

*This opinion is nonprecedential except as provided by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
A25-0879**

State of Minnesota,
Respondent,

vs.

Ricky Allen Severtson,
Appellant.

**Filed March 30, 2026
Affirmed
Wheelock, Judge**

Mower County District Court
File No. 50-CR-23-1298

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

Kristen Nelsen, Mower County Attorney, Scott K. Springer, Assistant County Attorney,
Austin, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Gina D. Schulz, 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NONPRECEDENTIAL OPINION

WHEELLOCK, Judge

Appellant challenges his sentence, arguing that the district court abused its discretion when it denied his motion for a dispositional departure. We affirm.

FACTS

Appellant Ricky Allen Severtson was convicted after pleading guilty to first-degree driving while impaired (DWI) in violation of Minnesota Statutes section 169A.20, subdivision 1(2) (2022), with reference to Minnesota Statutes section 169A.24, subdivision 1 (2022). On June 26, 2023, Severtson was driving in Austin when police observed him drift in his lane and make swift, erratic swerves. Officers conducted a traffic stop and saw that Severtson had bloodshot eyes, spoke rapidly, and was covered in sweat. Severtson agreed to take field sobriety tests, during which he had an increased pulse, his hands were twitching, and he had trouble maintaining his balance. Police arrested Severtson on suspicion of DWI and obtained a search warrant for a blood sample. Severtson's blood sample tested positive for amphetamine and methamphetamine.

At the plea hearing in April 2024, Severtson admitted that the drugs in his system had adversely affected his ability to drive. Severtson also had three prior DWI convictions within the last ten years—in 2020, 2021, and 2022—that caused this DWI charge to be enhanced to a felony. In March 2025, Severtson appeared for sentencing and moved for a downward dispositional departure, requesting a stayed sentence. The motion included a letter from Severtson, a copy of an agreement between Severtson and an ignition-interlock-device company for Severtson's vehicle, and six letters of support from

family and friends describing the positive changes they had seen in Severtson since his last arrest.

Severtson stated that he had participated in intensive outpatient treatment through Veterans Affairs (VA) for a year and continued to see a VA psychiatrist. He asserted that he had not used alcohol or drugs since he was arrested and had no ignition-interlock violations. When asked how he planned to maintain his sobriety, Severtson explained that he is “gonna’ leave the stuff alone” and that he wants to live as long as possible and “dope ain’t gonna’ help.” Severtson explained that he had met with his probation officer as required, had not violated any of his release conditions, and had not failed any urinalysis test given by probation. But when the district court inquired, Severtson was unable to state how many days he had been sober.

Severtson is in his seventies and shared information with the district court about a number of his health issues, explaining that he has leukemia that likely developed as a result of his military service, it is progressing, and he often suffers from complications. He also had a knee surgery that caused issues over the last two years. Severtson stated he had “but one year of good time” left.

Severtson’s sister stated that Severtson had been very ill and was often in the hospital and that she believed he was sober. She stated that she had seen positive improvement in him and did not believe he would survive for very long if he were incarcerated.

The state opposed the departure, arguing that Severtson had not taken responsibility for his actions, pointing to his responses during the presentence investigation when

Severtson questioned the legality of the stop, denied that any illegal chemicals were in his system at the time of his arrest, and alleged that he has been sober since 2021 despite his two DWI convictions since 2021. The state also noted that Severtson had not historically done well on probation, was currently on probation for drug possession and violation of a no-contact order, and continued to struggle with methamphetamine use. Severtson's probation officer recommended that the district court impose a sentence of 54 months. Because Severtson was convicted of a crime with severity-level seven and had a criminal-history score of three, the presumptive sentence was a term of imprisonment ranging from 46 to 64 months. *See* Minn. Sent'g Guidelines 4.A (2022) (sentencing-guidelines grid).

The district court determined that Severtson was not particularly amenable to probation for a number of reasons, including that Severtson did not appear to have many sober supports, he could not tell the court how many days he had been sober, and his attitude reflected that he did not understand why he was being punished for this DWI. The district court acknowledged Severtson's ailing health, observing, "I'm struggling because of the health problems. It's a fifty-four-month sentence, also a life sentence."

Before it denied the departure motion, the district court identified the factors that would support a departure, and then it stated, "So I don't find that there's been a clear and compelling reason based on the factors. I can't depart just 'cause I feel bad about not

doing it.” The district court imposed a bottom-of-the-box sentence of 46 months in prison and five years on conditional release.¹

Severtson appeals.

