

*This opinion is nonprecedential except as provided by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
A25-1708**

State of Minnesota,
Respondent,

vs.

Brandon Bradley Hammond,
Appellant.

**Filed August 10, 2026
Affirmed
Johnson, Judge**

Rice County District Court
File No. 66-CR-23-1505

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

Brian M. Mortenson, Rice County Attorney, Sean R. McCarthy, Assistant County Attorney, Faribault, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Hannah Laub, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Rasmusson, Presiding Judge; Johnson, Judge; and Bond, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

Brandon Bradley Hammond pleaded guilty to a first-degree controlled-substance crime. Before sentencing, he moved for a downward dispositional departure. The district

court denied the motion and imposed a sentence within the presumptive guidelines range. We conclude that the district court did not abuse its discretion and, therefore, affirm.

FACTS

In June 2023, law-enforcement officers investigated suspected sales of controlled substances by Hammond and another person. Officers conducted a warranted search of the home shared by Hammond and the other person. Officers found more than 43 grams of cocaine.

The state charged Hammond with first-degree controlled-substance crime, in violation of Minn. Stat. § 152.021, subd. 1(1) (2022), based on the allegation that Hammond sold more than 17 grams of cocaine, and with second-degree controlled-substance crime, in violation of Minn. Stat. § 152.022, subd. 2(a)(1) (2022), based on the allegation that Hammond possessed more than 25 grams of cocaine. The state alleged in the complaint that Hammond admitted in a post-arrest interview that he had purchased cocaine from his housemate and sold it to other persons.

In November 2024, Hammond pleaded guilty to the charge in count 1 in exchange for the dismissal of the charge in count 2. In January 2025, Hammond moved for a downward dispositional sentencing departure. A probation officer conducted a pre-sentence investigation (PSI) and filed a report in March 2025 in which she recommended that the district court stay execution of the sentence and place Hammond on probation. Each party filed a sentencing memorandum shortly thereafter. The probation officer filed an amended PSI report in June 2025 in which she again recommended that the district court stay execution of the sentence and place Hammond on probation.

In early July 2025, shortly before sentencing, the probation officer filed a memorandum updating the amended PSI report. The probation officer stated that she recently had learned that Hammond had “lost sober housing,” that his attendance in chemical-dependency programming had become “inconsistent,” that he had submitted a urine sample that tested positive for cocaine and fentanyl, and that he had admitted to using cocaine and to the “accidental use” of fentanyl. The probation officer further stated that Hammond “has been consistent with maintaining contact with probation,” is “still struggling to find a long-term residence,” and “was open and honest with probation about his relapse with cocaine.”

At the sentencing hearing, Hammond’s attorney argued that Hammond is particularly amenable to probation. The attorney noted the probation officer’s latest update but argued that Hammond “continues to show insight and progress,” had not committed any new criminal offenses, and was “putting in the effort” in chemical-dependency treatment.

The state introduced the testimony of the probation officer, who had supervised Hammond since 2023. She testified that, after her latest memorandum, she learned from Hammond’s treatment provider that multiple urine tests had yielded “inconsistent results,” which caused the provider to recommend residential treatment. When asked whether she believes that Hammond is particularly amenable to probation, she expressed uncertainty as well as “concern” about his “chemical use” and the likelihood that he would violate conditions of probation by using drugs. Hammond’s attorney cross-examined the probation officer, emphasizing Hammond’s difficulties in securing stable housing, and the

district court asked follow-up questions. The prosecutor argued that Hammond is not particularly amenable to probation. In doing so, the prosecutor objected to the district court's consideration of Hammond's housing on the ground that the sentencing guidelines prohibit the consideration of "living arrangements." Hammond spoke in allocution by stating that he was trying to achieve sobriety but was struggling, in part because he did not have stable housing.

