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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A18-0243**

State of Minnesota,  
Respondent,

vs.

Joshua Lee Gosch,  
Appellant.

**Filed November 26, 2018  
Affirmed  
Reilly, Judge**

Douglas County District Court  
File No. 21-CR-17-1057

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

Chad Larson, Douglas County Attorney, Ezra P. Hartsell, Assistant Douglas County Attorney, Alexandria, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant State Public Defender, St. Paul, Minnesota (for appellant)

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

**UNPUBLISHED OPINION**

**REILLY**, Judge

Appellant Joshua Lee Gosch challenges the district court's sentencing decision arising from his conviction of first-degree refusal to submit to a chemical test in violation

of Minn. Stat. § 169A.20, subd. 2 (2016). The district court declined to grant a downward dispositional departure and sentenced appellant to the presumptive sentence under the Minnesota Sentencing Guidelines. Because the district court did not abuse its discretion in sentencing appellant to the presumptive guideline sentence, we affirm.

## **D E C I S I O N**

The Minnesota Sentencing Guidelines promote uniformity, proportionality, and predictability in sentencing. *See* Minn. Stat. § 244.09, subd. 5(2) (2016). A district court must impose a presumptive sentence unless “identifiable, substantial, and compelling circumstances” justify a departure. Minn. Sent. Guidelines 2.D.1 (2016). “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). The decision whether to depart from the Sentencing Guidelines rests within the discretion of the trial court and will not be disturbed absent a clear abuse of that discretion. *See State v. Hicks*, 864 N.W.2d 153, 156 (Minn. 2005); *State v. Pegel*, 795 N.W.2d 251, 253 (Minn. App. 2011).

At sentencing appellant’s attorney argued for a downward dispositional departure based upon: (1) appellant’s particular amenability to probation; (2) appellant’s acceptance into the Minnesota Adult and Teen Challenge program; and (3) the benefits of attending treatment in lieu of a prison sentence. The presentence investigation (PSI) report, prepared by probation, detailed appellant’s criminal record, which includes eleven misdemeanor or gross misdemeanor convictions and five felony convictions. According to the PSI, appellant has been in chemical dependency treatment on several occasions, including at the

Northwest Regional Juvenile Center in 2004, an outpatient chemical dependency treatment program in 2005, the Minnesota Adult and Teen Challenge program in April 2014, and the TRIAD program at the Minnesota Correctional Facility in Saint Cloud in 2015. The PSI author did not support appellant attending the Minnesota Adult and Teen Challenge program in lieu of a prison sentence, and recommended the district court impose a 72-month sentence instead of the 62 months, the low end of the guideline range, called for in the plea agreement. After careful consideration, the district court denied appellant's downward dispositional departure motion, and imposed a 62-month prison sentence.

Appellant argues that the district court abused its discretion by sentencing him to the presumptive sentence because he is particularly amenable to probation. A district court may grant a downward dispositional departure if a defendant is "particularly amenable to probation." *State v. Soto*, 855 N.W.2d 303, 309 (Minn. 2014). A court may consider a defendant's age, prior record, remorse, cooperation, attitude in court, and the support of friends and family in determining whether he is particularly amenable to probation. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). However, a district court is not required to depart even when it finds that a defendant is particularly amenable to probation. *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."). Our review of a district court's decision whether to impose a sentencing departure is "extremely deferential." *Dillon v. State*, 781 N.W.2d 588, 596 (Minn. App. 2010), *review denied* (Minn. July 20, 2010). We will reverse a

district court's refusal to depart only in a "rare" case. *State v. Walker*, 913 N.W.2d 463, 468 (Minn. App. 2018).

Here, the district court judge thoroughly weighed the reasons for and against departure. The district court balanced appellant's strong work ethic and commitment to his family with the "high-risk factors present." The high-risk factors included, in part, appellant's prior exposure to multiple rehabilitation programs, his numerous alcohol related offenses,<sup>1</sup> and the fact that appellant committed the current offense while on supervised release. In the end, the district court found that appellant was not particularly amenable to probation due to appellant's "extremely high" risk of re-offense.

The record shows that the district court reviewed the factors for and against a downward dispositional departure and determined that a departure was not warranted. Because we discern no abuse of discretion in the sentencing court's determination, we affirm.

**Affirmed.**

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<sup>1</sup> Appellant argues that the district court erred in its finding that this was appellant's "fifth alcohol-related conviction as an adult" because appellant's 2005 DWI was committed when appellant was 17. Although appellant was 17 when he committed the 2005 DWI, pursuant to Minn. Stat. § 260B.225, subd. 3, it is considered an adult conviction. ("[A] child who commits an adult court traffic offense and at the time of the offense was at least 16 years old shall be subject to the laws and court procedures controlling adult traffic violators and shall not be under the jurisdiction of the juvenile court.").