

*This opinion is nonprecedential except as provided by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
A25-1739**

State of Minnesota,
Respondent,

vs.

Brady Alex Albertson,
Appellant.

**Filed August 3, 2026
Affirmed
Frisch, Chief Judge**

Stearns County District Court
File No. 73-CR-24-1362

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

Janelle P. Kendall, Stearns County Attorney, Jessica E. Hockley, Assistant County Attorney, St. Cloud, Minnesota (for respondent)

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

Considered and decided by Smith, Tracy M., Presiding Judge; Frisch, Chief Judge;
and Schmidt, Judge.

NONPRECEDENTIAL OPINION

FRISCH, Chief Judge

Appellant Brady Alex Albertson challenges his 72-month sentence for third-degree criminal sexual conduct, arguing that the district court abused its discretion in denying his

motion for a downward dispositional departure and imposing a sentence within the presumptive range. We affirm.

FACTS

In 2024, respondent State of Minnesota charged Albertson with three counts of third-degree criminal sexual conduct. Albertson agreed to plead guilty to one count of third-degree criminal sexual conduct in violation of Minn. Stat. § 609.344, subd. 1a(b) (2022). In exchange, the state dismissed the remaining two counts and pending charges in separate files.

During the plea hearing, Albertson admitted to penetrating a 15-year-old child's vagina with his penis at a residence in Stearns County. Albertson admitted to providing the child with alcohol and knowing that the child was drunk during the commission of the offense. The district court ordered the completion of a presentence investigation (PSI) and a psychosexual evaluation.

Shortly before sentencing, Albertson moved through counsel for a downward dispositional departure, arguing that he is particularly amenable to probation. At the sentencing hearing, the district court stated that it had reviewed all the submitted materials, including memoranda submitted by the defense, a victim impact statement, the PSI, the psychosexual evaluation, and a handwritten letter from Albertson. The prosecutor read the child's victim impact statement into the record.

Albertson's counsel argued that Albertson met "most, if not all, of the *Trog* factors." *See State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982) (stating that factors "relevant to a determination whether a defendant is particularly suitable to individualized treatment in a

probationary setting” include the defendant’s age, prior record, remorse, cooperation, attitude in court, and support of friends and family). Albertson’s counsel asked the district court to stay execution of the presumptive guidelines sentence and place Albertson on supervised probation for not more than 15 years.

In response, the state argued that the PSI and psychosexual evaluation portray Albertson as a person who “does what he wants when he wants regardless of the consequences.” The state referenced Albertson’s 33 misdemeanor convictions in the preceding five years, that Albertson continued to drive without a valid license, and Albertson’s “sporadic work history.” The state continued:

[Albertson] drank in violation of his conditions of release, continued to drive without a license. He used OnlyFans in violation of his conditions in Benton County and that was recently, last week. He didn’t get his license reinstated, he has not paid off any of his citations, he did not get employed until it appears recently, he delayed completing his psychosexual evaluation, he has not started sex offender treatment, he hasn’t started therapy. He’s had a year and a half and has done absolutely nothing except exactly what he wanted to do, continue with his own hobbies. None of these things distinguish him from others. None of these make him particularly amenable to probation.

The state asked the district court to impose the maximum guidelines sentence of 72 months.

Albertson addressed the district court and expressed his remorse. He stated that he had started a job one month before the sentencing hearing, was working toward license reinstatement, and completed the paperwork to begin therapy.

Ultimately, the district court denied Albertson’s motion for a downward dispositional departure, relying on the *Trog* factors. The district court noted that, while

Albertson was only 23 years old, that in “that short period of time” he had “accumulated quite a history” and shown “a general disregard for law-abiding behavior.” The district court also stated: “I do not believe you show true remorse. I think your remorse is you got caught.” Regarding Albertson’s cooperation, the district court noted that, while Albertson appeared at scheduled hearings, he did not follow court orders or show cooperation. The district court acknowledged the support of Albertson’s friends and family but noted “that support obviously has not changed the pattern of behaviors you exhibited.” Finally, the district court stated:

Based upon the nature of this offense, the facts, [and] the method in which it was carried out, I will be sentencing you to top of the box, 72 months. That is the most I can give you. Had the box allowed more, I would have given consideration for more. Your behavior is reprehensible.

