

*This opinion is nonprecedential except as provided by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
A25-1476**

State of Minnesota,
Appellant,

vs.

Kenneth James Holcomb,
Respondent.

**Filed April 13, 2026
Reversed and remanded
Wheelock, Judge**

Carver County District Court
File No. 10-CR-20-699

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

Mark Metz, Carver County Attorney, Kevin A. Hill, Assistant County Attorney, Chaska,
Minnesota (for appellant)

Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Minnesota (for
respondent)

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

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

Appellant State of Minnesota appeals from the district court's grant of a downward
dispositional sentencing departure, contending that the district court abused its discretion

because respondent failed to establish that he was particularly amenable to probation. We reverse and remand for imposition of a presumptive sentence.

FACTS

On August 4, 2020, officers from the Chaska Police Department responded to a report of a vehicle that was driving erratically, eventually crashing into a gas-station building before departing at a high rate of speed. An officer observed broken glass and other damage at the scene of the crash. While the vehicle was driving near Highway 41, a different officer identified it as the vehicle involved in the crash and initiated a traffic stop. Respondent Kenneth James Holcomb, who was driving, and a passenger both exited the vehicle. The officer checked Holcomb's driving record and determined that Holcomb's driver's license was cancelled. Holcomb informed officers that the reason for his irregular driving was that he was attempting to evade a white car that had been following him and that its occupants had been firing shots at his vehicle. An officer spoke to the white car's occupants, who witnessed Holcomb crash into the gas station and confirmed that they had been following Holcomb but only to document and report his dangerous driving conduct because they suspected that he was intoxicated. The officers determined that the white car's occupants did not have any guns and did not appear to have been shooting at Holcomb's vehicle.

After noticing that Holcomb's eyes were bloodshot and detecting the odor of alcohol, one of the officers asked Holcomb to take field sobriety tests. Holcomb initially complied and underwent various tests but then refused to take a preliminary breath test. Police arrested Holcomb and transported him to jail, where Holcomb continued to refuse a

breath test without first talking to an attorney. After failing to successfully contact an attorney within the time provided, Holcomb was charged with felony first-degree driving while impaired (DWI) pursuant to Minn. Stat. § 169A.20, subd. 1(1) (2020), felony first-degree DWI test refusal pursuant to Minn. Stat. § 169A.20, subd. 2(1) (2020), gross-misdemeanor driving after cancellation pursuant to Minn. Stat. § 171.24, subd. 5 (2020), and misdemeanor failure to stop for a collision pursuant to Minn. Stat. § 169.09, subd. 2 (2020).

In May 2025, Holcomb entered into a plea agreement in which he pleaded guilty to the test-refusal charge and the state dismissed the remaining charges. Holcomb has a criminal-history score of seven that includes an additional DWI-related felony for which he was on conditional release when he committed the underlying offense in this case as well as a domestic-abuse-no-contact-order (DANCO) violation for which he was on supervised release at the time of the offense.

At Holcomb's sentencing hearing, the state requested that Holcomb receive the presumptive sentence under the Minnesota Sentencing Guidelines of "at least 75 months[' imprisonment]." The state's attorney highlighted Holcomb's history of DWI- and driving-related offenses. The state's attorney also noted multiple instances in which Holcomb failed to comply with pretrial-release conditions in this case, including failing to timely arrange for required alcohol monitoring, failing to appear at hearings, testing positive for alcohol, and missing alcohol tests. He further stated that Holcomb had required extradition from Wyoming after being arrested there and was recently arrested again for driving after cancellation.

Holcomb moved the district court for a downward dispositional sentencing departure, requesting a stayed sentence and placement on probation. Holcomb's attorney described Holcomb as a good employee with a steady job and mentioned that Holcomb had undergone a year-long treatment program while in custody and had been sober for several years. He also noted that Holcomb had written a book on character development and was seeking a publisher. He further illustrated Holcomb's commitment to his family, highlighting how he cared for his mother with health issues and was excited to spend time with his recently born grandson. Holcomb also addressed the district court, stating, "I can guarantee you you will never see me in court again for no type of crimes I'm 45 years old. All this stuff is just so far behind me, it's not even funny. I can guarantee you will never see me again as far as criminal."

