STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0170

State of Minnesota,
Respondent,

vs.

Jesus Manuel Valdez,
Appellant.

Filed December 14, 2020
Affirmed
Florey, Judge

Hennepin County District Court
File No. 27-CR-19-8209

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

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Ross, Presiding Judge; Florey, Judge; and Bryan, Judge.

U N P U B L I S H E D O P I N I O N

FLOREY, Judge

In this appeal from a 33-month presumptive sentence for felony domestic abuse, appellant argues that the district court abused its discretion in denying his motion for a dispositional departure. We affirm.

FACTS

Appellant Jesus Manuel Valdez was charged with two counts of felony domestic abuse under Minn. Stat. § 518B.01, subd. 14(d)(1) (2018) ("violates an order for protection issued by a judge or referee" and the violation is "within ten years of the first of two or more previous qualified domestic violence-related offense convictions"). The charges arose after Valdez, who was subject to an order for protection prohibiting contact with S.M.P, called S.M.P twice from jail and threatened to hurt her if she contacted police. Valdez entered straight guilty pleas to both charges. Before waiving his trial rights and entering his pleas, Valdez acknowledged that he understood the following: the charges against him, the presumptive prison commitment of 33 months, that if he pleaded guilty the court would decide the appropriate sentence after reviewing a presentence-investigation report (PSI) and hearing the arguments of counsel, and that he waived his rights to a trial and had sufficient time to speak with counsel. At the plea hearing, Valdez acknowledged that he knew there was an order for protection prohibiting his contact with S.M.P. at the times he called her. He also acknowledged his criminal record, which included prior domestic-violence-related felony convictions for violating a no-contact order, domestic assault, and terroristic threats.

The PSI report recommended a 33-month prison commitment, the presumptive term for an individual with a criminal-history score of ten who commits a severity-level-four offense. The investigating probation officer found no aggravating or mitigating factors that would support a departure from the presumptive guidelines sentence. With respect to a downward dispositional departure to probation, the PSI stated that "it is difficult to find

[Valdez] particularly amenable to probation, considering he was under community supervision when his cases occurred." The PSI found that while Valdez had taken positive steps by completing a chemical-dependency treatment program, starting an anger-management program, and complying with the conditional-release conditions, those steps did "not outweigh the likelihood that [Valdez] is at risk to relapse and reoffend, as he has shown by three separate criminal charges while under parole supervision." The PSI also reported that Valdez had participated in chemical-dependency programing but failed to maintain sobriety and refrain from dangerous and threatening behavior.

At sentencing, Valdez moved for a downward-dispositional departure, arguing that such a probationary sentence was warranted due to his participation in a chemical-dependency treatment program, negative tests for alcohol and drugs, participation in an anger-management program, recent employment record, and remorse for his actions. Valdez's counsel argued that while his recent efforts did not "negate his record," a probationary sentence was warranted in recognition of the efforts he had made and to allow him to continue with the chemical-dependency and anger-management programming. Counsel urged the district court "to consider everything that Mr. Valdez [had] done since the date of this incident in April to show [the district court] that he indeed [was] amenable to treatment," and noted that Valdez was "more than willing to participate in any additional programs that probation recommend[ed]."

The district court denied the motion and imposed the presumptive guidelines sentence of a 33-month executed prison term, noting that it had considered the arguments and PSI in making its decision but did not find "significant and compelling reasons" to

depart from the guidelines. The district court congratulated Valdez for taking "some very positive steps," but concluded these actions were insufficient to find "a reason to depart."

This appeal followed.

D E C I S I O N

Valdez argues that the district court abused its discretion by refusing to grant a dispositional departure from the presumptive sentence. He argues that the district court should have found that he was "particularly amenable" to probation and treatment in a probationary setting.

We review a district court's decision to grant or deny a departure from the presumptive sentence for an abuse of discretion. *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014). We will reverse a district court's refusal to depart from the presumptive sentence only in a "rare case." *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

The Minnesota Sentencing Guidelines "prescrib[e] a sentence or range of sentences that is presumed to be appropriate." *Soto*, 855 N.W.2d at 308 (quotation omitted). The guidelines are intended to "maintain uniformity, proportionality, rationality, and predictability in sentencing." Minn. Stat. § 244.09, subd. 5 (2018). Therefore, departures are discouraged unless "there are 'identifiable, substantial, and compelling circumstances to support a departure.'" *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016) (quoting Minn. Sent. Guidelines 2.D.1 (Supp. 2015)). "Substantial and compelling circumstances are those circumstances that make the facts of a particular case different from a typical case." *State v. Peake*, 366 N.W.2d 299, 301 (Minn. 1985).

A district court may grant a downward dispositional departure from the sentencing guidelines if the defendant is "particularly amenable to probation." *Soto*, 855 N.W.2d at 309; *see* Minn. Sent. Guidelines 2.D.3.a.(7) (Supp. 2019). A finding that a defendant is particularly amenable to probation may "be supported by the fact that the offender is particularly amenable to a relevant program of individualized treatment in a probationary setting." Minn. Sent. Guidelines 2.D.3.a.(7). "[A] defendant's particular amenability to individualized treatment in a probationary setting will justify departure in the form of a stay of execution of a presumptively executed sentence." *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). When considering whether to grant a dispositional departure, the district court may consider factors such as "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.*

Here, appellant argues that the district court abused its discretion by not finding that he was particularly amenable to probation because "substantial and compelling reasons," including "his remorse and cooperation, the support of family and community members, and his community resources for treatment and employment," support a probationary sentence.

An examination of the record does not indicate that this is a rare or exceptional case indicating that Valdez is particularly amenable to probation. *See State v. Hennum*, 441 N.W.2d 793, 801 (Minn. 1989) (holding that the case qualified as a rare case justifying reversal of the district court's imposition of the presumptive sentence because of evidence that the victim had physically and mentally abused the defendant). The record indicates that the district court considered the reasons for and against departure. The district court

considered Valdez's sincere remorse, family support, current employment history, interest in continuing chemical-dependency and anger-management programming, prior treatment opportunities, and previous behavior while on probation, which included extensive criminal activity. Ultimately, the district court concluded there were not substantial and compelling reasons to depart on the basis of his amenability to probation.

Further, even if the record did support a finding that Valdez is particularly amenable to probation, "the mere fact that a mitigating factor is present in a particular case 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) (quoting *State v. Wall*, 343 N.W.2d 22, 25 (Minn. 1984)); *see also 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."); *State v. Evenson*, 554 N.W.2d 409, 412 (Minn. App. 1996) ("Even assuming [a defendant] is exceptionally amenable to treatment, his amenability does not dictate the result."), *review denied* (Minn. Oct. 29, 1996). Thus, in either scenario, the district court did not abuse its discretion by imposing the presumptive sentence.

Affirmed.