The district court acknowledged that its sentencing decision was "not an easy decision." The district court noted that sentencing had been continued multiple times to give Hammond an opportunity to demonstrate his amenability to treatment, but his substance-use disorder had "gotten in the way" and he had struggled to attend treatment programming. The district court stated to Hammond that a finding of particular amenability must be based on more than mere effort. The district court concluded by finding that Hammond is not particularly amenable to probation and by denying his motion for a downward dispositional departure. The district court imposed a sentence of 81 months of imprisonment, the shortest duration within the presumptive range. Hammond appeals.

DECISION

Hammond argues that the district court erred by denying his motion for a downward dispositional departure.

The Minnesota Sentencing Guidelines prescribe presumptive sentences for felony offenses. Minn. Sent'g Guidelines 2.C (2022). For any particular offense, the guidelines sentence is "presumed to be appropriate for all typical cases sharing criminal history and

offense severity characteristics.” Minn. Sent’g Guidelines 1.B.13 (2022). Accordingly, a district court “must pronounce a sentence . . . within the applicable prison range . . . unless there exist identifiable, substantial, and compelling circumstances to support a departure.” Minn. Sent’g Guidelines 2.D.1 (2022); *see also State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014); *State v. Best*, 449 N.W.2d 426, 427 (Minn. 1989).

Before departing from a guidelines sentence, a district court first must determine whether “‘aggravating or mitigating circumstances are present’” and, if so, whether “those circumstances provide a ‘substantial[] and compelling’ reason not to impose a guidelines sentence.” *Soto*, 855 N.W.2d at 308 (alteration in original) (quoting *Best*, 449 N.W.2d at 427), and Minn. Sent’g Guidelines 2.D.1). If substantial and compelling reasons exist, the district court has discretion to order a departure. *Soto*, 855 N.W.2d at 308; *Best*, 449 N.W.2d at 427. This court applies an abuse-of-discretion standard of review to a district court’s decision to depart or not depart from the presumptive sentence. *State v. Edwards*, 774 N.W.2d 596, 601 (Minn. 2009). This 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. Van Ruler*, 378 N.W.2d 77, 80-81 (Minn. App. 1985). We will reverse a district court’s imposition of a presumptive sentence only in a “rare case.” *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

The sentencing guidelines provide a non-exclusive list of mitigating factors that may justify a downward departure. Minn. Sent’g Guidelines 2.D.3.a & cmt. 2.D.301 (2022). Particular amenability to probation is one of the mitigating factors recognized in the

sentencing guidelines as a basis for a downward dispositional departure. Minn. Sent'g Guidelines 2.D.3.a(7). Particular amenability to probation is not established if the defendant is only somewhat amenable to probation. *Soto*, 855 N.W.2d at 308-09. Rather, the defendant must be “*particularly*” amenable to probation in a way that “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). In determining whether a defendant is particularly amenable to probation, a district court may consider, among other things, “the defendant’s age, his prior record, his remorse, his cooperation, his attitude while in court, and the support of friends and/or family.” *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). “But the mere fact that a mitigating factor is present in a particular case does not obligate the court to place defendant on probation or impose a shorter term than the presumptive term.” *State v. Pegel*, 795 N.W.2d 251, 253-54 (Minn. App. 2011) (quotation omitted). Additionally, a district court need not discuss all the *Trog* factors if the district court denies a motion for a downward dispositional departure. *Id.* at 254.

A.

Hammond argues that the district court erred because the *Trog* factors show that he is particularly amenable to probation. With respect to the factor of his prior record, Hammond states that the present offense is “his first and only controlled substance crime.” With respect to the factor of age, he contends that he is “at an age where criminal activity tends to decrease.” With respect to the factor of remorse, he notes record evidence that he has admitted that “his actions were ‘dumb and stupid,’ and that he was ‘disgusted’ with

them.” With respect to the factor of cooperation and attitude, he asserts that he was “cooperative and had a positive attitude in court.”

