

*This opinion is nonprecedential except as provided by  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  
A25-2117**

State of Minnesota,  
Appellant,

vs.

Ryan Richard Fenske,  
Respondent.

**Filed May 4, 2026  
Reversed and remanded  
Larkin, Judge**

Carver County District Court  
File No. 10-CR-24-197

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

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Minnesota (for appellant)

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

Considered and decided by Larkin, Presiding Judge; Cochran, Judge; and  
Rasmusson, Judge.

**NONPRECEDENTIAL OPINION**

**LARKIN**, Judge

The state challenges the district court's grant of respondent's motion for a  
downward dispositional departure. Because the record does not reveal substantial and

compelling circumstances justifying the departure, we reverse the departure and remand for resentencing.

## **FACTS**

In March 2024, appellant State of Minnesota charged respondent Ryan Richard Fenske with felony financial transaction card fraud, alleging that Fenske used or attempted to use a card without the consent of the cardholder to obtain the property in an amount of more than \$250 but less than \$2,500. Before trial, the state gave notice that it would seek an upward durational departure. Specifically, the state indicated that it intended to offer evidence that Fenske “is a career offender and/or [Fenske] has five or more prior felony convictions.”

The matter proceeded to trial, and the jury found Fenske guilty as charged. The jury also found by special verdict that Fenske had five or more prior felony convictions and that the present felony offense was committed as part of a pattern of criminal conduct. That finding permitted a determination that Fenske was a career offender and imposition of a longer sentence.

The district court scheduled a sentencing hearing and ordered a presentence investigation report (PSI). The state moved for an upward durational departure, and Fenske moved for a downward dispositional departure. The district court concluded that substantial and compelling circumstances justified a downward dispositional departure. Thus, the district court imposed the presumptive 24-month prison sentence, stayed its execution, and ordered Fenske to serve 360 days in the Carver County Jail with credit for 164 days.

The state appeals.

## DECISION

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, it 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).

## I.

The state contends that the district court abused its discretion by granting Fenske’s motion for a downward dispositional departure.

As an initial matter, Fenske asserts that because the state failed to provide a transcript of the underlying jury trial, the record is inadequate for appellate review. An appellant must provide this court with a record that is “sufficient to show the alleged errors and all matters necessary to consider the questions presented.” *State v. Carlson*, 161 N.W.2d 38, 40 (Minn. 1968). The absence of a trial transcript in this appeal is immaterial because the district court did not rely on trial evidence that was not otherwise available at the sentencing hearing. *See State v. Bicek*, 429 N.W.2d 289, 293 (Minn. App. 1988) (stating that “the lack of a trial transcript does not necessarily impede review of a sentencing appeal based on legal issues”), *rev. denied* (Minn. Nov. 23, 1988).

#### *The District Court’s Decision*

In granting Fenske’s request for a downward dispositional departure, the district court stated that it had reviewed the relevant filings, which included memorandums of law supporting the parties’ opposing departure motions. The district court expressed some concern about remarks attributed to Fenske in the PSI and stated that it would “make a sort of muted response” to Fenske’s acceptance of responsibility and expression of remorse. The district court also stated that it was “aware of [Fenske’s] wife’s support” because she had attended his trial and a previously continued sentencing hearing. The district court found that Fenske “made good use” of his time in jail pending sentencing by availing himself of programming and maintaining his sobriety. However, the court acknowledged that it was “a little bit of a forced sobriety, because [he was] in jail.”

The district court explained that it had “weigh[ed] the issue” and was “going to make a finding that this [offense] is less onerous than usual, despite the [career-offender]

finding by the jury, given that [Fenske's] only prior check forgery was in 2002" and that many of Fenske's prior convictions had decayed and were unrelated types of crimes. The district court therefore concluded that there were "substantial and compelling reasons" to find that Fenske was "particularly amenable to treatment given the work that [he had] done in the Carver County jail in taking advantage of the programs" and his ability "to avail [himself] of chemical dependency treatment while [he is] on probation."

### *The State's Challenge*

The state argues that the district court abused its discretion in determining that Fenske was particularly amenable to treatment in a probationary setting. Specifically, the state argues that the district court did not "deliberately" weigh the relevant factors and "did not offer any further support for its conclusory finding that [Fenske] was particularly amenable to treatment based upon" the programming Fenske completed in jail. The state also takes issue with the district court's apparent reliance on the severity of the offense.

### *Severity of the Offense*

Generally, the district court should not consider the severity of the offense when deciding a motion for a downward dispositional departure. *See Solberg*, 882 N.W.2d at 623-24 (explaining that a dispositional departure "focuses on characteristics of the defendant" whereas a durational departure focuses on offense-related factors). We are aware of only one precedential case in which a downward dispositional departure was granted and affirmed based on an offense-related factor: *State v. Stempfley*, 900 N.W.2d 412 (Minn. 2017).

Stempfley was convicted of aiding and abetting criminal sexual conduct. *Stempfley*, 900 N.W.2d at 415. The trial evidence showed that he held the victim's hand while another individual engaged in nonconsensual cunnilingus with the victim. *Id.* at 413-14. The district court granted a downward dispositional departure based on its finding that Stempfley played a minor or passive role in the crime. *Id.* at 415-16. The departure was affirmed by this court and by the supreme court. *Id.* at 416, 419. However, the supreme court noted that “[t]he State [did] not argue that the sentencing factor of a minor or passive role in the crime cannot be used to support a dispositional departure.”

