

*This opinion is nonprecedential except as provided by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
A25-0653**

State of Minnesota,
Respondent,

vs.

Aaron Joseph Jesmer,
Appellant.

**Filed March 30, 2026
Affirmed
Smith, Tracy M., Judge**

Dakota County District Court
File No. 19HA-CR-23-442

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

Kathryn M. Keena, Dakota County Attorney, Beth Beaman, Assistant County Attorney,
Hastings, Minnesota (for respondent)

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

Considered and decided by Smith, Tracy M., Presiding Judge; Wheelock, Judge;
and Halbrooks, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this direct appeal from the judgment of conviction for first-degree assault, appellant Aaron Joseph Jesmer argues that the district court abused its discretion by denying his motion for a downward dispositional sentencing departure because he demonstrated a particular amenability to probation. Because we discern no abuse of discretion, we affirm.

FACTS

Jesmer, who had been a career military member at the time of the offense, pleaded guilty to assault in the first degree (great bodily harm), admitting that on August 30, 2020, he severely injured his foster child, M.B., leaving M.B. with injuries that initially rendered him comatose and in need of extensive surgeries and now require ongoing medical care. Jesmer admitted that, while he was drinking alcohol and playing with M.B. around the backyard swimming pool, he tossed M.B. into the air multiple times, knowing that M.B. had hit his head and body on the side of the pool multiple times. The state argued for a presumptive 86-month prison sentence. Jesmer moved for a downward dispositional departure, arguing that he was particularly amenable to probation and treatment, was remorseful, and had been cooperative with the legal process. He also argued that probation was the appropriate sentence because it “[would meet] the needs of [M.B.] and the government’s interest in retribution” and that a prison sentence would be “disproportionately punitive,” in part because, based on the incident, he had already been

convicted of aggravated assault in a court-martial under the military justice system and been sentenced to probation and a discharge from the military for “bad conduct.”

At the sentencing hearing, the district court heard Jesmer’s prepared statement. Jesmer said that he had a “deep and heartfelt sorrow” for what he did; described his own life history, including the steps that he and his spouse had taken to prepare to foster and adopt; spoke of the challenges of caring for M.B. and M.B.’s brother, who was also his foster child; and described how the incident had prevented him and his spouse from adopting a child. The district court also considered a presentence investigation report (PSI) and a court-ordered psychological evaluation, which recommended that Jesmer access four types of services: (1) primary-care services, (2) substance-misuse services, (3) individual psychotherapy services, and (4) domestic-violence services. The district court questioned Jesmer’s counsel to determine to what extent Jesmer was following those recommendations. It also reviewed two victim-impact statements that detailed the ongoing physical and emotional damage that M.B. was suffering, making it difficult for him to perform basic daily living skills.

The district court then denied Jesmer’s motion for a downward departure and sentenced him to 86 months’ imprisonment. The district court explained that it had “read absolutely everything that was submitted,” “combed through” the PSI and Jesmer’s memorandum, and “read every single line of every single piece of paper,” but did not find that Jesmer was particularly amenable to probation.

Jesmer appeals.

DECISION

The Minnesota Sentencing Guidelines establish the presumptive disposition and duration of a sentence depending on the severity of the offense and the defendant's criminal history. Minn. Sent'g Guidelines 1.A, 2.C.1 (2020). A district court has discretion to depart from the presumptive disposition or duration only if "identifiable, substantial, and compelling circumstances" justify a departure. Minn. Sent'g Guidelines 2.D.1 (2020). But departures "are discouraged and are intended to apply to a small number of cases." *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016). Appellate courts review sentencing decisions for an abuse of discretion and will reverse a district court's decision to depart only in a "rare" case. *State v. Walker*, 913 N.W.2d 463, 468 (Minn. App. 2018).

