departures from sentencing 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). The sentencing guidelines outline a nonexclusive list of factors that courts may consider in deciding whether to depart from a presumptive sentence. Minn. Sent'g Guidelines 2.D.3.a (Supp. 2023). But appellate courts "will not ordinarily interfere with a sentence falling within the presumptive sentence range, either dispositionally or durationally, even if there are grounds that would justify departure." *State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006) (quotation omitted). A district court's refusal to depart from the presumptive sentence would warrant reversal only in a "rare case." *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

One mitigating factor is whether a person is “particularly amenable to probation.” Minn. Sent’g Guidelines 2.D.3.a(7). Particular amenability to probation can be demonstrated by factors such as the defendant’s age, prior record, remorse, cooperation, and attitude in court, and the support of friends and family. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). A district court may also consider whether a “defendant is particularly unamenable to incarceration and particularly amenable to individualized treatment in a probationary setting.” *State v. Wright*, 310 N.W.2d 461, 462 (Minn. 1981). In deciding whether to grant a downward dispositional departure, a district court considers “the defendant as an individual and [focuses] on whether the presumptive sentence would be best for [the defendant] and for society.” *State v. Heywood*, 338 N.W.2d 243, 244 (Minn. 1983).

In denying Osborne’s motion and sentencing her to the presumptive executed sentence, the district court stated:

When looking at this case, some of the things that strike me is the level of your culpability, meaning your level of blame in the overall offense, and I find you to be highly culpable, ma’am, and that cannot be overlooked.

One of the biggest, if not the biggest, issue that people in this part of the state, this part of the country, all of the United States have is the use of methamphetamine and associated drugs such as fentanyl, and you’re a drug dealer, ma’am. You’re not just an addict, you’re a drug dealer. You were making multiple trips back and forth to the metro area to pick up drugs “to make money” is what you said.

And this is one of the largest amounts of controlled substances, methamphetamine, that I have seen somebody possess with intent to distribute. . . .

I think to—and I certainly commend you on completing treatment, and obviously that’s something that you need to do for yourself, but I simply cannot overlook the fact that you’ve already received a huge break, a huge break, by the state agreeing to allow you to plead guilty to an attempt, which cuts everything in half. . . . Taking into account the progress that you made, I am going to commit you to the Commissioner of Corrections of the State of Minnesota for a period of 28 months. . . . I think to sentence otherwise would seriously diminish the severity level of the offense and is not consistent with your culpability and the part you played in committing this offense.

Osborne argues that the district court abused its discretion. She contends that the *Trog* factors demonstrate her particular amenability to probation because she was remorseful and cooperative, completed a 90-day treatment program, was engaged in aftercare programming, and had been maintaining sobriety for seven months. She also argues that she is particularly unamenable to incarceration given her physical-health problems. And she contends that the district court erred by focusing on the broader impact of drugs in the community rather than on her specific circumstances. We address her arguments factor-by-factor.

Age

Osborne argues that her age (58 years old at the time of the incident and sentencing) makes her particularly amenable to probation. To support her argument, she cites *State v. Hickman*, in which we affirmed the district court’s downward dispositional departure. 666 N.W.2d 729, 733 (Minn. App. 2003). But Osborne advances no specific argument as to *why* her age makes her particularly amenable to probation, other than stating that she is

nearly the same age as the 59-year-old defendant convicted of tax evasion in *Hickman*. *Id.* at 732.

