

*This opinion is nonprecedential except as provided by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
A25-1342**

State of Minnesota,
Respondent,

vs.

Donald Arthur Merrill,
Appellant.

**Filed June 22, 2026
Affirmed in part, reversed in part, and remanded
Larkin, Judge**

Otter Tail County District Court
File No. 56-CR-24-941

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

Michelle M. Eldien, Otter Tail County Attorney, Ruth E. Rosengren, Assistant County Attorney, Fergus Falls, Minnesota (for respondent)

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

Considered and decided by Larkin, Presiding Judge; Reyes, Judge; and Bratvold, Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant challenges his conviction for unlawful possession of a firearm, arguing that he should be allowed to withdraw his guilty plea. Alternatively, appellant argues that the district court abused its discretion in ordering restitution and by denying his motion for

a downward dispositional departure. We affirm appellant's conviction and sentence, but we reverse and remand the district court's restitution order for an express statement that the district court considered Merrill's ability to pay restitution as ordered.

FACTS

In April 2024, respondent State of Minnesota charged appellant Donald Arthur Merrill with first-degree burglary, felony theft, possession of burglary tools, and unlawful possession of a firearm. The state alleged that Merrill, who is prohibited from possessing firearms, drove his son to a bar, his son broke into the bar and stole a firearm, and Merrill drove his son away from the bar after the burglary. Merrill's son was criminally charged for his involvement in the burglary in a separate criminal case.

In May 2024, victim R.B. filed a restitution affidavit in Merrill's case seeking \$900, the alleged value of the stolen firearm.

In March 2025, Merrill appeared before the district court with counsel and pleaded guilty to unlawful possession of a firearm. In setting forth a factual basis, Merrill admitted that he took possession of the stolen gun and hid it in his residence. The state dismissed the remaining charges. The district court accepted Merrill's guilty plea and entered a judgment of conviction. Merrill did not submit a petition to plead guilty, and the parties did not discuss the issue of restitution at the plea hearing.

In April 2025, Merrill moved for a downward dispositional departure, arguing that he was particularly amenable to probation. Later, before sentencing, Merrill moved to withdraw his guilty plea. The district court denied Merrill's motion to withdraw his plea, denied his request for a dispositional departure, and sentenced him to serve 60 months in

prison, a presumptive sentence. The district court also ordered Merrill to pay “joint and several” restitution. Specifically, the district court ordered Merrill to pay \$900 in restitution to R.B. based on the affidavit submitted in this case and \$1,393.59 in restitution to victim V.P. based on information submitted in his son’s case. Merrill did not object to or otherwise challenge the restitution order in district court.

Merrill appeals.

DECISION

I.

Merrill contends that the district court erred in denying his motion for plea withdrawal. The Minnesota Rules of Criminal Procedure provide that a court must permit a defendant to withdraw a guilty plea at any time to correct a manifest injustice and that it may permit withdrawal when a motion is made prior to sentencing if it is “fair and just to do so,” giving “due consideration to the reasons advanced by the defendant in support of the motion and any prejudice the granting of the motion would cause the prosecution by reason of actions taken in reliance upon the defendant’s plea.” Minn. R. Crim. P. 15.05, subds. 1, 2. Merrill argues that he is entitled to plea withdrawal under both the fair-and-just and manifest-injustice standards. We address each standard in turn.

Fair-and-Just Standard

We review the denial of a plea-withdrawal motion under the fair-and-just standard for an abuse of discretion. *State v. Raleigh*, 778 N.W.2d 90, 97 (Minn. 2010). “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. Hallmark*, 927 N.W.2d 281, 291 (Minn.

2019) (quotation omitted). “The fair and just standard requires district courts to give due consideration to two factors: (1) the reasons a defendant advances to support withdrawal and (2) prejudice granting the motion would cause the State given reliance on the plea.” *Raleigh*, 778 N.W.2d at 97 (quotations omitted). The defendant “bears the burden of advancing reasons to support withdrawal,” and the state “bears the burden of showing prejudice caused by withdrawal.” *Id.*

Merrill filed a letter in support of his plea-withdrawal motion asserting that, prior to pleading guilty, his attorney showed him video evidence that he previously had not seen, which caused him to panic and commit perjury by pleading guilty.

