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**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0528**

State of Minnesota,
Respondent,

vs.

Daniel Roy Luckhardt,
Appellant.

**Filed November 2, 2020
Affirmed
Larkin, Judge**

Lyon County District Court
File No. 42-CR-19-776

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

Rick Maes, Lyon County Attorney, Abby Wikelius, Assistant County Attorney, Marshall, Minnesota (for respondent)

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

Considered and decided by Jesson, Presiding Judge; Larkin, Judge; and Reilly, Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges the district court's denial of his motion for a downward dispositional departure, arguing that he is particularly amenable to probation. We affirm.

FACTS

In July 2019, respondent State of Minnesota charged appellant Daniel Roy Luckhardt with fifth-degree possession of a controlled substance, obstructing legal process, violation of a domestic-abuse no-contact order, and possession of a hypodermic needle. Luckhardt was conditionally released while the case was pending. His conditions of release required him to abstain from drug use and to report for drug testing. He violated those conditions multiple times by testing positive for methamphetamine and by failing to report for drug testing. In November 2019, Luckhardt pleaded guilty as charged. Between the plea and sentencing hearings, Luckhardt again violated his conditions of release by failing to report for drug testing.

According to the presentence investigation, Luckhardt has five felony convictions for offenses committed between 2004 and 2011. Four of those offenses were controlled-substance crimes, and one was attempted simple robbery. Luckhardt also has three misdemeanor convictions for offenses committed earlier in 2019. He was placed on probation for two of those misdemeanor convictions in August 2019. The presentence investigation reported that Luckhardt has three young children who currently were the subjects of a child-protection case and placed in foster care.

Luckhardt moved for a downward dispositional departure, asserting that he was particularly amenable to probation. At the sentencing hearing in January 2020, the case manager for Luckhardt's child-protection case testified. She explained that Luckhardt had visitation with his children and that ever since she took over his case in October 2019, he had always taken a drug test when requested and had never failed a drug test in her program. The case manager conceded, however, that some child-protection staff members felt that Luckhardt had been "aggressive, rude, [and] intimidating" toward them. In arguing for a downward dispositional departure, Luckhardt's counsel stated that Luckhardt was enrolled in outpatient treatment, had taken steps to complete his conditions of probation from the prior misdemeanor convictions, had completed an anger-management course, and was "gradually moving towards being able to see his children again."

The district court denied the downward dispositional departure, explaining:

The reasons that you've offered in support of departure . . . while they are reasons, and I'm not trying to minimize the progress you've made, uh, in your [child-protection] case, but I cannot find that the information that's been provided to me rises to the level of substantial and compelling. . . .

In . . . your particular case, Mr. Luckhardt, in this file you've had multiple allegations of use while on pretrial release; multiple violations of conditional release. The information provided in the record, as well as the testimony here today, tells me that . . . you have made some changes But I can't say that those changes rise to the level of substantial and compelling.

The district court emphasized Luckhardt's violations of his conditions of release and stated, "I cannot say that you are particularly amenable to probation or treatment when you did not cooperate with pretrial release conditions. In fact, you were found multiple

times to be out of compliance with release conditions. And cooperating with release conditions is similar to your cooperation on probation.” The district court recognized that Luckhardt had made progress in his child-protection case, but it also took into account his case manager’s testimony that his “behavior has been aggressive and/or intimidating to persons involved in the system.”

The district court ordered Luckhardt to serve 21 months’ imprisonment for fifth-degree possession of a controlled substance, as well as concurrent jail sentences for obstructing legal process, violating a domestic-abuse no-contact order, and possessing a hypodermic needle. Luckhardt appeals.

D E C I S I O N

The Minnesota Sentencing Guidelines establish presumptive sentences for criminal offenses. Minn. Stat. § 244.09, subd. 5 (2018). The sentencing guidelines seek to “maintain uniformity, proportionality, rationality, and predictability in sentencing” of crimes. *Id.* “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 exist “identifiable, substantial, and compelling circumstances to support a departure.” Minn. Sent. Guidelines 2.D.1 (2018).

When 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). Only in a “rare” case will we reverse the district court’s refusal to depart from the presumptive sentence. *Id.* We will not reverse

the district court's refusal to depart "as long as the record shows the [district] 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).

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). A defendant's particular amenability to probation will justify departure from a presumptive sentence. *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014). 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." *Id.* at 309 (quotation omitted).

Relevant factors for determining whether the 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. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). Even if there is evidence that the defendant would be particularly amenable to probation, a district court is not required to impose a downward dispositional departure. *State v. Olson*, 765 N.W.2d 662, 664-65 (Minn. App. 2009).

Luckhardt contends that he is particularly amenable to probation because at the time of sentencing, he had made progress in his child-protection case and in completing the conditions of his misdemeanor probation. He argues that he is committed to rehabilitation. But Luckhardt does not assign error to the district court's decision-making process; he

simply argues that the record supports a different decision. That argument is unavailing because the district court was not required to depart even if there had been substantial and compelling circumstances supporting a departure.

The record indicates that the district court considered all of the information presented for and against a dispositional departure before making a decision. The district court reasonably concluded that Luckhardt was not particularly amenable to probation because he had violated his conditions of release multiple times while the case was pending. This is not a rare case in which we would reverse the district court's refusal to depart from the presumptive sentence.

Affirmed.