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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0460**

State of Minnesota,
Respondent,

vs.

Damon Dwight Wiederhofs,
Appellant.

**Filed December 16, 2019
Affirmed
Jesson, Judge**

Renville County District Court
File No. 65-CR-17-368

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

David Torgelson, Renville County Attorney, Olivia, Minnesota; and

Scott A. Hersey, Special Assistant County Attorney, St. Paul, Minnesota (for respondent)

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

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

UNPUBLISHED OPINION

JESSON, Judge

After grabbing the steering wheel of a car driven by his girlfriend, causing it to
crash, appellant Damon Dwight Wiederhofs pleaded guilty to one count of criminal

vehicular operation. On appeal, Wiederhoft argues that the district court abused its discretion by denying his motion for a downward dispositional departure because he was particularly amenable to probation and only played a minor, passive role in the offense. We affirm.

FACTS

In July 2017, Wiederhoft was a passenger in a vehicle involved in a serious single-car accident. The car was driven by J.R., Wiederhoft's girlfriend. Wiederhoft was in the front-passenger seat, and J.R.'s five children were safely restrained in the back of the car. While J.R. was driving, she and Wiederhoft got into an argument about Wiederhoft's drinking. During the argument, Wiederhoft threw a number of items both at J.R. and out of the car. One of the children told the police that Wiederhoft grabbed the steering wheel and yanked it, which caused the car to crash in a cornfield. J.R. was ejected from the car and seriously injured. Due to their safety restraints, the children suffered only minor injuries.

Blood tests taken after the accident revealed that Wiederhoft had an alcohol concentration of 0.143. Wiederhoft was charged with first-degree assault, two counts of criminal vehicular operation, and five counts of child endangerment. He agreed to plead guilty to the charge of criminal vehicular operation, and the state agreed to dismiss the remaining charges. Wiederhoft entered an *Alford* plea¹ because he could not recall actually

¹ *North Carolina v. Alford*, 400 U.S. 25, 38, 91 S. Ct. 160, 168 (1970) (holding that in some circumstances, a court may constitutionally accept a defendant's guilty plea even though the defendant maintained his innocence).

grabbing the steering wheel due to his drunkenness and the injuries from the accident, but conceded that the child's testimony would be sufficient to convict him.

At sentencing, Wiederhoft moved for a downward dispositional departure. The district court denied the motion on the record, and sentenced him to 33 months in prison, the bottom of the presumptive sentencing range. This appeal follows.

D E C I S I O N

Wiederhoft argues that the district court abused its discretion by denying his motion for a downward dispositional departure because he was particularly amenable to probation and only played a minor, passive role in the offense.

Appellate courts afford a 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). We will not interfere with a district court's decision to impose the presumptive guidelines sentence "as long as the record shows the sentencing court carefully evaluated all the testimony and information presented before making a determination." *State v. Pegel*, 795 N.W.2d 251, 255 (Minn. App. 2011) (quotation omitted). When considering whether to depart from the guidelines based on a defendant's particular amenability to probation, a district court may consider a defendant's age, prior record, remorse, cooperation, attitude while in court, and the support of friends and/or family. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982).

We first address Wiederhoft's argument that he warrants a dispositional departure because of his particular amenability to probation. "The requirement that a defendant be 'particularly' amenable to probation ensures that the defendant's amenability to probation

distinguishes the defendant from most others and truly presents the substantial and compelling circumstances necessary to justify a departure.” Minn. Sent. Guidelines cmt. 2.D.303 (2016). Here, the district court found that while Wiederhoft presented sufficient evidence to demonstrate his amenability to probation, the evidence did not support the finding of *particular* amenability required by the sentencing guidelines. *See Soto*, 855 N.W.2d at 309.

As highlighted by the district court, Wiederhoft was already on probation for an unrelated offense in Meeker County when the July 2017 crash occurred, and then was charged with driving while impaired in Stearns County only a couple months after the crash. Upon this basis, the district court did not abuse its discretion in finding that Wiederhoft was not particularly amenable to treatment in a probationary setting.²

Next, we move to Wiederhoft’s argument, relying principally on *State v. Stempfley*, that the district court should have granted his motion for a downward dispositional departure because he only played a minor or passive role in the offense. 900 N.W.2d 412, 418 (Minn. 2017); *see also* Minn. Sent. Guidelines 2.D.3.a.2 (2016). “[W]hether a defendant’s role in an offense was minor or passive depends on a comparison of the defendant’s conduct to the conduct of other participants in the crime.” *Stempfley*, 900

² Wiederhoft asserts that the district court abused its discretion by failing to make findings and failing to address the factors set forth in *Trog*. However, the district court specifically set forth its reasons for denying his departure motion on the record, even though it was not required to do so. *See State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985) (“[A]n explanation is not required when the court considers reasons for departure but elects to impose the presumptive sentence.”).

N.W.2d at 418. Here, while J.R. expressed guilt over the accident, there was no other participant charged with the crime of criminal vehicular operation, and therefore *Stempfley* is not applicable. Nor is the act of grabbing the steering wheel, causing the car to careen into a cornfield, a minor or passive act. Instead, it is the act that constituted criminal vehicular operation.

In sum, the district court carefully considered Wiederhofs sentencing arguments and acted within its wide discretion in denying his motion for a downward dispositional departure.

Affirmed.