STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0193

State of Minnesota,
Respondent,

vs.

Christopher Dwayne Leckner,
Appellant.

Filed July 6, 2021
Affirmed
Frisch, Judge

Koochiching County District Court
File No. 36-CR-18-790

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

Jeffrey S. Naglosky, Koochiching County Attorney, International Falls, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Abigail H. Rankin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Frisch, Presiding Judge; Ross, Judge; and Cochran, Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

Appellant argues that the district court abused its discretion by denying his motion for a dispositional sentencing departure because it failed to properly consider the bases

supporting departure and because substantial and compelling circumstances warranted a departure. We affirm.

FACTS

The state charged appellant Christopher Dwayne Leckner with first- and second-degree assault in violation of Minn. Stat. §§ 609.221, subd. 1, .222, subd. 2 (2018), alleging that on November 1, 2018, Leckner argued with a woman, punched her in the face, and stabbed her three times. Leckner entered a *Norgaard*[1] plea, indicated that he could not remember the incident due to his intoxication at the time, confirmed his review of the state's evidence, and agreed that the evidence would be sufficient to convict him. The district court scheduled a sentencing hearing and ordered probation to prepare a presentence investigation (PSI) report.

During the PSI interview, Leckner recalled that he and his then-girlfriend were drinking, that they argued, that she threatened him, and that she punched him. The next thing he remembered was yelling to his father to call 911.

Probation noted Leckner's history of chemical-dependency and mental-health issues, including daily marijuana use, occasional methamphetamine use, depression, anxiety, attention deficit hyperactive disorder, and borderline personality disorder. Probation summarized Leckner's prior crimes, which included a conviction for escaping from custody. Based on an offense severity level of nine and a criminal-history score of

[1] *See State ex rel. Norgaard v. Tahash*, 110 N.W.2d 867, 871-72 (Minn. 1961).

five, probation recommended that the district court impose the presumptive sentence of 146 months' imprisonment. *See* Minn. Sent. Guidelines 4.A (2018).

Leckner moved for a downward dispositional departure to probation, highlighting his history of mental-health struggles, cognitive impairment, and substance-abuse issues. Leckner emphasized that prior imprisonment had exacerbated his mental-health issues, but that he had improved when he previously participated in mental-health treatment programs. He also indicated that he was remorseful for his actions and was willing to accept responsibility for them. Leckner argued that a long-term inpatient treatment program and continued therapy would allow him to address issues related to his mental health and chemical dependency.

At sentencing, a doctor detailed Leckner's various diagnoses spanning his childhood and adulthood. The doctor indicated that Leckner's cognitive function tested at a level which rendered it difficult to work or succeed in school. He opined that Leckner required long-term group dialectical behavioral therapy and individual therapy. Although he was uncertain whether such therapy was available in prison, he believed "without a doubt" that the better option for Leckner was treatment outside of prison. The doctor recommended inpatient treatment and opined that such treatment would increase Leckner's chances of success on probation. The doctor also testified that there was a higher likelihood that Leckner would reoffend if he were merely sent to prison without receiving treatment.

Leckner's father testified that treatment on probation would be better for Leckner because prison "just makes him worse." Leckner's sister testified that Leckner had "gotten

a lot worse from being in prison" and that it would be better for him to get "very intense treatment" for his mental-health and chemical-dependency issues.

Leckner testified that he experienced mental illnesses since childhood and that, though he received some chemical-dependency treatment in his life, his mental illnesses had gone largely untreated. Leckner was imprisoned for seven years, from 2005 to 2012, and an additional five years, from 2013 to 2018. On cross-examination, Leckner clarified that his seven-year term of imprisonment stemmed from an 18-month sentence with five years of supervised release, the terms of which he violated. Regarding his five-year term of imprisonment, Leckner admitted that he was released in September 2017, violated the terms of supervised release, and was returned to prison by October 2017. Leckner claimed that he received very limited mental-health services during his imprisonment. He recalled spending most of his time in solitary confinement. Leckner testified that he was committed to completing treatment, remaining law-abiding, and complying with probationary terms. He also expressed remorse for the crime.

The district court accepted Leckner's plea and adjudicated his guilt. But the district court indicated it was going to "do some studying" and continued the sentencing hearing to a later date. When Leckner reappeared for sentencing, the district court explained that it had "walked through" the prison facilities offering treatment and that it believed Leckner would "get more services in prison [than he] could ever get in the public." The district court denied Leckner's departure motion and sentenced him to 150 months' imprisonment.

Leckner appealed, arguing that the district court's independent investigation deprived him of the right to a fair sentencing proceeding. *State v. Leckner*, No. A19-1007,

2020 WL 3172651, at *3 (Minn. App. June 15, 2020). We agreed, reversed his sentence, and remanded the case for resentencing before a different judge. *Id.* at *4.

