

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1209**

State of Minnesota,
Respondent,

vs.

William Eugene Hale,
Appellant.

**Filed June 20, 2022
Affirmed
Bryan, Judge**

Crow Wing County District Court
File No. 18-CR-18-4285

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

Donald F. Ryan, Crow Wing Attorney, Brainerd, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Max Brady Kittel, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Wheelock, Presiding Judge; Jesson, Judge; and Bryan,
Judge.

NONPRECEDENTIAL OPINION

BRYAN, Judge

In this sentencing appeal, appellant challenges the denial of his downward
dispositional departure motion. Because the denial is not against logic or the facts in the
record, we affirm the sentence imposed.

FACTS

In October 2018, respondent State of Minnesota charged appellant William Eugene Hale with four counts of first-degree criminal sexual conduct and four counts of second-degree criminal sexual conduct. The state amended the complaint in September 2019 to add two new counts of first-degree criminal sexual conduct. In November 2019, Hale agreed to enter a guilty plea to second-degree criminal sexual conduct. In exchange for his plea, the state agreed to recommend staying adjudication, dismissing the nine other charges, and including sex offender treatment as a term of probation. In March 2020, the district court adopted the parties' plea agreement and stayed adjudication of the second-degree criminal sexual conduct charge. The district court ordered Hale to complete a 15-year term of supervised probation, including the following conditions: follow the recommendations of the psychosexual evaluation, complete sex offender treatment, submit to a polygraph examination, abstain from alcohol and drugs, complete a chemical dependency assessment, follow the recommendations of that assessment, and submit to random drug and alcohol testing.

Hale participated in sex-offender treatment from May until August 2020, when he was terminated from treatment for nonpayment. In September 2020, probation filed a violation report, alleging that Hale violated the condition that prohibits the use of alcohol or controlled substances. The report noted that Hale admitted frequent use of methamphetamine over the preceding two weeks, and that Hale recently acquired a new job but quit less than a month later "for no particular reason." In October 2020, probation filed an addendum to the violation report, alleging that Hale had used alcohol and

methamphetamine again. In December 2020, Hale admitted to both probation violations and the district court revoked the stay of adjudication. Hale was convicted of second-degree criminal sexual conduct and released pending sentencing. The state explained that “if Mr. Hale has demonstrated that he’s particularly amenable to probation by not having further violations, successfully completing treatment, and engaging in the conditions of probation,” then it would agree to a dispositional departure.

In February 2021, before the sentencing hearing took place, Hale completed inpatient treatment. While Hale was attending outpatient programming, however, he tested positive for methamphetamine and probation filed a second addendum to the violation report. According to the second addendum, when the supervising agent requested Hale submit a urine sample on February 24, 2021, Hale initially stalled for 20 minutes before ultimately testing positive for methamphetamine. After testing positive, Hale admitted to methamphetamine use on two previous occasions. When Hale met with his supervising agent again in March, Hale admitted to additional methamphetamine use. In addition, according to the second addendum, Hale had “been on probation for over a year and has yet to really start sex offender treatment Quitting his job and leaving the halfway house were impulsive behaviors. This, coupled with continued substance use and lack of sex offender programming, raises significant concerns for public safety.” Hale also admitted to this probation violation and the matter was set for sentencing.

Hale moved for a downward dispositional departure, asserting that he was amenable to probation and in the alternative, requested the minimum presumptive sentence of 90 months. Hale filed a letter to the district court expressing remorse and shame for his

actions. Hale also submitted a letter from his outpatient chemical dependency program stating, among other things, that Hale's attendance was fair to good, he had "become an asset to the group," and "progressing well on his treatment plan." At his sentencing in June 2021, the state requested the top-of-the-box presumptive sentence of 108 months. The state argued that Hale had multiple opportunities to address his substance abuse but has been unsuccessful.