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). A defendant's particular amenability to probation may warrant a departure from a presumed prison sentence. *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014). Mere amenability to probation does not suffice; the defendant must be particularly amenable to probation in a way that "distinguishes [them] from most others and truly presents the substantial and compelling circumstances that are necessary to justify a departure." *Id.* at 308-09. Factors that may indicate particular amenability to probation include age, prior record, remorse, cooperation, attitude while in court, and the support of friends or family. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982) (articulating factors now referred to as "*Trog* factors"). However, a district court is not required to depart "from a

presumptively executed prison sentence, even if there is evidence in the record that the defendant would be amenable to probation.” *State v. Olson*, 765 N.W.2d 662, 663 (Minn. App. 2009)

Jesmer argues that the district court abused its discretion by determining that there were no substantial or compelling reasons to support a downward dispositional departure. Jesmer contends, first, that the *Trog* factors applicable to his case weigh in favor of a departure and, second, that a prison sentence would not be best for him or society because it would prevent him from following the rehabilitation recommendations from the psychological evaluation.

Particular Amenability to Probation

Jesmer contends he is particularly amenable to probation under all of the *Trog* factors with the exception of the factor of age, which is “neutral with regard to particular amenability.” He argues specifically that the district court did not consider his lack of criminal history and “gave little credence to his remorse and acceptance of responsibility in denying the departure request.” But the record shows that the district court considered Jesmer’s criminal history by reviewing the PSI, asked questions to ascertain whether Jesmer was following the recommendations of the psychological evaluation, and considered whether Jesmer was remorseful, determining that he was not.

When sentencing Jesmer, the district court explained:

All of your comments are all about how this has affected you, and I don’t think you still even grasp what you did. I don’t think you’ve read what the injuries are. I just don’t think that you grasp what has happened, because if you did, you would be following the recommendations of professionals when they tell

you that you need therapy, treatment, domestic counseling. And you've done none of those things. . . .

I just simply do not find that you are particularly amenable to probation. And when I say that I've read through everything line by line, it's because I'm trying to find a way to get there, and I can't. . . .

And so when you say that it was overwhelming and it was the system's fault because the system just gave these kids to you . . . , that's, again, you passing the blame to somebody else, sir.

And you're not going to ever be particularly amenable to probation if you can't follow the factors of remorse; acceptance of responsibility, which I do not feel that you have done; availing yourself of treatment; listening to probation, probation officers, professionals. You haven't done any of those things, sir.

“[A] reviewing court must defer to the district court's assessment of the sincerity and depth of [the defendant's] remorse and what weight it should receive in the sentencing decision.” *State v. Sejnoha*, 512 N.W.2d 597, 600 (Minn. App. 1994), *rev. denied* (Minn. Apr. 21, 1994). Here, the district court thoroughly explained the basis for its determination, even though it was not obligated to do so. *See State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985) (“[A]n explanation is not required when the court considers reasons for departure but elects to impose the presumptive sentence.”). We discern no abuse of discretion by the district court in determining that Jesmer is not particularly amenable to probation.

Consideration of What is Best for Jesmer and Society

Jesmer also contends that a prison sentence is not best for him or society because it would not allow him to follow the psychologist's recommendations for services.

When the district court inquired about Jesmer's compliance with the four recommendations in the psychological evaluation, his attorney explained that he was accessing support through "the on-line LGBT sober communities as well as relationships with his spouse [and] his pets" and that he was participating in counseling when he had financial resources available. Jesmer provided no documentation of his attendance in counseling services beyond what was listed in the PSI, nor did he provide evidence that he had met with a physician or licensed chemical-misuse provider, or that he had engaged at all with domestic-violence services, as recommended. The district court determined that Jesmer had not been following the recommendations and thus had not demonstrated that he was availing himself of treatment. Because Jesmer did not avail himself of the recommended treatment while he was awaiting sentencing, his argument that the district court abused its discretion by not deciding that probation would best serve him and society by allowing him to access services is unconvincing.

We discern no abuse of discretion in the district court's denial of a downward dispositional departure and no basis for concluding that this is the rare case in which we would disturb the district court's imposition of a presumptive sentence.

Affirmed.