Albertson appeals.

DECISION

On appeal, Albertson seeks reversal of his 72-month sentence and remand for resentencing.

District courts have a great deal of discretion in their sentencing decisions. *State v. Soto*, 855 N.W.2d 303, 307 (Minn. 2014). However, that discretion is limited by the Minnesota Sentencing Guidelines, which prescribe a sentence that is “presumed to be appropriate for the crimes to which they apply.” Minn. Sent’g Guidelines 2.D.1 (Supp. 2023). A district court may exercise its discretion to depart from the presumptive sentence only when there are “identifiable, substantial, and compelling circumstances to support a departure.” *Id.*

“Whether to depart from the sentencing guidelines rests within the district court’s discretion, and the district court will not be reversed absent an abuse of that discretion.” *State v. Pegel*, 795 N.W.2d 251, 253 (Minn. App. 2011) (citing *State v. Spain*, 590 N.W.2d 85, 88 (Minn. 1999)). A reviewing court will reverse the imposition of a presumptive sentence only in a “rare case.” *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

Here, Albertson requested a downward dispositional departure from the presumptive guidelines sentence, which in this case is an executed sentence of between 51 and 72 months. Minn. Sent’g Guidelines 4.B (Supp. 2023). A downward 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). When considering a dispositional departure, a 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). The Minnesota Sentencing Guidelines provide a nonexclusive list of mitigating factors that may justify a downward dispositional departure, including that “[t]he offender is particularly amenable to probation.” Minn. Sent’g Guidelines 2.D.3.a(7) (Supp. 2023). 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.” *Soto*, 855 N.W.2d 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. *Trog*, 323 N.W.2d at 31.

Albertson argues that the district court abused its discretion in denying his motion for a downward dispositional departure because substantial and compelling circumstances warranted the departure. We disagree.

The record reflects that the district court carefully evaluated the information and argument submitted at sentencing and exercised its independent discretion in imposing a guidelines sentence. The district court stated that it had reviewed memoranda submitted by the defense, the PSI, the psychosexual evaluation, and a handwritten letter from Albertson. The district court heard statements from the victim and from Albertson. And even though a district court need not give its reasons for imposing a sentence within the guidelines range, *see State v. Van Ruler*, 387 N.W.2d 77, 80 (Minn. 1985), the district court here explained—on the record—why each *Trog* factor did not support a finding that Albertson was particularly amenable to probation.

The district court’s findings are supported by the record. The district court concluded that Albertson’s extensive criminal history accumulated over a short period of time, evidencing that he is not particularly amenable to probation. The district court referenced its own observations of Albertson and information set forth in the PSI in concluding that Albertson did not demonstrate remorse. We “must defer to the district court’s assessment of the sincerity and depth of the remorse and what weight it should receive in the sentencing decision” considering that “the district court has an opportunity to actually observe the defendant throughout the proceedings.” *State v. Sejnoha*, 512 N.W.2d 597, 600 (Minn. App. 1994), *rev. denied* (Minn. Apr. 21, 1994). And the district court relied on Albertson’s failure to comply with his conditional-release terms in support

of its conclusion that Albertson was not cooperative. In short, the record reflects that the district court carefully considered circumstances for and against departure, deliberately exercised its discretion, and as a result, we will not interfere with the district court's exercise of that discretion. *Pegel*, 795 N.W.2d at 255; *see also Van Ruler*, 378 N.W.2d at 80-81.

To convince us otherwise, Albertson offers only one argument on appeal: his own analysis of the *Trog* factors. Albertson asks us to reevaluate the record and substitute our judgment for that of the district court—a task well outside the province of this court. *See Sejnoha*, 512 N.W.2d at 601 (“We emphasize that, as a reviewing court, it is not our role to substitute our own judgment for that of the district court, but to determine whether the [moving party] has shown an abuse of discretion in the sentence.”). Accordingly, Albertson has failed to establish that this is such a “rare case” that warrants our interference with the district court's refusal to depart. *Kindem*, 313 N.W.2d at 7.

Affirmed.