On remand, Leckner renewed his request for a downward dispositional departure. In addition to reviewing transcripts of the testimony from the first sentencing proceeding, the district court heard new testimony from the same witnesses. The doctor testified consistently with his prior testimony and clarified his opinion that Leckner needed treatment with the condition that treatment be provided in a confined, inpatient setting. Leckner's father and sister repeated their claims that prison was detrimental to Leckner, that treatment on probation would best serve him, and that he would have their support.

Leckner again recounted his history of mental-health struggles, emphasized his remorse, and made clear his desire to receive treatment and comply with probationary terms. He also claimed, "[H]ad I not . . . been . . . as heavily intoxicated as I was, . . . that crime would have never been committed."

The district court denied Leckner's request for a dispositional departure, finding that there were no substantial and compelling circumstances justifying a departure from the presumptive guidelines sentence. It conceded that there was a risk to Leckner's mental health but indicated that it was not a "foregone conclusion." The district court also acknowledged that Leckner expressed genuine remorse and that he took responsibility for his actions by pleading guilty. The district court also explained:

> I do not believe that [Leckner] is particularly amenable to probation. I look at his past history, including the fact that he got a stay of imposition, and that he didn't do well on conditional release and the fact that he has had insufficient treatment is not unlike most other people that I send to prison,

> unfortunately, and so there are not identifiable substantial and compelling circumstances to support a departure.

The district court further noted that it had public-safety concerns and questioned Leckner's ability to comply with court orders. The district court emphasized that Leckner's criminal history included escaping from custody and crimes of violence against women. The district court sentenced Leckner to 130 months in prison. This appeal follows.

DECISION

Leckner challenges the district court's denial of his motion for a downward dispositional departure, arguing that (I) the district court failed to appropriately consider the evidence of mitigating circumstances and (II) ample evidence demonstrated his mitigated culpability and his particular amenability to probation.[2] We review a district court's denial of a departure motion for an abuse of discretion. *See State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014). Because the decision to depart is discretionary with the district court, only in a "rare case" will we reverse the imposition of a presumptive sentence. *See State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

"The Minnesota Sentencing Guidelines . . . limit the sentencing court's discretion by prescribing a sentence or range of sentences that is presumed to be appropriate." *Soto*, 855 N.W.2d at 308 (quotation omitted). Pursuant to Minn. Sent. Guidelines 2.D.1 (2018), "The [district] court must pronounce a sentence of the applicable disposition and within the applicable range unless there exist identifiable, substantial, and compelling

[2] The state filed no response brief and we ordered that the case be decided pursuant to Minn. R. Civ. App. P. 142.03.

circumstances to support a departure." A downward dispositional departure "occurs when the Guidelines recommend a prison sentence but the court stays the sentence." Minn. Sent. Guidelines 1.B.5.a.(2) (2018). In general, a dispositional departure depends on the defendant's individual characteristics. *See State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016). The guidelines provide a list of mitigating circumstances which may warrant a departure, two of which are at issue on appeal: the existence of "substantial grounds . . . that tend to excuse or mitigate the offender's culpability," and the defendant's "particular[] amenab[ility] to probation." Minn. Sent. Guidelines 2.D.3.a.(5), (7) (2018).

I. The district court appropriately and carefully considered the bases for Leckner's motion.

Leckner argues that "the district court failed to appropriately and carefully consider [his] mitigated culpability and particular amenability to probation" and that the "decision demonstrates a failure to appropriately and carefully consider mitigating factors." We disagree.

Generally, a district court "is not required to explain its reasons for imposing a presumptive sentence." *State v. Johnson*, 831 N.W.2d 917, 925 (Minn. App. 2013), *review denied* (Minn. Sept. 17, 2013). And in most cases, "We will affirm the imposition of a presumptive guidelines sentence when the record shows [that] the sentencing court carefully evaluated all the testimony and information presented before making a determination." *Id.* (alteration in original) (quotation omitted). "If the district court has discretion to depart from a presumptive sentence, it must . . . deliberately consider[]

circumstances for and against departure." *State v. Mendoza*, 638 N.W.2d 480, 483 (Minn. App. 2002).

The record demonstrates that the district court carefully considered the bases supporting Leckner's motion. It heard testimony from Leckner and other witnesses, and it reviewed their prior testimony. It received sentencing memoranda from Leckner and the state. And the district court's analysis addressed the core of Leckner's argument, conceding Leckner's need for treatment and acknowledging the potential detriment of imprisonment to Leckner's mental health. But the district court also considered numerous circumstances in context, including Leckner's remorse, his accountability, his criminal history, his previous failures to comply with terms of supervised release, his similarity to others sentenced to prison, and an overarching concern for public safety. Accordingly, we discern no abuse of discretion in the depth of the district court's deliberation.

II. The district court did not abuse its discretion by finding that no substantial and compelling circumstances existed in support of a sentencing departure.

