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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0333**

State of Minnesota,
Respondent,

vs.

Justin Matthew Girling,
Appellant.

**Filed January 13, 2020
Affirmed
Smith, Tracy M., Judge**

Ramsey County District Court
File No. 62-CR-18-826

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

John Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney, St. Paul, Minnesota (for respondent)

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

Considered and decided by Cleary, Chief Judge; Hooten, Judge; and Smith, Tracy M., Judge.

UNPUBLISHED OPINION

SMITH, TRACY M., Judge

In this direct appeal from a judgment of conviction for second-degree intentional murder pursuant to a guilty plea, appellant Justin Girling argues that the district court

abused its discretion by denying his motion for a downward dispositional sentencing departure. We affirm.

FACTS

On January 31, 2018, Girling shot and killed his half-brother K.S. The state charged Girling with second-degree intentional murder, and, on August 1, 2018, he pleaded guilty as charged. In exchange for his guilty plea, the state agreed to recommend a sentence at the bottom of the sentencing guidelines range, which was 261 to 367 months' imprisonment, and that Girling would be free to argue for both a downward durational and a downward dispositional departure.

Plea Hearing

The following facts were established at Girling's plea hearing. On the day of the shooting, Girling, K.S., and their mother were at the home they all shared in St. Paul. At around 1:30 in the afternoon, Girling was in his upstairs bedroom when he heard what sounded like an argument between K.S. and their mother. According to Girling, K.S. was acting and speaking "erratically" and kicking things. Girling, who had a permit to carry a firearm and routinely carried one while at home, had a handgun concealed on his person. After hearing the argument, he went downstairs to "get breakfast." When he arrived in the kitchen, he determined that K.S. was upset about something that had happened to him at a store. Girling characterized K.S. as "a little bit aggrieved about it" but not more upset than was "normal" for K.S. Girling then confronted K.S. about how he was speaking to their mother, and K.S. started asking him, "What are you going to do about it tough guy?" According to Girling, K.S. then came towards him in a "challenging, aggressive way." K.S.

did not say anything else and had nothing in his hands. According to Girling, as K.S. approached him, K.S. lunged towards him. Girling pulled out his gun and shot K.S. three times. When he shot him, Girling aimed at K.S.'s chest and intended to kill him. K.S. died from his injuries.

Girling waived his right to assert a self-defense claim. The district court asked him multiple times whether he understood that the court was under no obligation to grant a departure from the sentencing guidelines, and Girling responded that he did understand. The district court found that there was a sufficient factual basis for Girling's plea, ordered a presentence investigation (PSI), and set the matter for sentencing on October 25, 2018.

Initial Sentencing Hearing

At the beginning of the scheduled sentencing hearing on October 25, the district court stated that it had reviewed everything filed in preparation for the hearing. This included the PSI report, letters of support on behalf of Girling from eight different people (including the mother of Girling and K.S.), letters from a medical health practitioner in the correctional center, certificates of Girling's completion of anger-management and goal-achievement programs, and affidavits of restitution. The district court then explained that it would like to hear from everyone intending to speak but that it would not issue a decision that day because it wanted more information regarding the request for a downward dispositional departure. The district court asked that defense counsel collect and submit more information regarding what "opportunities would be available for Mr. Girling" if it granted a dispositional departure.

Girling's attorney spoke first, asking for a downward durational or dispositional departure. She focused on a dispositional departure, asserting that Girling was particularly amenable to probation. Defense counsel said that Girling was a lifelong resident of Ramsey County, had never been in trouble before this offense, was an exemplary inmate while in custody on the present offense, held a job for most of his adult life, won awards for outstanding sales performance, had a degree in theology and a "deep faith" that caused him to minister to others while in custody, and was remorseful as demonstrated by his confessing his sins to clergy.

The district court heard next from the mother of K.S. and Girling. Their mother asked for leniency for Girling and believed that he "had no other alternative" but to shoot K.S. She said that, when K.S. had "act[ed] out" in the past, Girling had always tried to help him and was patient with him.