In denying Merrill’s plea-withdrawal motion, the district court noted the following circumstances: (1) Merrill asked to plead guilty at a hearing originally intended to address motions in limine, (2) Merrill’s trial rights were discussed at that hearing, and he said that he had not been pressured or coerced into pleading guilty, and (3) it was not Merrill’s “first time in court.” The district court stated that nothing showed that Merrill’s guilty plea “was anything but a voluntary plea.” Although the district court noted that the state had not made a “strong argument” regarding prejudice that could have resulted from plea withdrawal, it reasoned that Merrill’s claim that he was surprised by new video evidence was meritless because the probable-cause portion of the charging document mentioned that there was surveillance video from the crime scene. The district court therefore denied Merrill’s motion.

The record supports the district court’s reasoning. As the district court noted, Merrill’s assertion that he pleaded guilty because he was surprised by new video evidence

is undercut by the probable-cause portion of the complaint, which mentioned the surveillance video. It also mentioned law enforcement’s discussions with “an individual” who “confirmed” that Merrill and his son “both arrived home together” after the burglary.

In sum, because Merrill did not advance a substantiated basis for plea withdrawal, the district court did not abuse its discretion in denying his request. *See id.* at 98 (“Given that Raleigh failed to advance substantiated reasons for withdrawal of his plea, we hold that the district court did not abuse its discretion in denying [his] motion to withdraw his guilty plea under the fair and just standard”) (quotation omitted)).

Manifest-Injustice Standard

“At any time the court must allow a defendant to withdraw a guilty plea upon a timely motion and proof to the satisfaction of the court that withdrawal is necessary to correct a manifest injustice.” Minn. R. Crim. P. 15.05, subd. 1. “A manifest injustice exists if a guilty plea is not valid.” *Raleigh*, 778 N.W.2d at 94. “To be constitutionally valid, a guilty plea must be accurate, voluntary, and intelligent.” *Id.* “A defendant bears the burden of showing his plea was invalid.” *Id.* Whether a plea is valid is a question of law that we review de novo. *Id.*

Merrill asserts that he is entitled to plea withdrawal because his guilty plea was unintelligent. “The intelligence requirement ensures that a defendant understands the charges against him, the rights he is waiving, and the consequences of his plea.” *Id.* at 96.

Merrill argues that his guilty plea was unintelligent because he was not informed that he could be ordered to pay restitution. Merrill relies on *State v. Noreen*, in which we remanded for plea withdrawal or resentencing because the district court ordered restitution

that was not bargained-for in the plea agreement. 354 N.W.2d 77, 78-79 (Minn. App. 1984). We stated that a “defendant must understand the consequences of his plea.” *Id.* at 78.

But in a more recent case, *State v. Anderson*, we rejected a claim that a restitution order violated the terms of a plea agreement and therefore required either resentencing or withdrawal of the underlying guilty plea. 507 N.W.2d 245, 246 (Minn. App. 1993), *rev. denied* (Minn. Dec. 22, 1993). Anderson argued that, “because restitution was not discussed or contemplated by the plea agreement,” the restitution order violated the plea agreement. *Id.* at 247. In rejecting that argument, we reasoned that Anderson “should have been aware that the victim might seek and the court might order restitution” because Anderson received a presentence investigation report (PSI) prior to sentencing that recommended restitution, as well as an affidavit itemizing the victim’s losses. *Id.*