The district court granted Holcomb's motion for a downward dispositional departure, staying execution of his sentence and placing him on probation for seven years. The entirety of the district court's discussion of its reasons for granting a departure consisted of the following:

Well, and we'll see if the court regrets this, but the court is going to take a chance on you. The court is going to make a finding that there are substantial and compelling reasons to find that you are particularly amenable to treatment and particularly amenable to probation. The court is going to note that you have expressed remorse and accepted responsibility for this by pleading guilty to this charge. The court will note that this is an offense that happened back in I believe 2020 So it has been five years since this happened.

The state appeals.

DECISION

The state argues that the district court abused its discretion in granting a downward dispositional departure because its findings were insufficient to establish that Holcomb was particularly amenable to probation. We agree that the district court's findings were deficient in this regard, and we further note that we do not discern any record support for a finding of particular amenability to probation here. Accordingly, we reverse and remand for the district court to impose a presumptive sentence.

We review the district court's grant of a downward dispositional departure for an abuse of discretion. *State v. Walker*, 913 N.W.2d 463, 468 (Minn. App. 2018). "A sentencing court must pronounce a sentence within the applicable range unless there exist identifiable, substantial, and compelling circumstances that distinguish a case and overcome the presumption in favor of the guidelines sentence." *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014) (quotation omitted). "[A] defendant's particular amenability to individualized treatment in a probationary setting will justify departure in the form of a stay of execution of a presumptively executed sentence." *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). To determine whether a defendant is particularly amenable to probation, district courts weigh the various factors enumerated in *Trog*, "including the defendant's age, his prior record, his remorse, his cooperation, his attitude while in court, and the support of friends and/or family." *Id.* A dispositional departure based on particular amenability to probation is proper only when the district court's findings support the conclusion that a defendant displays *particular* amenability to probation, not mere amenability to probation. *Soto*, 855 N.W.2d at 308-09. The supreme court in *Soto* clarified

the distinction between amenability to probation and particular amenability to probation, stating:

Our consistent use of the words “particular” and “particularly” in this context is not accidental. “Particular” means exceptional or distinctive among others of the same group, and “particularly” means especially or specifically. By requiring a defendant to be particularly amenable to probation, therefore, we ensure 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 (quotations and citation omitted). And “a departure is an abuse of discretion if the court’s reasons are improper or insufficient and there is insufficient evidence of record to justify the departure.” *Id.* at 308 (quotations omitted).

Here, the only *Trog* factor the district court referenced was remorse. It also mentioned that five years had passed since the offense, but it cited no other considerations or analysis of any factors to support its finding. Its discussion of Holcomb’s remorse is minimal, noting only that he “expressed remorse and accepted responsibility for this by pleading guilty to this charge.” But a guilty plea alone is insufficient to establish that a defendant is particularly amenable to probation. *Id.* at 312; *cf. State v. Misquadace*, 644 N.W.2d 65, 72 (Minn. 2002) (“[A] plea agreement—standing alone—is not a sufficient basis to depart from the sentencing guidelines.”). And most concerning, the district court did not address Holcomb’s extensive criminal history, that he was already on conditional release for a DWI-related felony when he committed the DWI offense in this case, that he also violated his conditions of pretrial release after committing this offense, or that he absconded for a year and a half and was found in another state.

In sum, the district court did not identify anything that “distinguishes the defendant from most others”—which is necessary to support a finding of particular amenability to probation. *Soto*, 855 N.W.2d at 309. By the district court’s stated rationale, any defendant who pleads guilty would form the requisite remorse to support a departure. This is contrary to the standard set forth in *Soto*. And our own review of the record reveals no “substantial and compelling circumstances” that sufficiently set Holcomb apart from most other defendants to support a finding of particular amenability. *Id.* (quotation omitted). To the contrary, Holcomb’s multiple DWI-related offenses and repeated failure to comply with conditions of release, including testing positive for alcohol, persuade us that a presumptive guidelines sentence is appropriate here. We conclude that the district court abused its discretion because the reasons it provided for the departure were insufficient and the record does not otherwise justify it. *See id.* at 308. We therefore reverse and remand for the district court to impose a presumptive guidelines sentence.

Reversed and remanded.