STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0409

State of Minnesota,
Respondent,

vs.

Michael Emmanuel Ballard,
Appellant.

Filed December 18, 2017
Affirmed
Florey, Judge

Olmsted County District Court
File No. 55-CR-16-1981

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

Mark A. Ostrem, Olmsted County Attorney, Jennifer D. Plante, Associate County Attorney, Rochester, Minnesota (for respondent)

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

Considered and decided by Connolly, Presiding Judge; Jesson, Judge; and Florey, Judge.

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

FLOREY, Judge

In this appeal from a 66-month presumptive sentence for first-degree refusal to submit to a chemical test, in violation of Minn. Stat. §§ 169A.20, subd. 2, .24, subd. 2

(2014), appellant argues that the district court abused its discretion in denying his motion for a dispositional departure. We affirm.

FACTS

On March 19, 2016, appellant Michael Emmanuel Ballard was arrested on suspicion of driving while intoxicated (DWI). An officer read appellant the implied-consent advisory, but appellant refused to submit to a test. Appellant was charged with first-degree DWI, first-degree test refusal, giving a false name to a peace officer, and driving after cancellation.

Appellant pleaded guilty to first-degree test refusal in exchange for the state dismissing the remaining charges. The parties did not reach an agreement concerning the sentence. The district court ordered a presentence investigation, which was completed by a probation officer. After examining appellant's controlled-substance history, treatment history, and criminal history, the probation officer recommended that the presumptive sentence of 66 months be imposed.

At sentencing, appellant moved for a dispositional departure from the presumptive guidelines sentence, arguing that he was particularly amenable to probation and that he should be provided with the opportunity to participate in chemical-dependency treatment in a probationary setting. In support of his request for a probationary sentence, appellant cited his acceptance into an inpatient treatment program that would allow him the opportunity to complete chemical-dependency treatment. The district court denied the motion and sentenced appellant to the presumptive 66-month sentence.

This appeal followed.

D E C I S I O N

Appellant argues that the district court abused its discretion by refusing to grant a dispositional departure from the presumptive sentence. He argues that the district court should have found that he was "particularly amenable to probation and treatment in a probationary setting."

We review a district court's decision to grant or deny a departure from the presumptive sentence for an abuse of discretion. *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014). We will reverse a district court's refusal to depart from the presumptive sentence only in a "rare case." *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

The Minnesota Sentencing Guidelines "prescrib[e] a sentence or range of sentences that is presumed to be appropriate." *Soto*, 855 N.W.2d at 308 (quotation omitted). The guidelines are intended to "maintain uniformity, proportionality, rationality, and predictability in sentencing." Minn. Stat. § 244.09, subd. 5 (2014). Therefore, departures are discouraged unless "there are 'identifiable, substantial, and compelling circumstances to support a departure.'" *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016) (quoting Minn. Sent. Guidelines 2.D.1 (Supp. 2015)). "Substantial and compelling circumstances are those circumstances that make the facts of a particular case different from a typical case." *State v. Peake*, 366 N.W.2d 299, 301 (Minn. 1985).

A district court may grant a downward-dispositional departure from the sentencing guidelines if the defendant is "particularly amenable to probation." *Soto*, 855 N.W.2d at 309; *see* Minn. Sent. Guidelines 2.D.3.a.(7) (Supp. 2015) (including "particularly amenable to probation" as a mitigating factor). A finding that a defendant is particularly

amenable to probation may be supported "by the fact that the offender is particularly amenable to a relevant program of individualized treatment in a probationary setting." Minn. Sent. Guidelines 2.D.3.a.(7). "[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). When considering whether to grant a dispositional departure, the district court may consider factors such as "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.*

Appellant essentially argues that the district court abused its discretion by not finding that he was particularly amenable to probation after he claimed that he had been accepted into a program that would enable him to receive individualized treatment. He argues that it is best for him and society if he receives a probationary sentence. He cites to his remorse, lack of opportunity for rehabilitation following his prior DWI convictions, and his willingness to change to support his argument that the district court abused its discretion.

An examination of the record does not indicate that this is a rare case requiring reversal of the district court's imposition of the presumptive sentence. *See State v. Hennum*, 441 N.W.2d 793, 801 (Minn. 1989) (holding that the case qualified as a rare case justifying reversal of the district court's imposition of the presumptive sentence because of evidence that the victim had physically and mentally abused the defendant). The record indicates that the district court clearly considered the reasons for and against departure. The district court considered appellant's sincere interest in obtaining treatment, his prior

treatment opportunities, and his previous behavior while on probation and parole. Ultimately, the district court concluded there were not substantial and compelling reasons to depart on the basis of his amenability to probation.

Even if the record did support a finding that appellant is particularly amenable to probation, "the mere fact that a mitigating factor is present in a particular case does 'not obligate the court to place defendant on probation or impose a shorter term than the presumptive term.'" *State v. Pegel*, 795 N.W.2d 251, 253-54 (Minn. App. 2011) (quoting *State v. Wall*, 343 N.W.2d 22, 25 (Minn. 1984)); *see also State v. Olson*, 765 N.W.2d 662, 664-65 (Minn. App. 2009) ("[T]he district court has discretion to impose a downward dispositional departure if a defendant is particularly amenable to probation, but it is not required to do so."); *State v. Evenson*, 554 N.W.2d 409, 412 (Minn. App. 1996) ("Even assuming [a defendant] is exceptionally amenable to treatment, his amenability does not dictate the result."), *review denied* (Minn. Oct. 29, 1996). The district court did not abuse its discretion by imposing the presumptive sentence.

Affirmed.