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STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1218
A18-1219

State of Minnesota,
Respondent,

vs.

Michael John Martin,
Appellant.

Filed May 28, 2019
Affirmed
Larkin, Judge

Yellow Medicine County District Court
File No. 87-CR-17-264
Chippewa County District Court
File No. 12-CR-17-367

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

Keith Helgeson, Yellow Medicine County Attorney, Granite Falls, Minnesota; and

Matt Haugen, Chippewa County Attorney, Christopher Reisdorfer, Assistant County Attorney, Montevideo, Minnesota (for respondent)

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

Considered and decided by Ross, Presiding Judge; Larkin, Judge; and Bratvold, Judge.

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

LARKIN, Judge

Appellant was convicted of third- and fourth-degree criminal sexual conduct. He challenges the district court's imposition of an executed prison sentence on his third-degree conviction, arguing that the district court abused its discretion by denying his request for a downward-dispositional departure. We affirm.

FACTS

Respondent State of Minnesota charged appellant Michael John Martin with third-degree criminal sexual conduct by a correctional employee based on conduct that occurred in Yellow Medicine and Chippewa Counties.[1] The charges were based on allegations that Martin sexually abused L.C.W. while she was under Martin's supervision on a Sentence to Service (STS) crew. Martin was an employee of the Minnesota Department of Corrections at the time. Martin told L.C.W. not to disclose the abuse and that he was a person with power who "knows people." Martin provided L.C.W. with cigarettes and pop, allowed her privileges in violation of jail rules, and dropped her off to see her children while he was supervising her on STS. L.C.W. feared that she would get in trouble with the jail or not see her children if she did not do what Martin wanted.

The state alleged that Martin engaged in sexual activity with L.C.W. in Upper Sioux State Park in Yellow Medicine County and at a location near Montevideo in Chippewa County while Martin was supervising L.C.W. on STS. Pursuant to an agreement with the

[1] A separate complaint was filed in each county, and the district court consolidated the cases.

state, Martin pleaded guilty to third-degree criminal sexual conduct in the Yellow Medicine County case and fourth-degree criminal sexual conduct in the Chippewa County case.

The district court ordered a psychosexual assessment. The assessment indicated that Martin "was able to acknowledge that his behavior was wrong, because he was unfaithful to his wife, but failed to recognize how his position of authority coerced the victim into complying with the sexual abuse." The assessment recommended that Martin be required to complete a sex-offender treatment program and that he "should not hold a position of authority over vulnerable individuals."

The district court also ordered a presentence investigation (PSI). According to the PSI, Martin stated that L.C.W. initiated the relationship by "making sexual comments to [him] on a steady basis," that he "found [himself] being pulled into her thinking," and that eventually the "relationship became physical and [he] felt trapped." Martin stated that he "got caught up in [L.C.W.'s] drama," that he "regret[ted] it" and was "sorry for it," that he never used his "authority to coerce her," and that "[t]he only victim here is my wife." The PSI recommended an executed 48-month prison term for the third-degree Yellow Medicine County offense and a stayed 48-month prison term for the fourth-degree Chippewa County offense, based on "the seriousness of the offenses, [Martin's] position of authority over the victim which he fails to acknowledge, and the fact that the sexual abuse occurred on numerous occasions."

Martin moved for downward durational and dispositional departures, arguing that L.C.W. was the aggressor, that he was particularly amenable to probation, and that other substantial grounds tended to mitigate his culpability. Martin provided a statement at his

sentencing hearing and, when asked what he had done to show remorse for his actions, he said,

> I don't—I don't know really how to answer that one. Basically besides the fact that not a day goes by I don't realize what I have done. My health has suffered. I suffer from high blood pressure, which I'm having a hard time controlling. I've lost a lot of weight, thirty pounds since this has all started. There's not a day that goes by that I don't realize what I did was wrong.

Martin also stated that he was "embarrassed for [his] family and [L.C.W.]." But Martin claimed that L.C.W. initiated the sexual activity and that he "could not have forced [her] to do what she did."

Martin argued that he was particularly amenable to probation because he was trustworthy, he had left the state several times during the pendency of his case and always returned, he did not have any substance abuse problems, and he did not have a criminal record. He noted that he had sought counseling with a psychologist and made an appointment with a neuropsychologist to determine whether he may be suffering from a mental condition such as "Asperger's."

A correctional employee spoke at Martin's sentencing hearing and said that Martin had "eroded the confidence that all citizens should have in [the] justice system" and that his actions "not only devalued the victim, but also all the justice professionals who strive for justice every day." An employee of the Yellow Medicine County Sheriff's Office also provided a statement, saying that Martin broke the trust that he had developed with that office and "caused a huge black eye and security threats to our facility, our staff members, and our overall community."