Unlike *Stempfley*, in this case the state argues that the district court erred by relying on an offense-related factor. *Id.* at 413. And, Fenske was not convicted under an aiding-and-abetting theory of liability. He was not a minor or passive participant in the crime. He alone committed the crime. Thus, there is no basis to apply the reasoning of *Stempfley* here.

Because the district court relied on an offense-related factor to support of its determination that there were substantial and compelling reasons to justify a downward dispositional departure, the court's decision was based on an erroneous view of the law and was, therefore, an abuse of discretion. *See Hallmark*, 927 N.W.2d at 291.

#### *Particular Amenability to Treatment*

“[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). 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). 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.

In *Soto*, the district court determined that the defendant was amenable to probation because he had been recommended as a candidate for a particular outpatient treatment program, he was only 37 years old, his record did not include a lot of serious crimes, he was respectful to the court, and he had some family support. 855 N.W.2d at 307.

The supreme court vacated the district court’s grant of a dispositional departure, reasoning that, although the recommendation for treatment “provided some support for the district court’s decision to depart, it was not sufficient to justify the departure.” *Id.* at 309-10, 314. The supreme court accepted the district court’s determination that Soto had “some family support.” *Id.* at 312. But the supreme court rejected the district court’s conclusion that Soto’s age weighed in favor of a departure. *Id.* at 310. And it noted that Soto’s criminal record “provide[d] very little, if any, support for the conclusion that he was particularly amenable to probation” because he “did not have a clean record; he had been convicted of two counts of possessing drug paraphernalia, two counts of driving with a suspended license, and one count of simple assault against the mother of his son.” *Id.* at 311. Ultimately, the supreme court stated that, although some factors may have suggested that Soto was amenable to probation, “those factors, individually and collectively, provide

very little support for the further conclusion that Soto had any *particular* amenability to probation relative to other defendants.” *Id.* at 312.

The record here provides even less support for a downward dispositional departure based on particular amenability to probation. Although Fenske participated in programming while he was in jail pending sentencing, that programming was not chemical-dependency programing. Instead, he completed several online courses regarding topics such as “Navigating Large Emotions,” “Increasing Your Happiness,” and “Zen Lifestyle.” We commend Fenske for completing these courses, but there is no indication that they directly addressed chemical dependency. And as the district court noted, Fenske’s sobriety at sentencing was “forced” as a result of his incarceration.

The record reveals that Fenske otherwise failed to engage in any form of chemical-dependency treatment between his arrest and conviction. And, while he was on supervised release around the time of the underlying offense, Fenske provided positive drug tests for methamphetamine on six different occasions. Fenske took no responsibility for those positive drug tests, denied drug use, and claimed that his wife was providing him drugs without his consent.

In addition, the record also shows that, at the time of sentencing, Fenske was 41 years old and had a criminal history score of 11 based on his accumulation of 11 felony convictions over approximately 20 years.<sup>1</sup> Notably, Fenske was charged with the underlying offense while on supervised release for a previous conviction. And Fenske was

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<sup>1</sup> The PSI shows that Fenske’s criminal record includes an additional 7 delayed felony convictions.

charged with five more crimes while awaiting trial in this case, including disorderly conduct, theft, providing false information to the police, fifth-degree drug possession, and failure to produce proof of insurance. Finally, the jury found that Fenske had five or more prior felony convictions and committed the current offense as part of a pattern of criminal conduct—a finding that permitted the district court to determine that Fenske was a career offender and to impose a longer sentence. *See* Minn. Stat. § 609.1095, subd. 4 (2022). It is difficult to reconcile the district court’s finding that Fenske is particularly amenable to treatment in a probationary setting with the jury’s career-offender finding.

Although remorse is a factor that may show a particular amenability to treatment, the record does not support the district court’s finding of remorse. Fenske did *not* take full responsibility for his actions related to this case. The PSI states that Fenske claimed that the crime was the result of another person hacking his phone. In his letter to the court supporting his request for a dispositional departure, Fenske minimized his responsibility, essentially apologizing only for his negligence and mismanagement of the victim’s information, which he claims led to the underlying credit-card fraud. At the sentencing hearing, Fenske continued to offer equivocal apologies until the district court directly asked, “So let’s be clear: Obviously everyone expresses remorse because they get caught. Are you expressing remorse for taking these funds when there was not permission to take them?” Fenske responded, “Yes, Your Honor.”

Similarly, although support of family is a factor that may show a particular amenability to treatment, the district court’s finding that Fenske had appropriate family support is not supported by the record. Again, Fenske blamed his wife for his positive

methamphetamine tests, claiming that she gave him drugs without his knowledge. Fenske cannot reasonably assert both that his wife is to blame for his positive drug tests and that his wife is a supportive family member who will assist him to comply with treatment while on probation.

In conclusion, although the district court relied on factors that may justify a departure, on this record, the district court's findings that Fenske was particularly amenable to probation, that he was remorseful, and that he had appropriate family support leave us with a definite and firm conviction that a mistake was made. In addition, the district court's dispositional departure was based, in part, on an offense-related consideration.

Once again, the district court's discretion to depart from the presumptive sentence is not a limitless grant of power. *Warren*, 592 N.W.2d at 451. And "[b]ecause the guidelines' goal is to create uniformity in sentencing, departures are justified only in exceptional cases." *Solberg*, 882 N.W.2d at 625. This is not an exceptional case, and the grant of a downward dispositional departure was an abuse of discretion. *See Hallmark*, 927 N.W.2d at 291. We therefore reverse the downward dispositional departure and remand to the district court for resentencing.

**Reversed and remanded.**