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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0150**

State of Minnesota,
Respondent,

vs.

Ricky Thomas Cobb,
Appellant.

**Filed August 19, 2019
Affirmed
Reilly, Judge**

Hennepin County District Court
File No. 27-CR-17-19956

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

Michael O. Freeman, Hennepin County Attorney, Jonathan P. Schmidt, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Ross, Presiding Judge; Reilly, Judge; and Slieter, Judge.

UNPUBLISHED OPINION

REILLY, Judge

On appeal from his conviction of ineligible person in possession of a firearm, appellant argues that the district court abused its discretion by denying his motion for a downward dispositional departure. We affirm.

DECISION

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). Only a “rare case” warrants reversal of a district court’s refusal to depart from the sentencing guidelines. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

The Minnesota Sentencing Guidelines “prescribe a sentence or range of sentences that is presumed to be appropriate.” *Soto*, 855 N.W.2d at 308 (quotation omitted). Accordingly, a district court “must pronounce a sentence within the applicable [presumptive] range unless there exist identifiable, substantial, and compelling circumstances to support a departure.” Minn. Sent. Guidelines 2.D.1 (2016). “Substantial and compelling circumstances are those demonstrating that the defendant’s conduct in the offense of conviction was significantly more or less serious than that typically involved in the commission of the crime in question.” *State v. Hicks*, 864 N.W.2d 153, 157 (Minn. 2015) (quotation omitted).

Appellant Ricky Cobb pleaded guilty to being an ineligible person in possession of a firearm. Cobb moved for a downward durational and dispositional departure at sentencing. The district court found that there were not substantial and compelling reasons to depart, denied Cobb’s motion, and imposed the presumptive guidelines sentence. On appeal, Cobb argues that the district court abused its discretion by denying his motion for a downward dispositional departure and imposing the presumptive 60-month sentence. He

contends that he is particularly amenable to probation, and this is a rare case warranting a reversal by this court.

A dispositional departure occurs when the district court orders a disposition other than that recommended in the sentencing guidelines. Minn. Sent. Guidelines 1.B.5.a. (2016). The guidelines offer insight as to what aggravating and mitigating factors may justify such a departure. Minn. Sent. Guidelines 2.D.3 (2016). If a defendant requests a downward dispositional departure, the district court must “deliberately consider[] circumstances for and against departure,” *State v. Mendoza*, 638 N.W.2d 480, 483 (Minn. App. 2002), *review denied* (Minn. Apr. 16, 2002), and if the district court departs, it must state the reason or reasons for the departure, Minn. Sent. Guidelines 2.D.1.c. But if the district court does not depart, it is not required to provide reasons for imposing a presumptive sentence. *State v. Johnson*, 831 N.W.2d 917, 925 (Minn. App. 2013), *review denied* (Minn. Sept. 17, 2013). Moreover, “the mere fact that a mitigating factor is present . . . 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) (quotation omitted).

Cobb argued at sentencing that a downward dispositional departure was warranted based on his particular amenability to probation, which can be a mitigating factor. Minn. Sent. Guidelines 2.D.3.a.7. To determine whether a defendant is particularly amenable to probation, a district court may consider “the defendant’s age, his prior record, his remorse, his cooperation, his attitude while in court, and the support of friends and/or family.” *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). At sentencing and on appeal, Cobb argues that

the following factors demonstrate that he is particularly amenable to probation: (1) age; (2) support from his family; (3) enrollment in a pre-apprentice program; (4) employment; (5) motivation to rehabilitate himself; (6) remorse; and (7) respectfulness during the process.¹

At sentencing, the district court adequately considered the factors for and against departure. The district court first noted that “months . . . have gone by without appropriate steps being taken” by Cobb, such as completing a chemical-dependency evaluation. The court stated that it was especially concerned by Cobb’s negative response to police presence at a party, and could not find him particularly amenable to probation. The court considered Cobb’s positive relationships with his family, but found that there were not substantial and compelling reasons to depart.

The presentence investigation report (PSI) supports the district court’s findings. The report noted that between being charged with being an ineligible person in possession of a firearm and submitting a guilty plea, Cobb was convicted of felony domestic assault in April 2017, was charged with various drug crimes stemming from an incident in March 2018, and twice violated his conditional release: first for failing to maintain contact with probation and failing to submit to random drug testing, and second for failing to remain law abiding. The PSI stated that while Cobb claims to have made significant efforts to avoid being around firearms and criminal associates, “it appears that based on his recent

¹ We note that the Minnesota Sentencing Guidelines do not permit courts to consider employment or socio-economic factors when determining whether to depart. Minn. Sent. Guidelines 2.D.2.c.

police contact during the process of this case, the circumstances of this offense, and his alleged gang affiliation, [Cobb] is, in fact, doing the exact opposite.” And it was “particularly concern[ing] that even after being taken into custody after failing to comply with the terms of his conditional release once during this case, [Cobb] continued to make poor choices by associating with criminal individuals, drugs, and firearms.”

Moreover, a district court is not required to depart even if substantial and compelling circumstances are present. *State v. Walker*, 913 N.W.2d 463, 468 (Minn. App. 2018); *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.”). And the record reflects that this is not so rare a case that warrants reversal. The district court did not abuse its discretion by denying Cobb’s motion for a downward dispositional departure.

Affirmed.