Moreover, though in *Hickman* we cited the defendant's age (along with other factors) as support of the district court's conclusion that he was particularly amenable to probation, the *Trog* factor of age is more commonly relied upon when a defendant is young and immature. *See Trog*, 323 N.W.2d 28, 30-31 (noting that defendant's young age supported a departure); *State v. Patton*, 414 N.W.2d 572, 575 (Minn. App. 1987) (upholding a departure where the district court cited a defendant's immaturity and young age—19 years old—as a reason for departure). In *State v. Soto*, the supreme court rejected the district court's determination that the fact that the defendant was “‘only’ 37 years old” made him particularly amenable to probation when the district court's “only explanation for its conclusion was that [the defendant] was young enough that he still ‘ha[d] an opportunity to correct [his] behavior,’” noting “if that reasoning applies to a 37-year-old, it is difficult to see which defendants it would not reach.” 855 N.W.2d 303, 310 (Minn. 2014). Similarly, here, Osborne has not explained why her age makes her particularly amenable to probation in a way that differentiates her from most other defendants.

Prior Record

Osborne points to her criminal-history score of zero as evidence of her amenability to probation. Though a defendant's prior record is a consideration, “a defendant's clean record does not by itself justify mitigation of sentence because that factor, in the form of defendant's criminal history score, has already been taken into account by the sentencing

guidelines in establishing the presumptive sentence.” *Trog*, 323 N.W.2d at 31. Osborne’s criminal history was therefore taken into account.¹

Remorse

Osborne argues that the *Trog* factor of remorse weighs in favor of dispositional departure because she has consistently expressed remorse and has demonstrated her motivation to change, maintained sobriety, and tested negative for drug use. At the sentencing hearing, Osborne asked for forgiveness and stated she understands “the extremity of it.” The PSI report noted that Osborne “reiterated several times during the PSI interview that she is sorry and made a mistake.” The state acknowledges that Osborne was cooperative throughout the process but argues that Osborne minimized her role in the crime, noting that at the sentencing hearing she referred to her conduct as a “mishap that I got into.” The district court heard these arguments at the sentencing hearing and considered them in determining whether to depart.

Cooperation and Attitude in Court

Osborne argues, and the state agrees, that Osborne was cooperative throughout the proceedings and pretrial probation. Before announcing Osborne’s sentence, the district court explicitly stated that, in making its sentencing determination, it considered the progress Osborne had made.

¹ The district court also noted that the parties’ plea agreement allowed Osborne to plead guilty to an attempt, rather than to a completed crime, which cut her presumptive sentence in half.

Support of Friends and Family

Osborne points to the community support that she receives through aftercare programming and her peer recovery specialist, who submitted a letter on her behalf stating that Osborne has “continued sobriety” and “has proven to do what she says she is going to do.” The record shows that the district court heard and considered evidence about Osborne’s family and community support.

Particular Unamenability to Incarceration

Osborne also argues that she is particularly unamenable to incarceration, citing her poor health and lack of incarceration history. In deciding whether to depart, a court may consider whether a “defendant is particularly unamenable to incarceration and particularly amenable to individualized treatment in a probationary setting.” *Wright*, 310 N.W.2d at 462. The district court considered and acknowledged Osborne’s success in a residential treatment setting while she was awaiting her hearing and sentencing.

Community Needs and Seriousness of the Crime

Osborne argues that the community and Osborne’s needs could be addressed through her probation and contends that “the district court erred in focusing on wide-ranging social issues” rather than Osborne’s particular circumstances. Osborne takes issue with the district court’s comments quoted above describing the impact of methamphetamine locally and nationally and the large amount of the drug that Osborne had and intended to distribute.

The argument is unpersuasive. The district court recognized Osborne’s progress in treatment but was not obligated to conclude that probation would be better for the

community. And regarding the seriousness of Osborne’s offense and her culpability, as Osborne recognizes, when considering a motion for a downward dispositional departure, “a district court may consider both offender- and offense-related factors.” *State v. Walker*, 913 N.W.2d 463, 468 (Minn. App. 2018). Here, the district court appropriately considered both Osborne’s personal characteristics as well as the community harm that stems from the sale of drugs and the very large amount of drugs that Osborne intended to sell.

The record makes clear that the district court carefully evaluated the testimony and information before making its determination. We discern no abuse of discretion in the district court’s denial of Osborne’s departure motion.

Affirmed.