Although the possibility of restitution was not mentioned when Merrill pleaded guilty, the record shows that R.B. filed a restitution affidavit with the district court in Merrill’s case—before Merrill pleaded guilty—requesting restitution in the amount of \$900 for a loss resulting from the charged offense. In addition, the PSI in Merrill’s case recommended restitution, including “joint and several restitution” based on his son’s criminal case stemming from the underlying offense. More specifically, the PSI identified R.B. as a “victim” with a restitution amount of \$900 and V.P. as a “victim” with a restitution amount of \$1,393.59. Like the defendant in *Anderson*, Merrill “should have been aware that the victim might seek and the court might order restitution.” *Id.*

In sum, Merrill’s assertion that he was unaware that restitution could be ordered as a consequence of his guilty plea is not supported by the record, and he has not met his burden to show that his guilty plea was unintelligent. Thus, the district court did not err by determining that Merrill was not entitled to withdraw his guilty plea under the manifest-injustice standard.

II.

Merrill contends that the district court abused its discretion in ordering restitution. We review a district court’s restitution order for an abuse of discretion. *State v. Andersen*, 871 N.W.2d 910, 913 (Minn. 2015). “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. Garland*, 942 N.W.2d 732, 742 (Minn. 2020) (quotation omitted). However, questions regarding the district court’s authority to order restitution are questions of law subject to de novo review. *Andersen*, 871 N.W.2d at 913.

Restitution to V.P.

Merrill argues that because V.P. did not submit a restitution affidavit in Merrill’s case, the district court lacked legal authority to order restitution to V.P. More specifically, Merrill argues that the district court did not comply with Minn. Stat. § 611A.04, subd. 1(a) (2024), which establishes a crime victim’s right to receive restitution.¹ The state counters

¹ To determine the amount of restitution owed, information from the victim must be obtained “in affidavit form or by other competent evidence.” Minn. Stat. § 611A.04, subd. 1(a). That affidavit or evidence “must describe the items or elements of loss, itemize the total dollar amounts of restitution claimed, and specify the reasons justifying these amounts.” *Id.* Additionally, “to be considered at the sentencing or dispositional hearing, all information regarding restitution must be received by the court administrator of the

that, because Merrill did not challenge the district court’s restitution award within 30 days, as required under Minn. Stat. § 611A.045, subd. 3(b) (2024), his argument is not properly before us on appeal.²

Although restitution challenges that are brought outside of the 30-day time limit set forth in Minn. Stat. 611A.045, subd. 3 (2024), are generally forfeited on appeal, appellate courts “will consider a challenge made outside of that period under ‘the narrow circumstances’ where the ‘only challenge is to the legal authority of the court to order restitution *and that challenge was raised in the district court.*’” *State v. Haynes*, 24 N.W.3d 313, 317 (Minn. 2025) (emphasis added) (quoting *State v. Gaiovnik*, 794 N.W.2d 643, 648 (Minn. 2011)). *Gaiovnik* “recognized a narrow exception to [the 30-day time limit], holding that a failure to object to a restitution award does not bar an appeal ‘where the only challenge is to the legal authority of the court to order restitution *and that challenge was raised in the district court.*’” *State v. Cummings*, 2 N.W.3d 528, 532 n.4 (Minn. 2024) (emphasis added) (quoting *Gaiovnik*, 794 N.W.2d at 648). In short, a criminal defendant cannot challenge the district court’s legal authority to order restitution unless he first raises the issue in district court.

appropriate court at least three business days before the sentencing or dispositional hearing.” *Id.* But “[t]he issue of restitution is reserved or the sentencing or dispositional hearing or hearing on the restitution request may be continued if the victim’s affidavit or other competent evidence submitted by the victim is not received in time.” *Id.*

² The state also argues that a restitution affidavit was filed in Merrill’s son’s case on August 8, 2024, and that the affidavit lists damages to the burglarized bar totaling \$1,393.59. The state further argues that the affidavit was supported by detailed receipts. But the restitution affidavit in Merrill’s son’s case was not filed in Merrill’s case.

