

*This opinion is nonprecedential except as provided by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
A25-1924**

State of Minnesota,
Appellant,

vs.

Victor Wade Wang,
Respondent.

**Filed August 10, 2026
Affirmed in part and remanded
Connolly, Judge**

Rice County District Court
File No. 66-CR-23-683

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

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

Cathryn Middlebrook, Chief Appellate Public Defender, Julia Q. Brady, Assistant Public Defender, St. Paul, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Connolly, Judge; and Slieter, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Appellant State of Minnesota challenges the district court's grant of a downward dispositional departure, arguing that the district court erred in granting the departure because respondent failed to satisfy the requirements of Minn. Stat. § 152.152 (2022) for imposing a stay of execution, and because respondent is not particularly amenable to probation. We affirm in part and remand.

FACTS

In March 2023, the Cannon River Drug and Violent Offender Task Force executed a search warrant at respondent Victor Wade Wang's home, located in Rice County. Police recovered approximately 507 grams of a liquid form of N-dimethyltryptamin (DMT), which is a controlled substance. Wang later admitted that the liquid was his, that he knew the liquid contained DMT, and that he did not have any legal reason for possessing DMT.

Following the search, Wang was charged by amended complaint with six felony offenses: two counts of first-degree drug sale, one count of first-degree drug possession, one count of second-degree drug possession, one count of fifth-degree drug possession, and one count of being an ineligible person in possession of a firearm.

In January 2025, the state and Wang entered a plea agreement. Wang pleaded guilty to count 2 of the amended complaint—first-degree possession of 500 grams or more of a hallucinogen—in violation of Minnesota Statutes section 152.021, subdivision 2(a)(5) (2022). In exchange, the other five counts would be dismissed. The parties agreed that the plea was made without reference to Minnesota Statutes section 609.11 (2022), which

governs mandatory minimum sentences. The parties also acknowledged that Wang would be able to argue for a departure. The district court accepted Wang's guilty plea, but decided to wait until sentencing to enter the conviction.

The district court ordered that Wang engage in a pre-sentence investigation (PSI) and chemical-use assessment and directed Wang to sign any relevant releases of information related to these evaluations. The district court also directed that Wang follow the recommendations and aftercare steps of any assessment.

The sentencing worksheet established that Wang's criminal history score was zero, and that he faced a presumptive prison commitment of between 56 and 78 months.

On April 23, 2025, the PSI was completed by a probation officer from Rice County Community Corrections. The PSI noted that Wang had not completed a chemical-dependency assessment at the time of the PSI interview, that he had one scheduled for April 28, 2025, and recommended that he "be ordered to follow all clinically indicated appropriate level of care recommendations as a result of the evaluation."

The PSI also showed that while Wang had been convicted of three felony drug crimes in 2001, 2005, and 2006, he did not have any other felony or gross misdemeanor charges until this case. The report further noted that since his 2023 arrest, Wang had not incurred any additional charges. The report did not take a position as to whether Wang should receive a departure from the guidelines sentence, but stated that "if Mr. Wang were to be monitored by probation, address his chemical use, and engage in prosocial activities, it appears he may be amenable to probation." The PSI recommended the presumptive sentence of 65-months in prison.

Prior to the sentencing hearing, Wang filed a motion for a downward dispositional or durational departure. At sentencing, Wang's attorney asked the district court to grant the downward dispositional departure, arguing that Wang was particularly amenable to probation. Wang's attorney cited Wang's previous term of sobriety of approximately 10 years, during which time he was awarded custody of and raised his two children; his cooperation with law enforcement following his arrest; and the fact that Wang's prior drug-related felonies had occurred "about 20 years ago." Wang's attorney stated that Wang had a chemical-use assessment done on April 28, 2025, a copy of which had been given to the probation officer. Wang's attorney then stated the following:

Because [Wang has] had some sobriety – all this – under his belt. Of course, what they do is they recommend an alcohol and drug awareness class. I told him he might need more than that. A relapse program is my suggestion for that.