In ruling on Martin's departure motion, the district court rejected his claim that L.C.W. was the aggressor. The district court stated that it had considered Martin's age, prior criminal record, and work in the community, as well as his level of remorse, cooperation, and acceptance of responsibility. The district court reasoned that Martin's age did not weigh for or against a departure. The district court recognized that Martin had support from his family and his pastor but stated that Martin had "clearly burned his bridges with law enforcement. His former work peers no longer respect him and probation frankly under these circumstances would—would be difficult." As to Martin's remorse, the district court stated,

> Martin has come to court today and said he's sorry, but even in his allocution he—he said he apologized to his family, he apologized to others, but he didn't apologize to [L.C.W.]. When Mr. Martin spoke to law enforcement when the case broke, he first again tried to deny what happened; when faced with evidence, he ultimately admitted, but he was slow in doing that; and then when he had confessed to a sexual encounter, to two sexual encounters with [L.C.W.], this is what he said, he said I am more ashamed than anything. He didn't say I am so sorry that I had sex with [L.C.W.] for her sake because [L.C.W.] is absolutely the victim here. The presentation today has described the effect of Mr. Martin's actions on his family, on his financial circumstances, on his life, on his health, but he—he is woefully short in acknowledging the effect of this on [L.C.W.].

The district court concluded that Martin was "not particularly amenable to probation" and that "by no means has there been a showing that there are substantial and compelling reasons to depart" from the sentencing guidelines. The district court entered judgments of conviction for third- and fourth-degree criminal sexual conduct and ordered Martin to serve a presumptive executed sentence of 48 months for the third-degree Yellow

Medicine County offense and a presumptive stayed sentence of 48 months for the fourth-degree Chippewa County offense.

Martin appeals, arguing that the district court abused its discretion by denying his request for a downward-dispositional departure on his third-degree criminal-sexual-conduct conviction.[2]

D E C I S I O N

"A [district court] judge sits with a unique perspective on all stages of a case, including sentencing, and the [district court] judge is in the best position to evaluate the offender's conduct and weigh sentencing options." *State v. Hough*, 585 N.W.2d 393, 397 (Minn. 1998). However, "[t]he sentences provided in the [Minnesota Sentencing Guidelines] Grids are presumed to be appropriate for the crimes to which they apply." Minn. Sent. Guidelines 2.D.1 (2016). A district court may depart from the presumptive guidelines sentence only if substantial and compelling circumstances warrant a departure. *Id.* "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). Whether to depart from a guidelines sentence rests within the district court's discretion, and this court will not reverse the district court's decision "absent a clear abuse of that discretion." *State v. Oberg*, 627 N.W.2d 721, 724 (Minn. App. 2001), *review denied* (Minn. Aug. 22, 2001).

[2] Martin does not challenge the district court's denial of his request for a downward-durational departure.

Only in a "rare case" will a reviewing court reverse a district court's imposition of a presumptive guidelines sentence. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). A district court's failure to exercise its discretion or its reliance on an improper factor may present the rare circumstance that warrants reversal. *See* Minn. Sent. Guidelines 2.D.2 (2016) (listing factors on which the district court should not rely); *State v. Mendoza*, 638 N.W.2d 480, 484 (Minn. App. 2002) (remanding because exercise of discretion by district court "may not have occurred"), *review denied* (Minn. Apr. 16, 2002); *State v. Curtiss*, 353 N.W.2d 262, 264 (Minn. App. 1984) (remanding because record established that district court failed to consider arguments for departure).

When considering a downward-dispositional departure, the district court focuses "more on the defendant as an individual and on whether the [guidelines] sentence would be best for him and for society." *State v. Heywood*, 338 N.W.2d 243, 244 (Minn. 1983). "Numerous factors, 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, are relevant to a determination whether a defendant is particularly suitable to individualized treatment in a probationary setting." *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). But a district court does not abuse its discretion by refusing to depart "from a presumptively executed prison sentence, even if there is evidence in the record that the defendant would be amenable to probation." *State v. Olson*, 765 N.W.2d 662, 663 (Minn. App. 2009).

"[A] defendant's *particular* amenability to individualized treatment in a probationary setting will justify departure" from a guidelines sentence. *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014) (quotation omitted). The particular-amenability

requirement "ensure[s] 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).