Merrill acknowledges that he did not challenge the district court’s legal authority to order restitution to V.P. in the district court. But he asserts that he may raise this challenge for the first time on appeal because, as recognized in *Evans v. State*, a court “may at any time correct a sentence not authorized by law.” 880 N.W.2d 357, 359-60 (Minn. 2016) (quotation omitted). The *Evans* court concluded that “[a] motion to correct a sentence under Minn. R. Crim. P. 27.03 is a proper method to challenge a district court’s legal authority to award restitution when the motion does not impact the underlying conviction.” *Id.* at 358.

Merrill’s reliance on *Evans* is unavailing because unlike the appellant in *Evans*, Merrill did not file a motion to correct his sentence under Minn. R. Crim. P. 27.03 in district court. *See id.* at 359 (stating that “Evans filed a motion to correct his sentence under Minn. R. Crim. P. 27.03, subd. 9”). Because Merrill did not challenge the order for restitution to V.P. in the district court, that issue is forfeited in this appeal.³ *See Haynes*, 24 N.W.3d at 318 (“Because Haynes did not first raise his challenges to the restitution award in the

³ Because the issue is forfeited, we do not determine whether a violation of Minn. Stat. § 611A.04, subd. 1(a), should result in a remand to further develop the sentencing record if a defendant failed to object to a restitution order in the district court. *See State v. Johnson*, 31 N.W.3d 566, 575-76 (Minn. App. 2026) (reversing and remanding “to allow the state to further develop the sentencing record so that the court can make a proper determination” regarding inclusion of a defendant’s out-of-state convictions in his criminal history score at sentencing when the defendant did not object to the inclusion); *State v. Outlaw*, 748 N.W.2d 349, 356 (Minn. App. 2008) (“The record indicates that [the defendant] did not object to the district court’s determination that his out-of-state convictions were felonies. Thus, on remand, [the state] is permitted to further develop the sentencing record so that the district court can appropriately make its determination.”), *rev. denied* (Minn. July 15, 2008).

district court, we conclude that those challenges are forfeited and therefore are not properly before us on appeal.”).

Ability to Pay

Merrill also argues that the district court abused its discretion in awarding restitution because it “did not expressly state either orally at sentencing or in the written sentencing order that it had considered Merrill’s ability to pay the requested restitution.” The state argues that the record and the PSI contain sufficient information regarding Merrill’s ability to pay.

Under Minn. Stat. § 611A.045, subd. 1 (2024), in determining whether to order restitution, a district court must consider “the income, resources, and obligations of the defendant.” In *State v. Wigham*, the supreme court stated:

When ordering restitution under Minn. Stat. § 611A.045, subd. 1 . . . , *a district court must expressly state, either orally or in writing, that it considered the defendant’s income, resources, and obligations.* The district court need not make express findings about the defendant’s income, resources, and obligations, but the record must include sufficient evidence about the defendant’s income, resources, and obligations to allow a district court to consider the defendant’s ability to pay the amount of restitution ordered.

967 N.W.2d 657, 659 (Minn. 2021) (emphasis added).

In short, “a district court fulfills its statutory duty to consider a defendant’s income, resources, and obligations in awarding and setting the amount of restitution when it expressly states, either orally or in writing, that it considered the defendant’s ability to pay” and the record includes “sufficient evidence about the defendant’s income, resources, and

obligations to allow a district court to consider the defendant's ability to pay the amount of restitution ordered." *Id.* at 664-65.

Here, the PSI included information regarding Merrill's education and employment. It stated that Merrill had worked as a roofer for around ten years, that he is disabled, and that he receives supplemental security income totaling \$970 per month. Although the PSI contained information relevant to Merrill's income and ability to pay, the district court did not "expressly state, either orally or in writing," that it considered Merrill's "income, resources, and obligations." *See id.* at 659. The district court therefore abused its discretion in awarding restitution.

The state cites *State v. Alexander*, 855 N.W.2d 340 (Minn. App. 2014), for the proposition that a district court sufficiently considers a defendant's ability to pay if the PSI contains information regarding the defendant's income, resources, and obligations. But *Alexander* predates *Wigham*, and *Wigham* clearly requires an express statement from the district court that it considered a defendant's ability to pay.

