

*This opinion is nonprecedential except as provided by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
A25-1964**

State of Minnesota,
Respondent,

vs.

Justin Taylor Eschenbacher,
Appellant.

**Filed July 13, 2026
Affirmed
Smith, Tracy M., Judge**

Morrison County District Court
File No. 49-CR-24-596

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

Brian J. Middendorf, Morrison County Attorney, Little Falls, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sara J. Euteneuer, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

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

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this direct appeal from the district court's judgment of conviction for felony domestic assault, appellant argues that the district court (1) erred by sentencing appellant without allowing him to exercise his right to allocution and (2) abused its discretion by

denying his motion for a downward dispositional sentencing departure when he had demonstrated his particular amenability to probation. We affirm.

FACTS

In May 2024, Eschenbacher was charged with felony domestic assault under Minnesota Statutes section 609.2242, subdivision 4 (2022). In July 2025, he pleaded guilty to the charge in exchange for dismissal of a charge in another file for violating a domestic-abuse no-contact order. During his plea, Eschenbacher admitted to having a physical argument with his wife in which he “grabbed [her], put her on the couch, held her down, and then hit her.” He also admitted to having two prior domestic-assault convictions, in 2014 and 2016, which enhanced the current domestic-assault offense to a felony.

Morrison County Community Corrections prepared a presentence investigation report (PSI). The PSI recommended a downward durational departure from the presumptive sentence. Eschenbacher filed a motion requesting a dispositional and a durational departure. Attached to the motion were 21 letters of support from friends and family. The state objected to Eschenbacher’s motion.

At a sentencing hearing, Eschenbacher called four witnesses. He called two probation officers that supervised him in 2019 and from 2023 to 2024. Both testified that Eschenbacher did well on probation, had no violations, and would likely succeed on further probation. Next, Eschenbacher’s mother testified that he has grown more mature, taken responsibility for his actions, and attends therapy and domestic-violence classes. Finally, Eschenbacher’s father—the victim of Eschenbacher’s 2014 domestic-assault conviction—

testified that Eschenbacher has gotten better at controlling his anger, has sincere remorse about the past incidents, and has support from his family.

The victim in this case, Eschenbacher's wife, also addressed the court, reading a victim-impact statement. She described the fear and shame she felt living with Eschenbacher. She also asserted that Eschenbacher's attorneys had "concocted a settlement" in which Eschenbacher would give in to her custody demands and settle pending divorce proceedings so long as she did not testify at the sentencing hearing. She also described numerous instances where Eschenbacher allegedly beat, strangled, and threatened her. She concluded by asking the court to impose the sentence the state requested.

After counsel presented arguments, the district court found that Eschenbacher was not particularly amenable to probation and sentenced him to 28 months in prison, the top of presumptive range under the sentencing guidelines. Neither the district court nor counsel brought up Eschenbacher's right of allocution, and Eschenbacher did not request to speak.

This appeal follows.

DECISION

Eschenbacher challenges his sentence in two ways, arguing that the district court erred by (1) not giving him an opportunity for allocution and (2) denying his motion for a downward dispositional departure.¹ We address each argument in turn.

¹ The state elected not to file a brief on appeal. Accordingly, we decide the case on the merits under Minnesota Rule of Civil Appellate Procedure 142.03.

I. The district court erred by failing to allow allocution, but the error was harmless.

Eschenbacher argues that the district court erred by not giving him an opportunity for allocution.

The right to allocution refers to “the court’s responsibility to ask the defendant if [the defendant] has anything to say before a sentence is imposed.” *Greer v. State*, 973 N.W.2d 918, 922 (Minn. 2022). Minnesota courts have not considered whether allocution is a constitutional right, but the United States Supreme Court has determined that it is not. *Id.* (citing *Hill v. United States*, 368 U.S. 424, 428 (1962)). The right of allocution, however, is codified in rule 27.03, subdivision 3(C), of the Minnesota Rules of Criminal Procedure, which states: “Before pronouncing sentence, the court must allow statements from . . . the defendant, personally.”

A district court errs by not “extending” the defendant an opportunity for allocution before imposing a sentence. *State v. Young*, 610 N.W.2d 361, 363 (Minn. App. 2000), *rev. denied* (Minn. July 25, 2000); *see also State ex rel. Searles v. Tahash*, 136 N.W.2d 70, 74 (Minn. 1965) (stating defendant’s “right to have presented to the court all of the mitigating factors which might reasonably justify a sentence less than the maximum”); *State ex rel. Krahn v. Tahash*, 144 N.W.2d 262, 262 (Minn. 1966) (citing *Searles*). The right to allocution is not discretionary and cannot be waived by a defendant’s silence. *State v. Hanson*, 231 N.W.2d 104, 105 (Minn. 1975).²

² Rule 27.03 was amended in 2012 to remove the requirement that the district court explicitly ask if the defendant wants to make a statement. *Compare* Minn. R. Crim. P. 27.03 (2008) (requiring district court to “address the defendant personally and ask if the

Eschenbacher argues that the district court erred by not explicitly offering him a chance for allocution. The district court proceeded directly from counsel's arguments to sentencing, without giving Eschenbacher the opportunity to address the court personally. And, though Eschenbacher's counsel never objected or requested allocution, Eschenbacher cannot waive his right "[b]y remaining mute." *Hanson*, 231 N.W.2d at 105. We therefore agree with Eschenbacher that the district court erred by violating his right to allocution.