DECISION

Appellate courts review a district court’s decision not to depart from the sentencing guidelines for an abuse of discretion. *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014). “A district 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.” *State v. Mikell*, 960 N.W.2d 230, 256 (Minn. 2021) (quotation omitted). Because district courts have significant discretion in imposing sentences, appellate courts rarely reverse decisions not to depart from the sentencing guidelines. *State v. Walker*, 913 N.W.2d 463, 468 (Minn. App. 2018).

“The district court must order the presumptive sentence provided in the sentencing guidelines unless substantial and compelling circumstances warrant a departure.” *State v. Pegel*, 795 N.W.2d 251, 253 (Minn. App. 2011) (quotation omitted); *accord* Minn. Sent’g Guidelines 2.D (2022) (stating that a court has discretion to depart from a presumptive sentence only when substantial and compelling circumstances are present). “Substantial and compelling circumstances are those circumstances that make the facts of a particular case different from a typical case.” *State v. Olson*, 765 N.W.2d 662, 664 (Minn. App. 2009) (quoting *State v. Peake*, 366 N.W.2d 299, 301 (Minn. 1985)). “If departure is

¹ “The longest and shortest terms in the presumptive range are commonly called the ‘top of the box’ and the ‘bottom of the box.’” *State v. Morgan*, 968 N.W.2d 25, 28 n.2 (Minn. 2021).

permissible due to compelling circumstances, the [district court] ‘may’ depart.” *State v. Curtiss*, 353 N.W.2d 262, 263 (Minn. App. 1984).

“A dispositional departure places the offender in a different setting than that called for by the presumptive guidelines sentence.” *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016). In considering a motion for dispositional departure, the district court typically focuses on whether a defendant’s characteristics show that the defendant is “particularly amenable to individualized treatment in a probationary setting.” *State v. Wright*, 310 N.W.2d 461, 462 (Minn. 1981). The “defendant’s age, his prior record, his remorse, his cooperation, his attitude while in court, and the support of friends and/or family” are nonexclusive relevant factors that may justify a dispositional departure, known as the *Trog* factors. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982); *see* Minn. Sent’g Guidelines 2.D.3 (listing nonexclusive factors that may be reasons for departure). These are not the only factors that a court may consider when determining whether a defendant is particularly amenable to probation, and a court may decide that not all of these factors are relevant in any given case. *Soto*, 855 N.W.2d at 310.

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.” *Solberg*, 882 N.W.2d at 623 (quotation omitted). Even if there are factors that weigh in favor of a departure, the district court does not abuse its discretion by denying a departure. *See State v. Kindem*, 313 N.W.2d 6, 8 (Minn. 1981) (stating that, “while there may have been arguments for departing downward,” the decision to depart is discretionary). The mere fact that a

mitigating factor is present in a particular case does “not obligate the court to place defendant on probation.” *State v. Wall*, 343 N.W.2d 22, 25 (Minn. 1984). We will affirm the district court’s sentencing decision “as long as the record shows the sentencing court carefully evaluated all the testimony and information presented before making a determination.” *State v. Van Ruler*, 378 N.W.2d 77, 81 (Minn. App. 1985).

Severtson argues that the district court erred by not granting a dispositional departure based on his poor health, and in the alternative, he asks this court to exercise its authority to modify his sentence because it is unreasonable.

In support of his argument based on his poor health, Severtson relies on *State v. Kraft*, in which the supreme court stated that a “conceivable ground” for modifying Kraft’s sentence was his physical condition of having leukemia, although it declined to modify Kraft’s sentence. 326 N.W.2d 840, 842 (Minn. 1982). Severtson also relies on *Wright*, in which the supreme court affirmed a departure when the district court found the defendant would likely be victimized in prison and a different disposition would be better for society. 310 N.W.2d at 462-63. Neither case compels the conclusion that the district court abused its discretion here.

Caselaw supports that a district court may consider factors in addition to the *Trog* factors, which may include a defendant’s physical condition. *Trog*, 323 N.W.2d at 31 (stating that the factors are nonexclusive); *Wright*, 310 N.W.2d at 462 (recognizing that the factors in the sentencing guidelines are nonexclusive). However, a district court is not obligated to depart merely because a mitigating factor is present. *See Kindem*, 313 N.W.2d at 8. *Wright* stands for the proposition that the district court *may* grant a downward

dispositional departure if a defendant has serious health problems; it does not hold that when a defendant has serious health problems, a district court *must* grant a downward dispositional departure. 310 N.W.2d at 462.