But anyway, he started that process. He's paid for it. He's about halfway through, it's a 12-week program, so he's about halfway through from what I understand. He has another session on Monday.

Wang stated that he was "[a] drug addict" and "will be forever always needing to work at" his sobriety. Wang explained that he had previously been sober for a period of 10 years, that he got sober for his children, and remained sober until he "slipped." Wang asked the district court to grant his downward dispositional departure so that he could show the court that he can remain sober. Wang did not present any documentation of his completion of a chemical-use assessment or the chemical-treatment program that his attorney stated he was participating in.

The state opposed the motion. The state argued that, because this was a first-degree drug case, departures were governed by Minnesota Statutes section 152.152, which required Wang to present “adequate evidence that he has been accepted by and can respond to a treatment program approved by the commissioner” before the district court could grant the requested departure. The state further argued that Wang had not met this requirement because there was “no treatment record,” or “chemical health assessment in the record” to demonstrate that Wang had completed treatment. The state contended that, because the requirements of the statute were not met, the district court should deny the motion on that ground alone, but noted that, should the district court reach the *Trog*¹ factors, the factors did not weigh in favor of a departure.

The district court granted Wang’s motion for a downward dispositional departure. The district court found that there were “substantial and compelling reasons to depart,” and that Wang was “particularly amenable to probation.” The district court determined that Wang was “engaging in a program” under section 152.152. The district court stated that Wang “completed the chemical dependency evaluation, and whatever is being recommended out of that, he is doing. I don’t have those specifics, but I am taking as an officer of the court that he is asserting he’s engaging in that.” The probation officer attended the hearing by Zoom. The district court stated that if the probation officer wanted to tell the court differently, she could. The probation officer did not provide any comment.

¹ *State v. Trog*, 323 N.W.2d 28 (Minn. 1982).

The district court ultimately sentenced Wang to 78 months in prison—the top of the box—but stayed execution of the sentence for five years. The district court also imposed 150 days of jail time to be served on either work release or electronic home monitoring.

The state appeals.

DECISION

On appeal, the state argues that the district court erred in granting Wang’s motion for a downward dispositional departure because Wang failed to satisfy the requirements of Minnesota Statutes section 152.152 for imposing a stay of execution, and because Wang is not particularly amenable to probation.

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).

There are two types of sentencing departures: dispositional and durational. *Solberg*, 882 N.W.2d at 623.

[A] downward dispositional departure occurs when the presumptive guidelines sentence calls for imprisonment but the district court instead stays execution or imposition of the sentence. A dispositional departure typically focuses on characteristics of the defendant that show whether the defendant is particularly suitable for individualized treatment in a probationary setting.

Id. (quotation and citation 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). In contrast:

a durational departure is a sentence that departs in length from the presumptive guidelines range. A durational departure must be based on factors that reflect the seriousness of the offense, not the characteristics of the offender. A downward durational departure is justified only if the defendant’s conduct was significantly less serious than that typically involved in the commission of the offense.

Solberg, 882 N.W.2d at 623-24 (emphasis omitted) (quotation and citations omitted).

“We review a district court’s decision to depart from the presumptive guidelines sentence for an abuse of discretion.” *Id.* at 623. “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). When reviewing the district court’s underlying factual findings for clear error, “we examine the record to see if there is reasonable evidence in the record to support the court’s findings.” *State v. Bellazan*, 18 N.W.3d 385, 394 (Minn. App. 2025) (quotation omitted), *rev. denied* (Minn. May 28, 2025). “A finding of fact is clearly erroneous if we are left with the definite and firm conviction that a mistake has been made.” *Id.* (quotation omitted).

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). However, the district court’s sentencing

discretion is not a “limitless grant of power.” *State v. Warren*, 592 N.W.2d 440, 451 (Minn. 1999). “If the reasons given [for a departure] are improper or inadequate and there is insufficient evidence of record to justify the departure, [it] will be reversed.” *Williams v. State*, 361 N.W.2d 840, 844 (Minn. 1985).