But the violation of a defendant's right to allocution does not constitute reversible error if the error was not prejudicial. *See Krahn*, 144 N.W.2d at 262-63 (declining to reverse for violation of right to allocution when district court took into account mitigating information from other sources); *Greer*, 973 N.W.2d at 923 (holding that the harmless-error, rather than structural-error, standard applies to the denial of right to allocution when the district court imposed a mandatory sentence); *see also* Minn. R. Crim. P. 31.01 (requiring that harmless error be disregarded). Eschenbacher argues that he was prejudiced because, had he been afforded the chance to personally show his remorse and to respond to the allegations made in the victim impact statement, the district court might have departed downward. The argument is unconvincing.

defendant wishes to make a statement in the defendant's own behalf") *with* Minn. R. Crim. P. 27.03 (2026) (requiring district court to "allow statements from . . . the defendant, personally"). Nevertheless, nonprecedential decisions by this court have continued to cite caselaw from before the rule change in cases in which the district court has failed to invite defendant's allocution. *See, e.g., State v. Ryan*, No. A17-1532, 2018 WL 3716364, at *3 (Minn. App. Aug. 6, 2018) (citing *Hanson*); *State v. Allen*, No. A16-0311, 2017 WL 163733, at *2 (Minn. App. Jan. 17, 2017) (citing *Searles*, *Krahn*, and *Young*).

A deprivation of allocution may warrant reversal if information or arguments in favor of the defendant were not provided to the district court elsewhere. *See Hanson*, 231 N.W.2d at 105 (remanding for resentencing when district court did not have the benefit of PSI or defendant’s testimony); *Searles*, 136 N.W.2d at 74 (remanding for resentencing when there was no PSI and counsel failed to speak on defendant’s behalf). But reversal is not warranted when there is “adequate assurance . . . that the [district] court took into account the defendant’s version of the events leading to his conviction and other background information which is normally considered in mitigation of the penalty.” *Krahn*, 144 N.W.2d at 263.

Here, the district court was provided with a PSI, which reported Eschenbacher’s remorse, acceptance of responsibility, and steps toward rehabilitation, and which supported a durational departure. In addition, Eschenbacher made a robust case for downward dispositional and durational departures. His counsel presented written arguments in a departure motion and a reply memorandum. Eschenbacher submitted 21 letters of support from friends and family. At the sentencing hearing, Eschenbacher presented testimony from four witnesses, and his counsel orally argued how the factors considered for a departure were met. The district court repeatedly assured the parties that it had reviewed and considered all the materials and submissions. On this record, there is “adequate assurance” that the district court had before it and considered mitigating information, and it is unlikely that Eschenbacher’s personal statement would have added anything more to the evidence and argument on his behalf.

Specifically with respect to the Eschenbacher’s argument that he was unable to respond to the allegations in the victim-impact statement, a review of the sentencing-hearing transcript makes clear that, while the district court commended the victim for “standing up and making her voice heard,” it made its sentencing decision based on other reasons, which it outlined,³ and not on the victim’s allegations about other wrongdoing by Eschenbacher or his counsel. Thus, this argument is unconvincing as well.

In sum, the district court erred by violating Eschenbacher’s right to allocution, but the error was harmless.

II. The district court did not abuse its discretion by denying Eschenbacher’s motion for a downward dispositional departure.

Eschenbacher also argues that the district court abused its discretion by denying his motion for a downward dispositional departure.

Appellate courts review a district court’s decision on whether to grant a sentencing departure for an abuse of discretion. *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014). “A 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.” *Riley v. State*, 792 N.W.2d 831, 833 (Minn. 2011). “A reviewing 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. Pegel*, 795 N.W.2d 251, 255 (Minn. App. 2011) (quotation omitted).

³ We discuss the district court’s reasoning in the next section.

The Minnesota Sentencing Guidelines establish presumptive sentences for felony offenses. Minn. Stat. § 244.09, subd. 5 (2022). Reasons to depart from the presumptive range must be “substantial, and compelling.” Sent’g Guidelines 2.D.1 & cmt. 2.D.103 (Supp. 2023). Departures from sentencing 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). The sentencing guidelines outline a nonexclusive list of factors that courts may consider in deciding whether to depart from a presumptive sentence. Minn. Sent’g Guidelines 2.D.3.a (Supp. 2023). But appellate courts “will not ordinarily interfere with a sentence falling within the presumptive sentence range, either dispositionally or durationally, even if there are grounds that would justify departure.” *State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006) (quotation omitted). In other words, a district court’s refusal to depart from the presumptive sentence would warrant reversal only in a “rare case.” *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). And the district court need not provide explanation for imposing the presumptive sentence so long as it “considers reasons for departure.” *State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985).

