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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1873**

State of Minnesota,
Respondent,

vs.

Anthony Jefferson,
Appellant.

**Filed October 26, 2020
Affirmed
Frisch, Judge**

Hennepin County District Court
File No. 27-CR-18-15358

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

Michael O. Freeman, Hennepin County Attorney, Adam E. Petras, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Frisch, Presiding Judge; Johnson, Judge; and Schellhas,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

FRISCH, Judge

In this direct appeal following his conviction of felony driving while under the influence of alcohol, appellant argues that the district court abused its discretion by denying his motion for a downward dispositional departure from the Minnesota Sentencing Guidelines. We affirm.

FACTS

On June 15, 2018, law enforcement stopped appellant Anthony Jefferson for speeding on I-94 in the Twin Cities metro area. Jefferson failed multiple field sobriety tests and was arrested for driving while impaired. The state charged Jefferson with a single count of felony driving while under the influence of alcohol. *See* Minn. Stat. §§ 169A.20, subd. 1(1), .24, subd. 1(1) (2016). On June 5, 2019, Jefferson pleaded guilty. The district court ordered a presentence investigation (PSI) and continued the case for a sentencing hearing. The PSI recommended the presumptive guidelines sentence of 60 months' imprisonment. Jefferson moved for a downward dispositional departure from the Minnesota Sentencing Guidelines. The district court denied the motion and imposed the presumptive guidelines sentence. This appeal follows.

DECISION

Jefferson argues that the district court abused its discretion in denying his motion for a downward dispositional departure from the Minnesota Sentencing Guidelines. “Whether to depart from the guidelines rests within the district court’s discretion, and this court will not reverse the decision absent a clear abuse of that discretion.” *State v. Olson*,

765 N.W.2d 662, 664 (Minn. App. 2009) (quotation omitted). “[A] sentencing court can exercise its discretion to depart from the guidelines *only if* aggravating or mitigating circumstances are present, and those circumstances provide a substantial and compelling reason not to impose a guidelines sentence.” *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014) (quotations and citations omitted). We “generally will not interfere with sentences that are within the presumptive sentence range.” *State v. Freyer*, 328 N.W.2d 140, 142 (Minn. 1982). “Only in a ‘rare’ case will a reviewing court reverse imposition of a presumptive sentence.” *State v. Delk*, 781 N.W.2d 426, 428 (Minn. App. 2010) (quoting *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981)), *review denied* (Minn. July 20, 2010).

A downward dispositional departure “occurs when the [sentencing g]uidelines recommend a prison sentence but the court stays the sentence.” Minn. Sent. Guidelines 1.B.5.a.(2) (Supp. 2017). The district court must find the defendant is *particularly* amenable to probation to justify a dispositional departure in the form of a stay of execution of a presumptively executed sentence. *Soto*, 855 N.W.2d at 308-09. “Departures from the presumptive sentence are justified *only* when substantial and compelling circumstances are present in the record.” *State v. Jackson*, 749 N.W.2d 353, 360 (Minn. 2008). The district court may consider the age of the defendant, his prior record, his remorse, his cooperation, his attitude in court, and the support of family and friends in determining particular amenability to probation. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). Although the district court has discretion to grant a downward dispositional departure where a defendant is particularly amenable to probation, “it is not required to do so.” *Olson*, 765 N.W.2d at 664-65.

Jefferson argues that he is particularly amenable to individualized treatment in a probationary setting because he is remorseful, acknowledged his alcohol problem, cooperated by attending all court hearings and probation appointments, and is respectful in tone and demeanor.

The district court considered and acknowledged the basis for the departure motion, analyzed the *Trog* factors, and concluded that a downward dispositional departure was not appropriate. In so doing, the district court found that Jefferson denied responsibility for his actions during his probation interview, that Jefferson committed the offense while he was on probation, and that Jefferson amassed repeated violations of probationary conditions, among other concerns expressed by the district court. We see no abuse of discretion in the district court finding that Jefferson was not particularly amendable to probation or imposing the presumptive guidelines sentence.

Affirmed.