In sum, we reverse the district court's order for joint-and-several restitution and remand for an express statement that the district court considered Merrill's ability to pay.

III.

Finally, Merrill contends that the district court abused its discretion in denying his request for a downward dispositional departure.

The Minnesota Sentencing Guidelines establish presumptive sentences for criminal offenses and seek to "maintain uniformity, proportionality, rationality, and predictability in sentencing." Minn. Stat. § 244.09, subd. 5 (2022). "Consequently, 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 the presumptive sentence only when there are “identifiable, substantial, and compelling circumstances to support a departure.” Minn. Sent’g Guidelines 2.D.1 (Supp. 2023).

If substantial and compelling circumstances exist, the district court has broad discretion to depart, and we generally will not interfere with the exercise of that discretion. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). This court will reverse the district court’s refusal to depart from the presumptive sentence only in a “rare” case. *Id.* If the record shows that the district court “carefully evaluated all the testimony and information presented before making a determination,” we will not reverse the district court’s refusal to depart. *State v. Pegel*, 795 N.W.2d 251, 255 (Minn. App. 2011) (quotation omitted).

When considering a dispositional departure, the district court focuses “more on the defendant as an individual and on whether the presumptive sentence would be best for him and for society.” *State v. Heywood*, 338 N.W.2d 243, 244 (Minn. 1983). A defendant’s particular amenability to probation can justify a downward dispositional departure from a presumptive sentence. *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014). The requirement of particular amenability ensures that “the defendant’s amenability to probation distinguishes the defendant from most others and truly presents the substantial and compelling circumstances that are necessary to justify a departure.” *Id.* at 309 (quotation omitted).

Relevant factors for determining whether a defendant is particularly amenable to probation include the defendant’s age, prior criminal record, remorse, cooperation, attitude

in court, and support of friends and family. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). Even if there is evidence that the defendant would be particularly amenable to probation, a district court is not required to grant a dispositional departure. *State v. Olson*, 765 N.W.2d 662, 664-65 (Minn. App. 2009).

Merrill argues that the district court failed to consider “the impact [his] chemical use and dependency had on his criminal history, [his] success in the inpatient treatment program he completed during pre-trial supervision, and his desire to improve his life through the long-term, thirteen-month Teen Challenge program.”

At sentencing, the district court stated that it had reviewed the PSI and Merrill’s departure motion. The court then heard arguments from defense counsel, who discussed Merrill’s past troubles with chemical dependency and desire to enter and complete a thirteen-month-long program at Teen Challenge. The court also heard from Merrill, who commended his counsel’s arguments. The state opposed the motion, noting Merrill’s extensive criminal history, that “five of [Merrill’s alleged] new offenses were committed after his first appearance in this case,” and that Merrill had failed to demonstrate that he can remain law abiding despite completing treatment several times in the past.

The district court discussed the relevant departure factors and noted the following circumstances:

- Merrill had “approximately nine to ten pages of criminal history”;
- the court could not find that Merrill had cooperated with law enforcement;
- the court “certainly” could not find that Merrill had been remorseful and respectful in court;
- treatment was available at a respected program;

- the court previously released Merrill to complete inpatient treatment followed by outpatient treatment, and subsequently, a warrant issued for Merrill's arrest and he did not turn himself in;
- there were no indications that Merrill successfully completed all treatment requirements after he was released from custody because he completed inpatient treatment but did not complete outpatient treatment; [and]
- Merrill was charged with new offenses while released from custody in this case.

The record shows that the district court considered the arguments for and against a downward dispositional departure. *See Pegel*, 795 N.W.2d at 255 (stating that we will not reverse a departure denial if the district court considered the relevant information); *see also State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006) (“[W]e will not ordinarily interfere with a sentence falling within the presumptive sentence range . . . even if there are grounds that would justify departure.” (quotation omitted)). In sum, this is not a rare case in which we would reverse the district court's imposition of a presumptive sentence.

Affirmed in part, reversed in part, and remanded.