This opinion is nonprecedential except as provided by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
A21-1219

State of Minnesota,
Respondent,

vs.

Cody Robert Meyer,
Appellant.

Filed July 18, 2022
Affirmed
Reyes, Judge

Crow Wing County District Court
File No. 18-CR-19-1913

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

Donald F. Ryan, Crow Wing County Attorney, Janine LePage, Assistant County Attorney, Brainerd, Minnesota (for respondent)

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

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

NONPRECEDENTIAL OPINION

REYES, Judge

Appellant argues on appeal that the district court abused its discretion by denying his motion for a downward dispositional departure from the presumptive executed prison

sentence because the record shows that he is particularly amenable to probation and treatment. We affirm.

FACTS

Appellant Cody Robert Meyer used force to sexually penetrate a 15-year-old victim. Victim's mother filed a report with the police department several months later, and investigators interviewed appellant. During the interview, appellant first told investigators that he and victim had consensual sex but later admitted that he "pretty much forced [victim] to have sex" by forcibly holding her against the seat of his truck. He also admitted that victim had cried and repeatedly told him to stop and that she wanted to go home.

Respondent State of Minnesota charged appellant with two counts of third-degree criminal sexual conduct. Appellant then participated in a psychosexual assessment, during which appellant again initially denied having forcibly sexually penetrated the victim, claiming it had been consensual, but later admitted to it not being consensual. Appellant also disclosed that as a minor he was placed on probation and required to complete community service for committing criminal sexual conduct against another minor. The assessor recommended that appellant complete a group sex-offender treatment program, which appellant began about six months later.

Appellant pleaded guilty to, and the district court convicted him of, one count of third-degree criminal sexual conduct Minn. Stat. § 609.344, subd. 1(b) (2016). Before sentencing, appellant moved for a downward dispositional departure consisting of 15 years of supervised probation and required sex-offender treatment. He argued in part that he is particularly amenable to probation because his psychosexual assessment recommended

treatment and his presentence investigation report (PSI) recommended probation. The state countered that appellant had not accepted responsibility or cooperated with the legal process, had not shown that he could not receive the recommended treatment in custody, and his juvenile history shows a pattern of criminal sexual behavior, among other arguments. The state also read into evidence the victim's impact letter. At his sentencing hearing, the district court denied appellant's motion after listening to testimony and the parties' arguments, accepting documents, and taking a break to consider the information presented. It determined that there were no grounds to depart from the sentencing guidelines and sentenced appellant to the presumptive sentence of 48 months in prison, followed by ten years of conditional release. *See* Minn. Sent. Guidelines 4.B, 5.A (Supp. 2017). This appeal follows.

DECISION

Appellant argues that the district court abused its discretion by denying his motion for a downward dispositional departure because he is particularly amenable to probation based on the factors outlined in *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). We are not persuaded.

District courts are afforded "great discretion in the imposition of sentences," which appellate courts will reverse "only for an abuse of that discretion." *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014) (quotation omitted). When a district court imposes a presumptive sentence, we "may not interfere with the [district court's] exercise of discretion, as long as the record shows [the district court] carefully evaluated all the testimony and information presented before making a determination." *State v. Van Ruler*,

378 N.W.2d 77, 80-81 (Minn. App. 1985). Only in a "rare case" will we reverse the district court's refusal to depart from the presumptive sentence. *See State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

The sentences provided in the Minnesota Sentencing Guidelines are presumed to be appropriate. Minn. Sent. Guidelines 2.D.1 (Supp. 2017). A district court may only depart from the guidelines sentence if "aggravating or mitigating circumstances are present, and those circumstances provide a substantial and compelling reason not to impose a guidelines sentence." *Soto*, 855 N.W.2d at 308 (quotations and citations omitted); *see also* Minn. Sent. Guidelines 2.D.1 (stating that district court "must" sentence within guidelines range "unless there exist identifiable, substantial, and compelling circumstances to support a departure").

Under *Trog*, several factors are relevant to determine whether a defendant is "particularly suitable to individualized treatment in a probationary setting." 323 N.W.2d at 31. These include the defendant's age, prior record, remorse, cooperation, and family support. *Id.* But even if substantial and compelling circumstances exist, a district court need not depart from the guidelines. *State v. Walker*, 913 N.W.2d 463, 468 (Minn. App. 2018) (citing *Kindem*, 313 N.W.2d at 7); *see also, e.g.*, *State v. Wall*, 343 N.W.2d 22, 25 (Minn. 1984) (considering that presence of mitigating factor does not obligate district court "to place defendant on probation"); Minn. Sent. Guidelines 2.D.1 (stating that district court "may" depart from presumptive disposition).

Appellant argues the following factors establish substantial and compelling circumstances that support a departure: this is his first criminal offense; he was only 21

years old at the time of the offense; he showed remorse and cooperated with the legal process; his family supports him; the psychosexual assessment recommended a group sex-offender treatment program and the PSI recommended probation; and he has shown that he can follow treatment-like programming. Appellant's argument is unpersuasive.

First, the district court need not depart even if mitigating factors are present. It needed only to evaluate all relevant information carefully before making its decision. *Van Ruler*, 378 N.W.2d at 80-81. The record reflects that the district court carefully considered all relevant information presented, including the state's sentencing arguments, appellant's arguments to support his dispositional departure motion, victim's impact letter, the PSI, and the psychosexual assessment. And before making its determination, the district court took a recess to consider the motion:

> Counsel, you've both made some very important points and you both referred in detail to the psychosexual assessment. I'm going to take a recess for about five minutes so that I can review the psychosexual assessment one more time in light of the arguments that have been made here today.

After considering all of this information and testimony, the district court determined that appellant was not particularly amenable to probation.

The record supports the district court's determination. Although there may be some favorable mitigating circumstances, such as appellant's young age, his supportive family, and the PSI recommendation, other factors support the district court's decision to deny a downward dispositional departure. Appellant committed fifth-degree nonconsensual criminal sexual conduct when he was 17 years old. The record also contradicts appellant's argument that he cooperated in the legal process. Appellant initially denied forcibly

sexually penetrating victim to investigators, the psychosexual assessor, and the PSI assessor, although he later admitted to it. And more than once he blamed the victim. The psychosexual assessor also identified appellant as an above-average risk of committing sexual offenses in the future, a high priority for sexual and violent recidivism, and a high priority for general criminal recidivism. We discern no abuse of discretion by the district court.

Appellant relies heavily on the psychosexual assessment recommendation that appellant complete a group sex-offender treatment program. However, it never recommended *outpatient treatment* or that appellant should receive treatment in a probationary setting. Nor is there any evidence to suggest that he cannot receive or benefit from an appropriate sex-offender treatment in prison. *See State v. Malinski*, 353 N.W.2d 207, 209 (Minn. App. 1984) (stating that substantial and compelling circumstances for downward dispositional departure may "include a finding that a defendant is particularly amenable to correction on probation *and* unamenable to correction by imprisonment"), *rev. denied* (Minn. Oct. 16, 1984) (emphasis added); *see also* Minn. Sent. Guidelines 2.D.3.a(7) (Supp. 2017). Finally, "the mere fact that the person who prepared a report for the district court reached a certain conclusion does not" require the district court to depart from the presumptive sentence. *Soto*, 855 N.W.2d at 309 (quotations omitted). Given this record, this is not the "rare case" in which we will intervene in the district court's broad sentencing discretion. *See Kindem*, 313 N.W.2d at 7.

Affirmed.