Martin contends that he is particularly amenable to probation. He argues that "many factors . . . weighed heavily in favor of probation," including "his clean criminal history for 48 years, his expressed remorse, his extensive family and community support, and the fact that he pleaded guilty and accepted responsibility for the offense." He also notes that he "had sought out the treatments and assessments necessary to help him rehabilitate himself from what he had done," including an assessment to determine whether he was on the autism spectrum based on a recommendation of his psychosexual assessment.

Martin assigns error to the district court's reliance on his lack of remorse and the purported difficulty of supervising him on probation as reasons to deny a dispositional departure. As to remorse, Martin notes that the district court "criticized [his] showing of remorse as inadequate" and argues that "a court's finding of particular amenability to supervision cannot hinge on whether a defendant's showing of remorse is neurotypical or highly emotive."

"The presence or absence of remorse can be a very significant factor in determining whether a defendant is particularly amenable to probation." *State v. Sejnoha*, 512 N.W.2d 597, 600 (Minn. App. 1994), *review denied* (Minn. Apr. 21, 1994). "Because the district court has an opportunity to actually observe the defendant throughout the proceedings, a reviewing court must defer to the district court's assessment of the sincerity and depth of the remorse and what weight it should receive in the sentencing decision." *Id.*; *see also*

Soto, 855 N.W.2d at 311 ("[W]hether [the defendant's] apology was genuine or should be given much weight were matters for the district court to decide.").

District courts commonly rely on a defendant's attitude, statements, and actions when assessing the defendant's level of remorse for sentencing purposes. *See, e.g.*, *Sejnoha*, 512 N.W.2d at 598-600 (stating that district court granted downward departure based on defendant's "extremely remorseful attitude" and statements of remorse both in a psychological examination and at sentencing); *State v. Nash*, 342 N.W.2d 177, 180-81 (Minn. App. 1984) (affirming denial of downward departure in part because defendant failed to show remorse by denying his involvement in the offense), *review denied* (Minn. Mar. 15, 1984). The district court here relied on Martin's statements to the PSI reporter and at the sentencing hearing, in which he expressed regret for the harm that he had caused himself and his family, but he did not apologize to the victim or acknowledge that he had harmed her. We discern no error in the district court's assessment of Martin's level of remorse, and we defer to that assessment.

Martin argues that the district court's second reason for denying a departure, the purported difficulty of supervising Martin on probation given that he "burned his bridges with law enforcement," was improper. Martin notes that he

> will be supervised under these difficult circumstances. [He] is serving 10 years of probation on the Chippewa file, as well as his supervised and 10-year conditional release term on the Yellow Medicine file. No matter how difficult this supervision is, it will take place. The [Department of Corrections] has already navigated one hurdle by sending [him] to an undisclosed out-of-state facility to serve his prison term. It may well be that he will be transferred to another county's supervision team, or that some other type of arrangement is

> reached, during the next decade, when he will be on probation regardless of what this Court decides. But the difficulty in logistically implementing probation is unrelated to [his] amenability to probation. Even the court conceded that [he] "has had a long history of following rules." [His] ability to follow the rules, live safely in the community, complete programming, and otherwise lead a law-abiding life, is not affected by the logistical hurdles of probation. [He] is just as amenable to probation on the first file as he is on the second, and his past history as a correctional officer does not make that any less true.

The district court mentioned "burned bridges" in the context of Martin's position in the community and the statements of the corrections and law-enforcement representatives at the sentencing hearing. The district court seems to have determined that Martin's support from his family and other members of the community was undermined by the lack of support from the law-enforcement community. When ruling on a departure motion, the district court must consider the relevant factors and the reasons for and against departure. Thus, the district court here could not have based its refusal to depart solely on the opinion of any one stakeholder, including the law-enforcement community. But the district court could consider what is best for "society." *Heywood*, 338 N.W.2d at 244. Given the circumstances of Martin's offenses, in which he used his position as a correctional officer to sexually abuse a person entrusted to his supervision, the district court properly weighed the opinion of law enforcement when assessing the greater societal concern. Moreover, given the district court's significant focus on Martin's lack of remorse regarding the impact of his actions on L.C.W., the record does not suggest that the district court would have granted a departure but for its consideration of Martin's "burned bridges" with law enforcement.

In sum, this is not a rare case in which reversal is appropriate. Although the district court was not required to justify its refusal to depart, it explained its refusal to do so, and its reasoning was well within its discretion. *See State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985) ("Although the [district] court is required to give reasons for departure, an explanation is not required when the court considers reasons for departure but elects to impose the presumptive sentence."). We therefore affirm.

Affirmed.