The state then argued that, although a sentence at the bottom of the guidelines range was appropriate, Girling was not particularly amenable to probation in a way that warranted a downward dispositional departure. It argued that the nature of the case and Girling's lack of criminal history had already been accounted for by the guidelines and the state's recommendation.

After the state's argument, Girling spoke. The district court allowed him to speak for about 35 to 40 minutes. Girling discussed K.S.'s history of threatening and erratic behavior, including two occasions in which police had been called. He described the day that he shot K.S., making statements such as: "And when he lunged at me . . . I panicked" and "I overestimated the threat from him." He also stated: "It was an evil wicked act

. . . He didn't deserve to die. I could have used [a] nonlethal form of defense against him. I didn't need to shoot him." Girling then discussed at length other situations in which he had "dealt with conflict" with other people without using his firearm. He also talked about his spiritual convictions and how he had shared those convictions with other inmates while in jail. He asked that the district court place him on probation so that he could take care of his mother as she aged and so that he could be involved in ministry.

When Girling finished speaking, the district court concluded the hearing and deferred its sentencing decision until the next hearing, which was scheduled for November 29.

Continued Sentencing Hearing

At the November 29 hearing, the district court noted that it had received and reviewed a letter from the defense outlining opportunities available to Girling in the event of a dispositional departure, a certificate of Girling's completion of a mindfulness class, two more letters in support of Girling from other inmates in the jail, and an additional letter from Girling. After hearing final arguments from the parties, the district court announced its sentencing decision.

The district court began by denying the request for a downward dispositional departure and explaining its rationale. It said that it was troubled by aspects of Girling's statement at the prior hearing and questioned whether he had demonstrated genuine remorse. It found it troubling that Girling had approached K.S. with a gun when K.S. had never physically attacked Girling or his mother in the past. According to Girling's own account, the district court explained, K.S. had only ever "threatened in general terms to

hurt himself or others in the abstract.” The district court found it troubling that Girling, to show his nonviolent nature, gave examples of interactions with other people in which “[n]o force would have been necessary or even appropriate.” The district court was “particularly troubled” by Girling’s statement: “I wish I could make him live again because it wasn’t worth coming to jail or doing any sentence over it. If I could, I would let him live again. This crime has made a fool of me.” The district court opined that “these are not words of remorse but rather of regret.”

The district court then granted Girling’s request for a downward durational departure. The sentencing guidelines range was 261 to 367 months’ imprisonment, with a presumptive disposition of 306 months, and the district court sentenced Girling to 180 months instead. The district court stated that it was granting this significant durational departure because it was persuaded that the victim was the aggressor and that Girling’s conduct was therefore significantly less serious than that typically involved in the commission of second-degree murder.

Girling appeals the district court’s denial of his request for a downward dispositional sentencing departure.

D E C I S I O N

District courts have a great deal of discretion in sentencing. *State v. Soto*, 855 N.W.2d 303, 305 (Minn. 2014). Appellate courts review a district court’s sentencing decision for an abuse of that discretion. *Id.* at 307-08. A district court “abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record.” *Riley v. State*, 792 N.W.2d 831, 833 (Minn. 2011).

The district court's sentencing discretion is, however, limited by the Minnesota Sentencing Guidelines, which prescribe a sentence that is "presumed to be appropriate." Minn. Sent. Guidelines 2.D.1 (Supp. 2017); *see Soto*, 855 N.W.2d at 308. A district court may depart from the presumptively appropriate guidelines sentence only if "identifiable, substantial, and compelling circumstances" warrant departure. *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016). To maintain uniformity and proportionality in sentencing, departures from the guidelines sentence are discouraged. *State v. Rund*, 896 N.W.2d 527, 532 (Minn. 2017).