Leckner contends that the district court abused its discretion by failing to find a substantial and compelling reason to depart from the sentencing guidelines based on either: (A) the existence of substantial grounds tending to excuse or mitigate his culpability, or (B) his particular amenability to probation. *See* Minn. Sent. Guidelines 2.D.3.a.(5), (7).

A. The district court did not abuse its discretion by failing to find the existence of substantial grounds tending to excuse or mitigate Leckner's culpability.

Leckner contends that he demonstrated substantial grounds tending to excuse or mitigate his culpability. *See* Minn. Sent. Guidelines 2.D.3.a.(5). He emphasizes that he

has a below-average cognitive ability, that he endured a difficult upbringing, that he has struggled with mental-health and chemical-dependency issues that contributed to his commission of the assault, and that he "made it clear that he would not have committed this offense but for his intoxication resulting from his addiction."

Leckner's argument regarding his below-average cognitive ability likely falls under the purview of Minn. Sent. Guidelines 2.D.3.a.(3) (2018), which permits a sentencing departure when a defendant "lack[s] substantial capacity for judgment when the offense was committed" due to a mental impairment. Regardless, Leckner did not demonstrate how his below-average cognitive level reduced or mitigated his culpability with respect to the crime for which he was sentenced. The doctor's testimony linked Leckner's tendency toward impulsivity to Leckner's difficulty with "think[ing] through problems in the moment." But Leckner fails to cite any portion of the record indicating that the level of Leckner's cognitive ability contributed to the specific crime against the victim. And the nature of Leckner's plea was such that he had no recollection of the actual stabbing.

Separately, Leckner's attempt to link his crime to his addiction and intoxication runs afoul of the sentencing guidelines. Although Leckner presents his argument under the catch-all provision of Minn. Sent. Guidelines 2.D.3.a.(5), the language of Minn. Sent. Guidelines 2.D.3.a.(3) clearly precludes "[t]he voluntary use of intoxicants (drugs *or alcohol*) from the purview of [that] factor." (Emphasis added.)

Third, the district court was familiar with the various difficulties Leckner had faced during his lifetime, including issues of mental health and chemical dependency. The district court acknowledged these circumstances. But Leckner fails to develop any

argument demonstrating how these circumstances, either independently or collectively, excuse or mitigate his culpability for stabbing the victim. The district court did not abuse its discretion by failing to find the existence of any substantial grounds tending to excuse or mitigate Leckner's culpability.

B. The district court did not abuse its discretion by finding that Leckner was not particularly amenable to probation.

Leckner contends that the district court abused its discretion by finding that he was not particularly amenable to probation. A district court may grant a dispositional departure if "[t]he offender is particularly amenable to probation," which "may, but need not, 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). "By requiring a defendant to be *particularly* amenable to probation . . . we ensure that the defendant's amenability to probation distinguishes the defendant from most others and truly presents the substantial and compelling circumstances that are necessary to justify a departure." *Soto*, 855 N.W.2d at 309 (quotation omitted). Numerous factors may be relevant to the district court's determination of a defendant's particular amenability to probation, including the age of the defendant, his past criminal record, his remorse for the crime, his cooperation, his support group, and his motive to reform. *See State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982); *State v. Malinski*, 353 N.W.2d 207, 210 (Minn. App. 1984), *review denied* (Minn. Oct. 16, 1984).

We discern no abuse of discretion on this record. The district court weighed Leckner's remorse and accountability in his favor, and we assume for the sake of Leckner's

argument that his age, family support, and motive to reform weighed in his favor. Even so, the district court cited public-safety concerns, emphasized the unavailability of a *secure* treatment facility outside of prison, referenced Leckner's criminal history, and explained that Leckner "didn't do well on conditional release." Where certain circumstances directly contradicted Leckner's claimed amenability to probation, the district court did not abuse its discretion by finding that Leckner was not *particularly* amenable to probation. *See Soto*, 855 N.W.2d at 309.

Leckner suggests that the district court's public-safety analysis "goes against logic" because "if a defendant needs treatment to ensure rehabilitation and public safety and he will not get the treatment in prison, a commitment to prison is not the rational sentence." The argument ignores the relevant fact, as noted by the district court, that there was no secure treatment facility available. The question before the district court was not simply whether imprisonment or probation would provide better treatment for Leckner, but "whether public safety would be served" by placing Leckner on probation. *See id.* at 313; *see also State v. Heywood*, 338 N.W.2d 243, 244 (Minn. 1983) (affirming departure that was based, in part, on district court's finding that defendant "was not a threat to the public safety"). The district court's analysis in this respect logically balanced competing interests.

Leckner also argues that the district court's decision was "against logic and the facts in the record" because it committed Leckner to a prison system which had "repeatedly failed him and . . . the public that [the prison] system is intended to protect." But the relevant consideration is not whether imprisonment has succeeded in its capacity for rehabilitation, but whether Leckner demonstrated his *particular* amenability to probation

such that a departure was permissible. Here, the record supports the district court's determination that Leckner was not particularly amenable to probation.

Affirmed.