The caselaw is clear that a district court may, but is not required to, expressly consider the *Trog* factors if it denies a motion for a downward dispositional departure and imposes a guidelines sentence. See *Pegel*, 795 N.W.2d at 254; *Trog*, 323 N.W.2d at 31. This court will affirm a presumptive sentence if the record shows that the district court carefully considered the record and the parties’ arguments before making its decision. *Van Ruler*, 378 N.W.2d at 80-81.

In this case, the record shows that the district court carefully considered the record and the parties’ arguments before making its decision. After the attorneys had completed their arguments and Hammond had spoken in allocution, the district court stated that whether to grant Hammond’s motion was “not an easy decision.” The district court articulated reasons for its decision that were based on facts that appear prominently in the record and were discussed by both attorneys at the sentencing hearing. In addition, the district court made comments that reflect the arguments of Hammond’s attorney, who used sports metaphors in arguing that, even though Hammond “hasn’t made every shot” and has “had some turnovers,” he should be placed on probation because he was “putting in the effort.” The district court indicated its familiarity with Hammond’s argument by using other sports metaphors in stating that a downward dispositional departure is reserved for a defendant who is a “superstar” or in the “starting five and probably on the all-star team,” not merely a “bench player.” The district court appropriately considered Hammond’s arguments for a downward dispositional departure.

B.

Hammond also argues that his inability to make more progress in chemical-dependency treatment is due to his inability to secure and maintain stable housing.

In conjunction with this argument, Hammond challenges the state's objection to the district court's consideration of his housing situation, arguing that the objection is inconsistent with the sentencing guidelines. The guideline at issue states that "[s]ocial factors," including a defendant's "living arrangements at time of offense or sentencing," "should not be used as reasons for departure." Minn. Sent'g Guidelines 2.D.2.d.(2). Hammond refers to a comment to the guideline, which states that "sentencing should be neutral with respect to an offender's race, sex, and income level" and that the social factors identified in guideline 2.D.2.d. "are highly correlated with sex, race, or income level." Minn. Sent'g Guidelines cmt. 2.D.201. Hammond asserts that the purpose of guideline 2.D.2.d. is "to prevent some groups being unfairly disadvantaged due to housing instability" because "crediting one person for having stable housing would necessarily punish someone else for having instable housing." But, Hammond contends, the purpose of guideline 2.D.2.d. is not served by refusing to consider a defendant's *unstable* housing and "how that instability has impeded his ability to reach his full potential in treatment."

We question whether guideline 2.D.2.d.(2) applies in this case. The guideline and its accompanying comment state that social factors such as "living arrangements" "should not be used as *reasons for departure*." Minn. Sent'g Guidelines 2.D.2.d.(2) (emphasis added); Minn. Sent'g Guidelines cmt. 2.D.201 (emphasis added). This language indicates

that the guideline does *not* apply if a district court decides *not* to depart from a presumptive sentence.

We also question the logic of Hammond's argument concerning housing instability. He contends, in essence, that he is *not* particularly amenable to probation but that his unamenability should be excused because it is attributable to his adverse housing circumstances. He cites no caselaw for the proposition that a district court may find that a defendant is particularly amenable to probation if the defendant is not particularly amenable to probation for excusable reasons. Furthermore, Hammond does not argue that his housing instability had been resolved at the time of the sentencing hearing.

In any event, Hammond's housing-instability argument fails because the district court did not refer to Hammond's living arrangements or his housing instability when it stated its reasons for denying his motion for a downward dispositional departure. The district court stated that Hammond had not demonstrated an amenability to probation in the two-year period since being charged, had relapsed by using controlled substances, and had struggled to attend treatment. Because the district court did not mention Hammond's living arrangements or housing instability when stating its reasons not to depart, we need not decide whether housing instability generally, or Hammond's housing instability in particular, is a valid basis for a finding of particular amenability to probation.

In sum, the district court did not abuse its discretion by finding that Hammond is not particularly amenable to probation, by denying his motion for a downward dispositional departure, and by imposing a presumptive sentence.

Affirmed.