If a defendant requests a downward dispositional departure, a district court must determine whether "mitigating circumstances are present" and, if so, whether "those circumstances provide a substantial and compelling reason not to impose a guidelines sentence." *Soto*, 855 N.W.2d at 308 (quotations omitted). A district court may consider "both offender- and offense-related factors" for a downward dispositional departure. *State v. Walker*, 913 N.W.2d 463, 468 (Minn. App. 2018). "[T]he mere fact that a mitigating factor is present in a particular 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). And, "[a]lthough 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." *State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985). Appellate courts will reverse a district court's refusal to depart only in a "rare" case. *Walker*, 913 N.W.2d at 468.

The guidelines provide a nonexclusive list of mitigating factors that can justify a downward dispositional departure, including that “[t]he offender is particularly amenable to probation.” Minn. Sent. Guidelines 2.D.3.a.(7) (Supp. 2017). The qualifier “particularly” severely curbs the number of departures in a way that is consistent with promoting the guidelines’ purpose of sentencing uniformity. *See Soto*, 855 N.W.2d at 308-09. In determining whether a defendant is particularly amenable to probation, courts consider a number of factors, which 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.” *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). However, a district court is not required 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).

Girling argues that he is particularly amenable to probation and thus should have received a downward dispositional departure. He points out that he has no prior criminal history, has been employed most of his adult life, has stable housing, does not abuse substances, accepted responsibility for his offense by pleading guilty, and was cooperative in court. Girling argues that the district court erroneously found that the “few sentences”¹ in his statement at sentencing regarding his prior conflict-avoidance and nonviolence showed a lack of insight on Girling’s part. He also points to his involvement with anger-

¹ In fact, Girling’s discussion regarding his management of conflict with others spans two and a half pages of the hearing transcript.

management programming and his “ministering to others” while in jail as steps towards rehabilitation.

Girling submitted a pro se supplemental brief for this appeal, which elaborates on why the district court should not have interpreted his statements as showing a lack of remorse, explains why he gave examples of nonviolence at sentencing, and speaks to his relationship with his brother.

The state argues that the record did not establish that Girling is particularly amenable to probation, especially given his lack of remorse, and that, even if the record did establish his particular amenability, the district court was still under no obligation to grant a dispositional departure in an intentional-murder case.

The record makes clear that the district court carefully considered Girling’s request for a downward dispositional departure. The district court reviewed the sentencing memorandum and supplemental letter from the defense, the PSI report, all of the letters in support of Girling, letters from a medical health practitioner in the correctional center, and certificates of Girling’s completion of anger-management, mindfulness, and goal-achievement programs. The district court also allowed Girling to speak for 35 to 40 minutes and listened carefully to his statements. Furthermore, the district court demonstrated careful consideration of the matter by continuing the initial sentencing hearing and requesting more information from defense counsel regarding a dispositional departure.

Though not required to do so, the district court explained its rationale for declining to grant a dispositional departure. *See Van Ruler*, 378 N.W.2d at 80. It began by summarizing its view on the circumstances leading up to the murder, emphasizing that

Girling appeared to have had “no reason to panic” when K.S. approached him that day because Girling had extensive experience with K.S. and knew that K.S. had never physically injured anyone. The district court told Girling that it believed what happened was: “[Y]ou were no longer going to allow [K.S.] to verbally abuse you or your mother. You frankly had had enough.” The district court also explained that it was troubled by Girling’s examples of his nonviolent confrontations with others, as violence would have been entirely inappropriate in any of the given scenarios.

Lastly, the district court specifically emphasized Girling’s lack of remorse, which is one of the factors for amenability to probation identified in *Trog*. 323 N.W.2d at 31. It was “particularly troubled” by Girling’s statement that killing his brother was not “worth coming to jail or doing any sentence over This crime has made a fool of me.” The district court’s finding that Girling lacked remorse is consistent with the PSI report. The PSI agent noted that Girling “lacks recognition of his offense conduct as criminal” and “verbalized limited remorse, and no empathy for the victim.”

The district court carefully considered the entire record and made relevant findings regarding Girling’s amenability to probation. The district court’s findings were amply supported by the record. Accordingly, the district court did not abuse its discretion by denying Girling’s motion for a downward dispositional departure.

Affirmed.