The district court considered appropriate factors when it determined that Severtson has not demonstrated he is particularly amenable to probation. It found that Severtson was not taking responsibility for his actions and did not have a reliable plan to remain sober. Moreover, its decision is supported by the record, which shows that Severtson was on probation at the time of this offense, for both drug possession and violation of a no-contact order, and that he had three prior DWI convictions in the three years preceding this offense.

The district court considered Severtson's health conditions, stating, "I'm struggling because of the health problems," but concluding, "I don't find that there's been a clear and compelling reason based on the factors." The district court then observed, "I can't depart just 'cause I feel bad about not doing it." The record reflects that the district court carefully evaluated all the information before it in making its determination; it was not required to find that Severtson's health was a substantial and compelling reason to grant the departure, and it did not abuse its discretion by imposing a sentence within the presumptive range.

Severtson alternatively argues that this court should exercise its authority under Minn. Stat. § 244.11 (2024) and Minn. R. Crim. P. 28.05, subd. 2, or otherwise determine compelling circumstances exist to reverse or modify his sentence because his age, status as a disabled veteran, and cancer diagnosis make his sentence inappropriate and unreasonable. Severtson further contends that there are many less restrictive ways to render him less of a risk to society and asserts that the parties anticipated that he would receive a probationary

sentence but that he did not qualify for sentencing under the veterans' statute, Minn. Stat. § 609.1056 (2022), and his criminal-history score was higher than expected.

Minnesota Statutes section 244.11, subdivision 2(b), states, "On an appeal pursuant to this section, the court may review the sentence imposed or stayed to determine whether the sentence is inconsistent with statutory requirements, unreasonable, inappropriate, excessive, unjustifiably disparate, or not warranted by the findings of fact issued by the district court." Minnesota Rule of Criminal Procedure 28.05, subdivision 2, states the same. *See also State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006) ("Appellate courts may vacate or modify a sentence on many grounds, including that the sentence is unreasonable or inappropriate.").

"This court will generally not exercise its authority to modify a sentence within the presumptive range 'absent compelling circumstances.'" *State v. Delk*, 781 N.W.2d 426, 428 (Minn. App. 2010) (quoting *State v. Freyer*, 328 N.W.2d 140, 142 (Minn. 1982)), *rev. denied* (Minn. July 20, 2010). Only in a "rare" case will a reviewing court reverse the imposition of a presumptive sentence. *Kindem*, 313 N.W.2d at 7.

Severtson cites two cases to persuade us that his sentence is inappropriate and unreasonable: *State v. Hennum*, 441 N.W.2d 793, 801 (Minn. 1989), which reversed a presumptive sentence because the appellant wife's culpability was mitigated when she was subjected to years of brutal abuse by husband and, following another beating, shot and killed him, and *State v. Christianson*, No. A13-0433, 2014 WL 1344203, at *6-7 (Minn. App. Apr. 7, 2014), which reversed a sentencing increase within the presumptive range because courtroom-spectator misconduct that is not attributable to the defendant is a

constitutionally impermissible sentencing consideration. In *Hennum*, the supreme court reduced the appellant's sentence from the presumptive sentence to the sentence recommended in the presentence-investigation report. 441 N.W.2d at 800-01. The supreme court explained that, although the jury found she did not establish self-defense, the appellant's culpability was mitigated under several guidelines factors. *Id.* at 801.

Severtson's case is not analogous to either of the cases he cites. The district court did not sentence him based on unconstitutional considerations, and although he did not qualify for sentencing under the veterans' statute or for probation as the presumptive disposition as he had hoped, these are not factors that render the presumptive sentence inappropriate so as to compel a departure. The sentence imposed—at the low end of the presumptive range—was not “inconsistent with statutory requirements, unreasonable, inappropriate, excessive, unjustifiably disparate, or not warranted.” Minn. Stat. § 244.11, subd. 2(b). This is not the “rare” case in which we will reverse the imposition of a presumptive sentence. *Kindem*, 313 N.W.2d at 7.

Affirmed.