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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1426**

State of Minnesota,
Respondent,

vs.

Isaiah Kendell Vonne McDaniel,
Appellant.

**Filed July 6, 2020
Affirmed
Reilly, Judge**

Olmsted County District Court
File No. 55-CR-18-4918

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

Mark A. Ostrem, Olmsted County Attorney, Jennifer D. Plante, Senior Assistant County Attorney, Rochester, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Lydia M. Villalva Lijo, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Reilly, Judge; and Florey, Judge.

UNPUBLISHED OPINION

REILLY, Judge

In this direct appeal from his conviction of first-degree burglary, appellant challenges his sentence, arguing that the district court abused its discretion by denying his

motion for a downward dispositional departure. Because we discern no abuse of discretion, we affirm.

FACTS

Respondent State of Minnesota charged appellant Isaiah McDaniel with two counts of first-degree burglary, one count of attempted third-degree criminal sexual conduct (CSC), and one count of fourth-degree CSC. The complaint alleged that McDaniel entered an occupied dwelling and sexually assaulted the occupant.

Pursuant to a plea agreement with the state, McDaniel entered a *Norgaard* plea¹ to first-degree burglary-assault. Under the plea agreement, the state agreed to dismiss “all remaining counts in all files,” including the remaining charges in this case, and recommend a presumptive commitment. McDaniel would also serve a mandatory six-month incarceration and was free to argue for a downward departure. McDaniel later moved to withdraw his guilty plea, but that motion was denied.

At sentencing, McDaniel moved for a downward dispositional departure based on his lack of criminal history, his amenability to probation, and his background. The district court denied McDaniel’s motion, finding no substantial and compelling reasons warranted a departure. The district court then sentenced McDaniel to 57 months’ imprisonment and

¹ In a *Norgaard* plea, “the defendant asserts an absence of memory on the essential elements of the offense but pleads guilty because the record establishes, and the defendant reasonably believes, that the state has sufficient evidence to obtain a conviction.” *Williams v. State*, 760 N.W.2d 8, 12 (Minn. App. 2009), *review denied* (Minn. Apr. 21, 2009); *see State ex rel. Nogaard v. Tahash*, 110 N.W.2d 867, 871 (Minn. 1961).

ordered him to comply with the predatory-offender registration statute. This appeal follows.

D E C I S I O N

McDaniel challenges the district court's decision to deny his motion for a downward dispositional departure. Appellate courts give "great discretion" to a district court's sentencing decision. *See State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014) (quotation omitted). A district court abuses that discretion "when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019) (quotation omitted).

A district court must impose a presumptive sentence unless there are substantial and compelling circumstances warranting a downward dispositional departure. Minn. Sent. Guidelines 2.D.1. (Supp. 2017). Such circumstances include when the defendant is "particularly amenable" to probation and to treatment. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). Particular amenability is based on offender-related 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." *Id.*; *see also State v. Chalklos*, 528 N.W.2d 225, 228 (Minn. 1995). A district court need not address every *Trog* factor in considering a dispositional departure. *State v. Pegel*, 795 N.W.2d 251, 252, 254 (Minn. App. 2011).

McDaniel argues that the district court abused its discretion by denying his request for a downward dispositional departure because his age and prior record, remorse and cooperation, and his drive to improve himself show "that there were substantial and compelling reasons for him to be placed on probation." We disagree.

Age and Prior Criminal Record

Although McDaniel was only 20 years old at the time of the offense and has no prior felony convictions, the record reflects that he has several misdemeanor/gross misdemeanor convictions from Wisconsin, including two convictions of disorderly conduct,² as well as convictions of resisting an officer and possession of drug paraphernalia. The record also reflects that McDaniel was involved in at least three offenses as a juvenile with unknown dispositions. And McDaniel was arrested in 2018 for domestic assault, but that charge was dismissed as part of his plea agreement. McDaniel's record reveals that he has an extensive history of unlawful behavior. As the state points out, the "fact that [McDaniel] avoided felony convictions while engaging in [this] activity does not demonstrate that [McDaniel] is particularly amenable to probation; it demonstrates that he engaged in activity that increased with severity over the course of a relatively short period of time and culminated with a first-degree burglary."

Remorse and Cooperation

The record also supports the district court's finding that McDaniel failed to establish that his alleged remorse and cooperation provided substantial and compelling reasons to depart. Although McDaniel pleaded guilty to first-degree burglary-assault and expressed remorse at sentencing, the record reflects that before sentencing, McDaniel moved to withdraw his plea. That motion, and the fact that he entered a *Norgaard* plea, claiming to

² McDaniel was 17 when he committed the disorderly conduct offenses, but those offenses were "handled through adult court."

have no memory of the offense, contradict McDaniel's assertion that his decision to plead guilty evidences his remorse.

Moreover, the record reflects that after pleading guilty, McDaniel expressed that he felt "tricked into pleading guilty by his now former counsel" and that it was "not explained to him that [his offense] was a presumptive commit." And record evidence demonstrates that despite pleading guilty, McDaniel continues to "minimize" or "deny" his conduct. The district court had access to and reviewed all of the evidence in the record and determined that McDaniel's alleged remorse and cooperation did not provide substantial and compelling reasons to depart. Based on our review of the record, we conclude that the district court's determination is supported by the record.

Support of Family and Friends

Unfortunately, there is also little evidence in the record showing that McDaniel's family and friends support him. In fact, the record shows otherwise. As McDaniel recognizes, his "childhood and background reflected 'a lot of difficulty in there. Mental health, issues with his family, problems with stability, can't remember a time that he wasn't in the system.'" McDaniel's lack of family and community support, along with McDaniel's failure to establish any other offender-related factors that make him particularly amenable to probation, refute McDaniel's position that he had demonstrated a drive to improve himself. Accordingly, the district court did not abuse its discretion by finding that there were no substantial and compelling reasons to depart.

Finally, even if the district court had found that McDaniel was particularly amenable to probation, the district court did not have to depart. *See Olson*, 765 N.W.2d at 664-65.

And the district court did not need to provide reasons for imposing a presumptive sentence. *See State v. Johnson*, 831 N.W.2d 917, 925 (Minn. App. 2013), *review denied* (Minn. Sept. 17, 2013). As long as the district court “carefully evaluated all the testimony and information presented” before imposing a presumptive sentence, we must affirm. *Id.* (quotation omitted).

Here, the record reflects that the district court reviewed all the evidence and imposed a presumptive sentence after finding no substantial and compelling reasons to depart. Without compelling circumstances, a presumptive sentence is not an abuse of discretion. *See State v. Delk*, 781 N.W.2d 426, 428 (Minn. App. 2010) (“This court will generally not exercise its authority to modify a sentence within the presumptive range absent compelling circumstances.” (quotation omitted)), *review denied* (Minn. July 10, 2010). And although the district court did not explicitly explain its reasoning for imposing a top-of-the-box guidelines sentence, no explanation was necessary. *See Johnson*, 831 N.W.2d at 925 (stating that a district court need not provide reasons for imposing a presumptive sentence). Thus, the district court did not abuse its discretion by denying McDaniel’s motion for a downward dispositional departure and imposing a presumptive guidelines sentence.

Affirmed.