One mitigating factor that can warrant departure is that a person is “particularly amenable to probation.” Minn. Sent’g Guidelines 2.D.3.a(7). Particular amenability to probation can be demonstrated by factors such as the defendant’s age, prior record, remorse, cooperation, attitude in court, and the support of friends and family. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). In deciding whether to grant a downward dispositional departure, a district court considers “the defendant as an individual and [focuses] on

whether the presumptive sentence would be best for [the defendant] and for society.” *State v. Heywood*, 338 N.W.2d 243, 244 (Minn. 1983).

Eschenbacher moved for a downward dispositional departure based on his particular amenability to probation.⁴ The district court determined that Eschenbacher was not particularly amenable to probation and denied the motion to depart, imposing a sentence at the top of the presumptive range. Eschenbacher argues that this decision was an abuse of discretion because the record shows that he was particularly amenable to probation under the *Trog* factors. The argument is unpersuasive.

Eschenbacher discusses the *Trog* factors of age, prior criminal record, and remorse. Regarding his age, Eschenbacher cites *State v. Donnay*, 600 N.W.2d 471, 473 (Minn. App. 1999), *rev. denied* (Minn. Nov. 17, 1999). But the defendant in *Donnay* was 20 years old, whereas Eschenbacher was 29 years old at the time of his offense. 600 N.W.2d at 474. Age is typically relied upon as a factor to show a defendant was young and immature when they committed the offense. *See, e.g., Trog*, 323 N.W.2d 28, 30-31 (noting that defendant’s young age supported a departure); *State v. Patton*, 414 N.W.2d 572, 575 (Minn. App. 1987) (upholding a departure where the district court cited a defendant’s immaturity and young age—19 years old—as a reason for departure). In *Soto*, the supreme court rejected the district court’s determination that the fact that the defendant was “‘only’ 37 years old” made him particularly amenable to probation on the basis that he “was young enough that he still ‘ha[d] an opportunity to correct [his] behavior,’” noting that “if that reasoning

⁴ Eschenbacher also moved for a downward durational departure but does not challenge denial of that motion on appeal.

applies to a 37-year-old, it is difficult to see which defendants it would not reach.” 855 N.W.2d at 310. Similarly, here, Eschenbacher does not elaborate on why his age of 29 makes him particularly amenable to probation.

Eschenbacher argues that his criminal record should be considered “neutral” because his past two offenses would have decayed in a few months and would have not contributed to his criminal history score, leading to a presumptive stayed sentence. But the district court’s consideration of prior offenses under this factor has never been limited to offenses included in a criminal-history score. *See id.* (discussing the relevance of prior offenses even where the defendant’s criminal history score was zero). And in its explanation at the hearing, the district court noted Eschenbacher’s prior “violent offenses” and the long duration of his probation.

Eschenbacher argues that he “consistently expressed remorse and regret for his actions” and “demonstrated a commitment to change through engagement and therapy.” He argues that his psychological evaluation after the offense was “eye-opening” and led to “significant improvement in his ability to cope with stress and frustration.” But “whether a defendant’s actions express genuine remorse and how much weight to give to that remorse” are questions for the district court. *Solberg*, 882 N.W.2d at 626. The district court apparently found Eschenbacher’s remorse not genuine, noting that “ancillary issues” were driving his remorse and that it took him a year to resolve the case. It also found that his domestic-abuse classes and therapy were insufficient, noting indications that “he wasn’t being truthful” during an assessment.

Eschenbacher also argues that the factor of community support weighs in favor of a dispositional departure. Eschenbacher undisputedly had a “tremendous amount of community support,” as reflected in the numerous letters and testimony presented at the hearing. In addition, Eschenbacher argues that he “cooperated, did not minimize his actions and was respectful” throughout the judicial process. The district court did not comment on this during the hearing, but, in general, cooperation and attitude in court typically weigh in favor of departure. Although two factors may have supported departure, on this record, we see no abuse of discretion in the district court’s determination that Eschenbacher is not particularly amenable to probation.

The district court repeatedly stated that it had reviewed and considered all the materials before it. And, having done so, it concluded that Eschenbacher’s mitigation efforts were insufficient, that his remorse was not genuine, and that he was at risk of further domestic abuse. Because the district court “carefully evaluated all the testimony and information presented before making a determination,” this court “may not interfere” with the exercise of discretion to impose a presumptive sentence. *Pegel*, 795 N.W.2d at 255 (quotation omitted).

Affirmed.