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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0101**

State of Minnesota,
Respondent,

vs.

Shawn James McEachern,
Appellant.

**Filed November 12, 2019
Affirmed
Rodenberg, Judge**

Clay County District Court
File No. 14-CR-17-235

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

Brian J. Melton, Clay County Attorney, Jacob Fauchald, Assistant County Attorney, Moorhead, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sharon E. Jacks, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Rodenberg, Judge; and Jesson, Judge.

UNPUBLISHED OPINION

RODENBERG, Judge

On appeal from his conviction for first-degree driving while impaired (DWI), appellant argues that the district court abused its discretion when it denied his motion for a

downward dispositional departure from the presumptive sentence under the Minnesota Sentencing Guidelines. We affirm.

FACTS

On January 21, 2017, appellant Shawn McEachern, having previously been convicted of eight DWIs and then on probation for felony DWI, was stopped by police. Evidence gathered after the stop indicated that appellant had been driving while under the influence of methamphetamine. As a result, the state charged appellant with two counts of felony first-degree DWI and one count of fifth-degree possession of a controlled substance.

On May 30, 2018, pursuant to a plea agreement, appellant pleaded guilty to first-degree DWI for operating a motor vehicle while under the influence of a controlled substance. The state dismissed the other counts as part of the agreement.

Appellant moved the district court for a downward dispositional sentencing departure based on his claimed amenability to probation. At the sentencing hearing, appellant argued that, since his arrest nearly two years earlier, he had successfully completed treatment, maintained sobriety, obtained employment, and secured his own housing. Appellant expressed remorse for his crime and reminded the court that he cooperated with the court throughout the case.

The state opposed appellant's motion and requested a middle-of-the-box sentence under the sentencing guidelines, relying primarily on appellant's history of eight prior DWI convictions and his having been under probationary supervision at the time of the offense. The district court declined to depart from the sentencing guidelines. It imposed a guidelines sentence of 62 months in prison.

This appeal followed.

DECISION

Appellant argues that the district court abused its discretion by denying his motion for a downward dispositional departure and imposing a 62-month executed sentence under the sentencing guidelines.

Appellate courts “afford the [district] court great discretion in the imposition of sentences and reverse sentencing decisions only for an abuse of that discretion.” *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014) (quotation omitted). A district court may depart from the Minnesota Sentencing Guidelines only in the presence of substantial and compelling circumstances. *Id.* at 308. To maintain proportionality and uniformity in sentencing, departing from the sentencing guidelines is discouraged. *State v. Rund*, 896 N.W.2d 527, 532 (Minn. 2017).

A defendant’s request for a downward dispositional departure requires a district court to consider whether mitigating circumstances exist. *Soto*, 855 N.W.2d at 308. If such circumstances are present, a district court must determine whether “those circumstances provide a substantial and compelling reason not to impose a guidelines sentence.” *Id.* (quotation omitted). The mere presence of a mitigating factor in a case “does not obligate the court to place [a] defendant on probation.” *State v. Pegel*, 795 N.W.2d 251, 253 (Minn. App. 2011) (quotation omitted). Although a district court is required to provide reasons for departure, “an explanation is not required when the court considers reasons for departure but elects to impose the presumptive sentence.” *State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985). We therefore “will not ordinarily

interfere with a sentence falling within the presumptive sentence range . . . even if there are grounds that would justify departure.” *State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006) (quotation omitted).

When determining whether to grant a downward dispositional departure and place a defendant on probation, a district court’s primary focus should be on “the defendant as an individual and on whether the presumptive sentence would be best for him and for society.” *State v. Heywood*, 338 N.W.2d 243, 244 (Minn. 1983). There are a number of relevant factors for courts to consider in determining whether a defendant is particularly amenable to probation. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). Such factors include “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 argues that he is amenable to probation and that the *Trog* factors weigh substantially in his favor. Appellant cites his successful completion of treatment, his acceptance of responsibility, remorse, cooperation, positive attitude in court, and support of his friends and family as reasons the court should depart from the guidelines and place him on probation and not in prison.

The sentencing transcript reveals that the district court carefully considered all of the evidence before it and determined that, despite appellant’s personal improvements during the progression of his case, the factors weighing in favor of a probationary sentence were not substantial and compelling in light of the risk appellant poses to public safety. In making its decision, the district court reviewed appellant’s sentencing memorandum and a presentence investigation (PSI). Based on appellant’s eight previous DWI convictions and

the fact that appellant was on probation for felony DWI at the time of the current offense, the PSI recommended a guidelines sentence. The district court agreed with that recommendation.

While it need not have provided any further explanation for imposing a guidelines sentence, the district court noted appellant's history of "using, relapsing and then driving." The district court's thoughtful and deliberate consideration of appellant's departure request is reflected on the record. The district court accepted appellant's arguments as having some merit, but also recognized that this was appellant's "fourth felony DWI," his eighth DWI in total, and that appellant's "risk to public safety in [the] matter is just too significant for the court to grant [appellant's] request for a downward dispositional departure." There is no dispute that appellant was on probation for DWI when he committed this offense. The district court deemed this fact significant.

We see no error in the district court's conclusion that substantial and compelling reasons to depart do not exist, and that public safety would best be served by a guidelines sentence. The district court acted within its sentencing discretion.

Affirmed.