Minnesota Statutes section 152.152

One mitigating factor that may provide a basis for a departure in a controlled-substance case is a finding of particular amenability to probation. *See* Minn. Sent’g Guidelines 2.D.3.a(8) (2022). 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.” *State v. Soto*, 855 N.W.2d 303, 309 (Minn. 2014) (quotation omitted).

Minnesota Statutes section 152.152 establishes the requirements that must be met for a district court to depart based on amenability to probation or treatment when the individual has been convicted of a first-degree controlled substance crime:

If a person is convicted under section 152.021, 152.022, 152.023, or 152.0262, and the Sentencing Guidelines grid calls for a presumptive prison sentence for the offense, the court may stay imposition or execution of the sentence only as provided in this section. *The sentence may be stayed based on amenability to probation only if the offender presents adequate evidence to the court that the offender has been accepted by, and can respond to, a treatment program that has been approved by the commissioner of human services.* The court may impose a sentence that is a mitigated dispositional departure on any other ground only if the court includes as a condition of probation incarceration in a local jail or workhouse.

(Emphasis added.)

The state argues that the district court's finding that Wang was completing a treatment program "appear[s to] be based only on the comments of counsel," and that Wang has "provided no records whatsoever that he has done or is enrolled in any form of treatment program." As a result, the state argues that the district court's sentencing departure is "contrary to the statutory requirements found in Minn. Stat. § 152.152, and lacks the required evidentiary support in the record." Wang does not dispute that the chemical-dependency evaluation and treatment records are not found in the record, but instead argues that "it was not an abuse of discretion for the district court to rely on Wang's attorney's assertions about his treatment status as evidence." We agree with the state.

Here, Wang pleaded guilty to a controlled substance violation under Minnesota Statutes section 152.021, subdivision 2(a)(5)—one of the enumerated sections under Minnesota Statutes section 152.152. As such, Wang was required to present "adequate evidence to the [district] court that [he] ha[d] been accepted by, and [could] respond to, a treatment program that has been approved by the commissioner of human services." Minn. Stat. § 152.152. The statute provides that the district court "may" depart based on amenability to probation "only if" those requirements have been satisfied. *See* Minn. Stat. § 152.152. While it appears from the sentencing transcript that Wang may have been enrolled in treatment at the time of the sentencing hearing, there is not adequate evidence to support this assertion. This determination is supported by Wang's concession that he did not offer into evidence any "certificate of completion (or something similar) showing he attended treatment." Instead, the only assertions as to Wang's participation in treatment

came from Wang's attorney at the sentencing hearing. We conclude that is not sufficient evidence to satisfy the statute's requirements.

To convince this court otherwise, Wang asserts three arguments. First, Wang argues that the rules of evidence do not apply to sentencing hearings, citing Minn. R. Evid. 1101(b)(3) and *State v. Adams*, 295 N.W.2d 527 (Minn. 1980). But Wang's argument overlooks that the rules of evidence govern the admissibility of evidence, whereas here, there was no evidence that was even attempted to be admitted regarding treatment. Moreover, it is well established that sentencing departures must be supported by substantial and compelling circumstances *in the record*, a requirement that has not been met in this case. *See Williams*, 361 N.W.2d at 844 ("If the reasons given are improper or inadequate and there is insufficient evidence of record to justify the departure, the departure will be reversed.").

Second, Wang argues that the PSI and statements from Wang and his attorney at sentencing "all establish[] that Wang was sober and had not had any issues with the law since he was charged in 2023." However, the PSI did not state that Wang was in a treatment program that had been approved by the commissioner of human services. Indeed, the PSI only stated that "Mr. Wang has a chemical dependency evaluation scheduled for 4/28/2025." We also conclude that statements made by Wang's attorney are not evidence.²

² We note that CRIMJIG 3.02 states: "Attorneys for the state and defense are officers of the court. It is their duty to make objections they think proper and to argue their client's case. However, the arguments or other remarks of an attorney are not evidence." 10 Minnesota Practice, CRIMJIG 3.02 (2026).

