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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1656**

State of Minnesota,
Respondent,

vs.

Sammy Lee Jackson,
Appellant.

**Filed May 1, 2017
Affirmed
Smith, Tracy M., Judge**

Dakota County District Court
File No. 19HA-CR-16-1029

Lori Swanson, Attorney General, St. Paul, Minnesota; and

James C. Backstrom, Dakota County Attorney, Kathryn M. Keena, Assistant County Attorney, Hastings, Minnesota (for respondent)

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

Considered and decided by Smith, Tracy M., Presiding Judge; Reilly, Judge; and Klaphake, Judge.*

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

UNPUBLISHED OPINION

SMITH, TRACY M., Judge

Appellant Sammy Lee Jackson challenges his presumptive-guidelines prison sentence for first-degree criminal sexual conduct, arguing that the district court abused its discretion by denying his motion for a downward durational or dispositional departure. Because the district court did not abuse its discretion, we affirm.

FACTS

On March 16, 2016, a 12-year-old child reported that she was sexually assaulted by a male relative, Jackson. Another adult household member told police that she witnessed Jackson sexually assaulting the victim and recording a video of the incident with a cellphone.

Jackson was charged with one count of criminal sexual conduct in the first degree. Jackson pleaded guilty to the charge with the understanding that he could argue for a downward departure after a presentence investigation including a psychosexual evaluation. The state agreed not to pursue child-pornography charges.

The presentence investigation identified no substantial and compelling mitigating factors, but it identified three possible offense-based aggravating factors. The presentence-investigation report recommended that Jackson be committed to the commissioner of corrections for 306 months, which is within the presumptive range in the sentencing guidelines.

At the sentencing hearing, the district court found no substantial and compelling circumstances to support a sentencing departure. The district court imposed a prison sentence of 306 months.

Jackson appeals.

D E C I S I O N

The Minnesota Sentencing Guidelines establish presumptive sentences for felony offenses. *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016); *see* Minn. Stat. § 244.09, subd. 5 (2016). A district court must order a sentence within the presumptive range unless there are “substantial and compelling circumstances” warranting departure. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). If the defendant requests a departure, the district court must “exercise [its] discretion by deliberately considering circumstances for and against departure.” *State v. Pegel*, 795 N.W.2d 251, 253 (Minn. App. 2011) (quotation omitted). A district court may not fail to exercise its discretion altogether by rejecting a departure request without considering the reasons for and against departure. *State v. Curtiss*, 353 N.W.2d 262, 263-64 (Minn. App. 1984).

We may reverse a district court’s sentencing decision only if the district court abused its discretion. *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014). We will affirm a district court’s refusal to depart as long as there are valid reasons for doing so. *Kindem*, 313 N.W.2d at 7-8.

Durational Departure

Jackson asserts that the district court abused its discretion by denying his request for a downward durational departure. “Requests for durational departures require the

district court to consider whether the conduct involved in the offense of conviction was significantly more or less serious than the typical conduct for that crime.” *State v. Peter*, 825 N.W.2d 126, 130 (Minn. App. 2012), *review denied* (Minn. Feb. 27, 2013). Such factors are referred to as “offense-related” factors. *Id.* “[O]ffender-related factors,” such as the *Trog* factors discussed below, “do not support durational departures.” *Id.*

Jackson did not identify any offense-related factors in his argument for a sentencing departure (nor does he identify any on appeal). The district court did not abuse its discretion in declining to grant a downward durational departure. *See id.*

Dispositional Departure

Jackson asserts that, in denying his motion for a downward dispositional departure, the district court neglected to consider and weigh all the relevant factors, thereby failing to exercise its discretion. This argument is based on the district court’s statement during sentencing that “[t]he only mitigating circumstance that I believe is potentially worthy of discussion is whether Mr. Jackson is amenable to probationary supervision.”

A district court may grant a downward dispositional departure, staying a presumptively executed sentence, if a defendant has a “particular amenability to individualized treatment in a probationary setting.” *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). When evaluating whether a defendant is particularly amenable to probation, a district court may consider factors relevant to that issue, including “the defendant’s age, his prior record, his remorse, his cooperation, his attitude while in court, and the support of friends and/or family.” *Id.*

Because the defendant's particular amenability to probation is the overarching issue that determines whether a downward dispositional departure may be granted, we interpret the district court's statement about the "only mitigating circumstance . . . potentially worthy of discussion" to mean that the district court believed only offender-related factors for dispositional departure, and not offense-related factors for durational departure, might possibly weigh in favor of a downward departure in this case. Because Jackson did not identify any possible offense-related factors, the district court's statement does not imply that there was an improper refusal to consider any required factors.

Jackson also argues that the district court failed to exercise its discretion because it did not specifically discuss each of the *Trog* factors, including age, prior record, remorse, cooperation and attitude while in court, and support of friends and/or family. "A district court's failure to address all of the *Trog* factors on the record does not demonstrate that the district court abused its discretion" *Pegel*, 795 N.W.2d at 252. It is sufficient that the record show that the district court deliberately considered circumstances for and against departure, even if it did not address each one on the record. *Id.* at 254.

The district court's explanation for denying the departure motion focused on assessments of Jackson's ability to change through treatment and his recidivism risk, based on the psychosexual evaluation. The district court's reliance on the psychosexual evaluation indicates that it deliberately read and considered the report, which discusses not only Jackson's amenability to community-based intervention services, but also *Trog* factors including age, prior criminal record, remorse, and support from friends and family. Several *Trog* factors also came up during the sentencing hearing. Relevant to remorse,

cooperation, and attitude in court, Jackson took the stand and stated, “I am sorry for what I did. . . . I know that it was wrong,” and “I’m just asking for forgiveness and I’m just hoping for a second chance to make things better.” Relevant to the support of friends and family, the district court noted at the sentencing hearing that it was “very, very glad that Mr. Jackson has family members here today,” and acknowledged that Jackson’s family members were “deeply concerned for his well-being” and were there “in support of [their] son and brother.” Given the testimony and reports presented to the district court and the court’s own discussion, we conclude that the district court duly considered and weighed the relevant factors and did not fail to exercise its discretion.

Having determined that the district court did not fail to exercise its discretion, we next consider whether the district court abused that discretion. In its discussion of Jackson’s amenability to probation, the district court focused on conclusions drawn in the confidential psychosexual-evaluation report. This discussion reflects deliberate consideration of circumstances that are highly probative of whether Jackson is particularly amenable to treatment in a probationary setting. *See Trog*, 323 N.W.2d at 31. Because the district court had valid reasons substantiated by information in the confidential report, we conclude that the district court did not abuse its discretion in refusing to grant a dispositional departure. *See Kindem*, 313 N.W.2d at 7-8.

Finally, Jackson asserts that the fact that he was a victim of sexual abuse when he was a child weighs in favor of granting a downward dispositional departure. However, “[t]he fact that defendant himself was sexually abused as a child is a social factor that cannot be relied upon as a ground for departing.” *State v. Brusven*, 327 N.W.2d 591, 594

(Minn. 1982). The district court therefore did not abuse its discretion in refusing to grant a departure on that ground.

Affirmed.