The district court received testimony from Hale's probation officer and admitted Hale's treatment records and his most recent chemical dependency recommendations. The current probation officer testified that she did not think that Hale was particularly amenable to probation because he was unwilling to admit the facts of the offense, even though Hale had done so with his former probation officer. Hale's probation officer also testified that Hale admitted to substance use only after he tested positive for methamphetamine. The probation officer explained that she believed Hale was willing to go to inpatient treatment, but that she generally expected more to show particular amenability. The probation officer also explained that the March 2021 recommendation to continue outpatient treatment was no longer appropriate given her conversations with Hale and his lack of accountability. Among other documents, the district court received a letter from a behavioral health counselor from the sex offender treatment program that Hale participated in until his discharge in August 2020. The counselor stated that at the time of his termination from the program, Hale had completed no assignments, continued to deny behavior in the criminal complaint, and had not made any payments for the polygraph examination.

On June 22, 2021, the district court denied Hale’s dispositional departure motion and sentenced Hale to an executed prison term of 98 months. The district court found that Hale had “not completed treatment as required by probation” and had “not maintained sobriety even after finishing a treatment program.” The district court also found that Hale addressed his substance use only when he was confronted with a positive test, “made statements denying conduct that he previously admitted to,” and continued to present a risk to public safety. Hale appeals.

DECISION

Hale argues that the district court erred when it denied his motion for a dispositional departure. Specifically, Hale argues that the district court failed to give sufficient weight to the progress that he made in treatment. Because it is not against logic to conclude that Hale’s conduct while on probation and pending the sentencing hearing indicates he is not particularly amenable to probation, the district court did not abuse its discretion.

The Minnesota Sentencing Guidelines establish sentences that are presumptively appropriate. Minn. Sent. Guidelines 2.D.1 (2018); Minn. Stat. § 244.09, subd. 5 (2018); *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014). The district court must pronounce a presumptive sentence “unless there exist identifiable, substantial, and compelling circumstances to support a departure.” Minn. Sent. Guidelines 2.D.1 (Supp. 2018); *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016). A district court is not required to grant a departure even if there are grounds that would justify a departure. *See State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006); Minn. Sent. Guidelines 2.D.3 (2018) (providing that the factors “may” be used to depart). District courts may consider both offense-related and

offender-related factors when deciding whether to grant a request for dispositional departure. *State v. Walker*, 913 N.W.2d 463, 468 (Minn. App. 2018) (citing *State v. Chaklos*, 528 N.W.2d 225, 228 (Minn. 1995)). We review a district court’s denial of dispositional departure requests for an abuse of discretion. *Soto*, 855 N.W.2d at 307-08. A district court abuses its discretion when its decision is against logic or the facts in the record. *State v. Guzman*, 892 N.W.2d 801, 810 (Minn. 2017).

In this case, Hale argued for a downward dispositional departure based on his particular amenability to individualized treatment in a probationary setting. Minn. Sent. Guidelines 2.D.3.a.(7). For a departure to be warranted on this basis, the defendant must be particularly amenable to probation—meaning 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); *see also State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982) (listing factors relevant to particular amenability, including age, criminal history, remorse, cooperation, attitude while in court, and the support of friends or family).

While the record includes some statements that could support Hale’s departure motion, it also includes uncontested evidence that strongly weighs against the *Trog* factors. For example, Hale admitted to multiple probation violations, including those that resulted in the revocation of the initial stay of adjudication. Hale’s failure to abstain from the use of drugs continued even after completing the inpatient portion of his treatment program in February 2021, when Hale used methamphetamine on several separate occasions. In addition, although Hale expressed motivation to participate in a sex offender treatment

program, after more than one year, Hale had yet to complete a single assignment. In addition, the state submitted evidence that Hale was not completely forthright and admitted to substance use only after he failed drug tests. Given Hale's history of noncompliance with the terms of probation, Hale's lack of progress in the sex offender treatment program, and Hale's mixed efforts to demonstrate accountability, we conclude that it was not against logic or the facts to deny the departure request.

Affirmed.