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STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1811

State of Minnesota,
Respondent,

v.

Hannah Christie Weyh,
Appellant.

Filed May 8, 2017
Affirmed
Bjorkman, Judge

Hennepin County District Court
File No. 27-CR-16-280

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

Michael O. Freeman, Hennepin County Attorney, Cheri A. Townsend, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Thomas H. Shiah, Law Offices of Thomas H. Shiah, Ltd., Minneapolis, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Cleary, Chief Judge; and Peterson, Judge.

U N P U B L I S H E D O P I N I O N

BJORKMAN, Judge

Appellant challenges the district court's denial of her motion for a downward dispositional departure, arguing substantial and compelling reasons warrant a departure.

Because the district court did not abuse its discretion in imposing a presumptive sentence, we affirm.

FACTS

On November 8, 2015, appellant Hannah Christie Weyh was driving westbound on Broadway Street in Minneapolis. When she attempted to make a left turn into a parking lot, her vehicle struck an oncoming motorcycle, killing its driver, B.P. Weyh admitted to investigative police officers that she had been drinking. A blood test revealed an alcohol concentration of 0.19.

Respondent State of Minnesota charged Weyh with one count of criminal vehicular homicide. Weyh pleaded guilty. She moved for a downward dispositional or durational departure, arguing her genuine remorse, acceptance of responsibility, and commitment to seeking treatment and maintaining her sobriety following the offense demonstrates that she is amenable to probation. In connection with her motion, Weyh submitted letters from 21 friends, family members, coworkers, and individuals involved in her substance-abuse treatment. The community corrections officer who conducted the presentence investigation (PSI) noted Weyh's post-offense efforts to address her substance-abuse issues, but concluded no mitigating factors were present and recommended the presumptive sentence.

During the sentencing hearing, the district court heard statements from B.P.'s mother and aunt regarding how his death had impacted their family, particularly B.P.'s six-year-old daughter. Weyh also gave a statement expressing her remorse, guilt, and commitment to maintaining her sobriety and educating others about the dangers of driving

while impaired. The district court denied Weyh's motion and imposed a presumptive 48-month sentence. Weyh appeals.

D E C I S I O N

The district court must impose a presumptive sentence unless "identifiable, substantial, and compelling circumstances" justify a downward dispositional departure. *State v. Johnson,* 831 N.W.2d 917, 925 (Minn. App. 2013) (quotation omitted), *review denied* (Minn. Sept. 17, 2013). One such circumstance is an individual's particular amenability to probation. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). In determining whether an offender is particularly amenable to probation, the district court may consider her age, prior record, remorse, cooperation, attitude in court, and the support of friends and family. *Id.* We review a district court's decision to grant or deny a departure from the presumptive sentence for abuse of discretion. *State v. Geller*, 665 N.W.2d 514, 516 (Minn. 2003). We will reverse a presumptive sentence only in rare cases. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). And we "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).

Weyh first argues that the district court did not adequately consider her arguments in support of a departure. She acknowledges that a district court is not required to explain its decision to impose a presumptive sentence. *State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985). But Weyh contends that implicit in this directive is the requirement that the district court actually consider a defendant's arguments for departure. And she

asserts that the district court did not do so. The record defeats this argument. Weyh filed her departure motion and supporting documents one week prior to the sentencing hearing. And the community corrections officer submitted his PSI prior to sentencing. While, as Weyh observes, the district court "dismissed her motion in less than two transcript pages," the court acknowledged during the hearing that it reviewed Weyh's motion and accompanying submissions. And the district court indicated it had "spent a lot of time thinking about this case." In short, the record does not support Weyh's bald assertion that the district court failed to consider her motion.

Weyh next contends that the district court abused its discretion by imposing a presumptive sentence because her remorse, acceptance of responsibility, and commitment to maintaining her sobriety make her particularly amenable to probation. We are not persuaded. The presence of mitigating factors does not obligate a district court to dispositionally depart. *Wells v. State*, 839 N.W.2d 775, 781 (Minn. App. 2013), *review denied* (Minn. Feb. 18, 2014). Indeed, "a district court always has discretion to impose a presumptive prison sentence even if the *Trog* factors support a probationary sentence." *Id.* Accordingly, the presence of mitigating factors does not require a dispositional departure.

Finally, Weyh argues that the district court improperly denied her motion based on conduct that predated the offense and erroneous information in the PSI. We disagree. Weyh asserts that the district court essentially punished her for being forthright about the extent and longevity of her struggles with chemical dependency. But this information was included in and properly considered as part of the PSI. After reviewing the PSI, the district court remarked that it was troubled that, despite a long history of prior "wake-up calls," it

took the tragic event that resulted in B.P.'s death for Weyh to change her behavior. Weyh cites no authority to support the conclusion that such an analysis is improper. *See Ganguli v. Univ. of Minn.*, 512 N.W.2d 918, 919-20 n.1 (Minn. App. 1994) (stating that we decline to address arguments unsupported by legal authority). And we are not persuaded by Weyh's assertion that the district court mischaracterized an "intervention" in the winter of 2013 as related to alcohol abuse because the precipitating incident related to her use of Prozac. The district court referenced the 2013 "intervention" as indicative of Weyh's history of "wake-up calls" followed by relapse. And a review of the PSI shows that Weyh's Prozac use coincided with a period of heavy drinking.

Weyh's commitment to sobriety is commendable. And we acknowledge her substantial efforts during the months after this offense to address her significant chemical-abuse issues and make amends for B.P.'s tragic death. But on this record, we conclude that the district court did not abuse its broad discretion when it imposed a presumptive sentence.

Affirmed.