Finally, neither Wang nor his attorney ever stated what treatment program he was in or whether it was approved by the commissioner of human services.

Third, Wang argues that the probation officer was present via Zoom at sentencing and the district court “explicitly gave [the probation officer] an opportunity to correct the record and ‘tell [the court] differently’ if the court’s findings were inappropriate.” But again, this argument fails to provide “adequate evidence” that Wang was “accepted by, and [could] respond to, a treatment program that has been approved by the commissioner of human services.” Minn. Stat. § 152.152. As such, Wang’s arguments are unpersuasive.

In sum, the district court’s finding that Wang was enrolled in treatment at the time of the sentencing hearing was clearly erroneous and did not satisfy the statutory requirements. As such, we remand with instructions for the district court to make the findings required under the statute. *See* Minn. Stat. § 152.152.

Particular Amenability to Probation

The state argues that “the district court departed without adequate record evidence to support its decision, and without finding that [Wang] was *particularly* amenable to probationary supervision and treatment.” In response, Wang argues that “[t]he record made at sentencing established that Wang is particularly amenable to probation.” We agree with Wang.³

³ Wang additionally argues that the state “relied on information outside the appellate record to support its argument” because it relied on allegations in the complaint related to the five felonies that Wang did not plead guilty to. Wang argues that these allegations are not a part of the record and cannot be considered by this court on appeal. The issue before this court is whether the district court abused its discretion by granting Wang’s motion for a downward *dispositional* departure. As such, we look to the “characteristics of [Wang] that

“[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.” *Trog*, 323 N.W.2d at 31. 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 suitable to individualized treatment in a probationary setting 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.

Here, in explaining its decision to grant Wang’s motion for a dispositional departure, the district court addressed numerous *Trog* factors that supported the departure. The district court stated that “the public safety risks to this court was more at the forefront of this case than what [Wang has] shown over the course of the two years.” The district court noted that while Wang was “not a young man,” he still had “more than enough time to make those substantial changes and embrace that sober recovery network.” The district court further noted that Wang’s prior record, which included three felony drug crimes, were “from a long time ago,” and since those convictions, Wang has “shown that he can do it.” The district court observed that Wang had “taken full responsibility.” The district court

show whether [he] is particularly suitable for individualized treatment in a probationary setting,” as opposed to the seriousness of the offense. *Solberg*, 882 N.W.2d at 623.

further noted that Wang “pled guilty to [c]ount 2, which is a [first] degree possession without a guaranteed sentence” and that this demonstrated that Wang was “cooperative” and “taking responsibility.” The district court noted that Wang’s attitude had been “very respectful” and that Wang was “appropriate in court.” The district court discussed Wang’s support system, noting that while nobody was present in court at the sentencing hearing, people have “supported him over the years.” Finally, the district court recognized that there had been no new charges since the incident, that Wang had been out for two years on a \$25,000 bond with “just the standard conditions,” and that there had been no concerns during that time. The district court concluded that all of these factors demonstrated that Wang was “able to be supervised, that he is able to follow court directions, [and] that he can follow through.”

When looking at this case as a whole, the district court did not abuse its discretion in determining that there were substantial and compelling circumstances justifying a downward dispositional departure. Numerous *Trog* factors are supported by the record. While Wang had three felony drug crime convictions between 2001 and 2006, he did not have any other felony or gross misdemeanor charges until this case and since his 2023 arrest, Wang has not incurred any additional charges. The district court found that Wang was remorseful and cooperative, and that his attitude while in court was respectful and appropriate. Wang also has the support of friends and family, as is evidenced by the letters submitted to the district court by Wang’s long-time employers.

In sum, the record supports the district court's finding that Wang is particularly amenable to probation.

Affirmed in part and remanded.