

*This opinion is nonprecedential except as provided by  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  
A21-1220**

State of Minnesota,  
Respondent,

vs.

Lejuan Walter Hyde,  
Appellant.

**Filed July 18, 2022  
Affirmed  
Wheelock, Judge**

Hennepin County District Court  
File No. 27-CR-20-21410

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, Sara J. Euteneuer, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

**NONPRECEDENTIAL OPINION**

**WHEELOCK**, Judge

Appellant argues that the district court abused its discretion in denying his motion for a downward dispositional departure from the presumptive guidelines sentence after he

pleaded guilty to a charge of unlawful possession of a firearm. Because the record shows the district court carefully evaluated the reasons for and against departure, we affirm.

## FACTS

Appellant Lejuan Walter Hyde was charged with one count of unlawful possession of a firearm, in violation of Minn. Stat. § 624.713, subd. 1(2) (2018), following a traffic stop where police found a loaded handgun in the car. Hyde was driving the car, officers found the gun under the driver's seat, and subsequent forensic analysis showed the presence of Hyde's DNA on the gun. Hyde was previously adjudicated delinquent for first-degree burglary in Illinois and was therefore prohibited from possessing a firearm.

Hyde pleaded guilty with no agreement as to sentencing, and the district court ordered a presentence investigation (PSI). At the sentencing hearing, Hyde moved the court for downward dispositional and durational departures, arguing that his age, community support, cooperation with court proceedings, and history of substance-abuse treatment demonstrate his particular amenability to probation. The PSI report did not find any substantial or compelling reasons to support a dispositional departure, noting that Hyde reported spending time with one prosocial friend, that he was scheduled to start a GED program, that he had worked one volunteer shift at the time of the interview, and that he missed his first two PSI interview appointments. The district court denied the motion for a downward dispositional departure but granted the motion for a downward durational departure—imposing a 48-month sentence. Hyde appeals the denial of his dispositional-departure motion.

## DECISION

The Minnesota Sentencing Guidelines establish presumptive sentences for criminal offenses. Minn. Stat. § 244.09, subd. 5 (2018). The district court “must pronounce a sentence of the applicable disposition . . . unless there exist identifiable, substantial, and compelling circumstances to support a departure.” Minn. Sent. Guidelines 2.D.1 (Supp. 2019). The decision to depart is “an exercise of judicial discretion constrained by statute or case law.” *Id.* Only in a “rare” case will we reverse a sentencing court’s refusal to depart. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). If the record contains evidence of factors supporting departure that the district court could have considered but did not, we may remand for consideration of those factors. *State v. Johnson*, 831 N.W.2d 917, 925-26 (Minn. App. 2013). However, the district court is not required to explain its reasons for imposing a presumptive sentence. *Id.* at 925. We “may not interfere with the sentencing court’s exercise of discretion, as long as the record shows the sentencing court carefully evaluated all the testimony and information presented before making a determination.” *State v. Pegel*, 795 N.W.2d 251, 255 (Minn. App. 2011) (quotation omitted).

The offender’s particular amenability to probation is one factor in a nonexclusive list that may serve as the basis for a sentencing departure. Minn. Sent. Guidelines 2.D.3.a(7) (Supp. 2019). Particular amenability to probation “distinguishes the defendant from most others and truly presents the substantial and compelling circumstances necessary to justify a departure.” Minn. Sent. Guidelines cmt. 2.D.303 (Supp. 2019) (citing *State v. Soto*, 855 N.W.2d 303, 309 (Minn. 2014)). Consideration of a dispositional departure typically focuses on the offender’s characteristics to evaluate whether the offender is

“particularly suitable for individualized treatment in a probationary setting.” *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016) (quotation omitted). Factors relevant to particular amenability to probation that can justify a dispositional departure include the defendant’s age, prior record, remorse, cooperation, attitude while in court, and the support of friends or family; courts sometimes refer to these as the “*Trog* factors.” *Soto*, 855 N.W.2d at 310 (quoting *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982)). Even if a defendant would be particularly amenable to probation, a district court is not required to impose a downward dispositional departure. *State v. Olson*, 765 N.W.2d 662, 664-65 (Minn. App. 2009).

Hyde moved the district court for both downward durational and downward dispositional departures from the guidelines sentence. In granting the motion for a durational departure, the district court credited Hyde’s accepting responsibility as well as “circumstances that are not amounting to [a] defense.”<sup>1</sup> The district court, however, did not grant a dispositional departure. Hyde contends that in declining to grant a dispositional departure, the district court abused its discretion because (1) it failed to carefully evaluate

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<sup>1</sup> The Minnesota Sentencing Guidelines provide that one mitigating factor that may be used as a reason for departure is if “[o]ther substantial grounds exist that tend to excuse or mitigate the offender’s culpability, although not amounting to a defense.” Minn. Sent. Guidelines 2.D.3.a(5) (Supp. 2019). The district court did not specify what grounds it considered to be circumstances not amounting to a defense that would have mitigated Hyde’s culpability. At the time of the offense in question, Hyde was on conditional release in a fifth-degree controlled-substance-possession case in Minnesota. When Hyde was arrested in that case, he was also in possession of a handgun, but the charging prosecutor failed to note that Hyde was prohibited from possessing a firearm based on his juvenile adjudication in Illinois and did not charge him with unlawful possession of a firearm. This was noted on the record by the district court, and Hyde argued at sentencing that this led to a misunderstanding as to whether he was permitted to possess a firearm.

the circumstances for and against a dispositional departure, and (2) substantial and compelling circumstances supported a dispositional departure in this case. The record does not sustain either contention. Therefore, the district court acted within its discretion.

Hyde's claim that the district court did not carefully evaluate the reasons for a dispositional departure is not borne out by the record. The court informed the parties at the sentencing hearing's outset that it had reviewed the PSI report and the memorandum in support of Hyde's departure motion. During the hearing, Hyde argued through counsel in support of his particular amenability to probation, while the state argued in support of the presumptive executed sentence. Hyde also made a statement to the court on his own behalf. The court asked clarifying questions throughout the hearing, indicating it was attending to and considering the remarks being presented. The record demonstrates that the court also considered the risk to public safety based on the circumstances and incorporated its assessment of that risk into its analysis of the dispositional-departure request. *See Soto*, 855 N.W.2d at 313 (confirming that public safety can be a relevant factor in dispositional-departure decisions). In particular, we note that the district court, in arriving at its decision in favor of a durational departure, looked to the testimony and recommendations provided by the parties. An argument that the court did not carefully review the same testimony and recommendations to evaluate the appropriateness of a dispositional departure is unconvincing.

Hyde points to our nonprecedential opinion in *State v. Lichtsinn*, No. A10-1555, 2011 WL 1743908 (Minn. App. May 9, 2011), to claim that the district court erred by

failing to specifically address the factors weighing for or against dispositional departure.<sup>2</sup> Established precedent maintains that “the district court is not required to explain its reasons for imposing a presumptive sentence.” *Johnson*, 831 N.W.2d at 925. Moreover, *Lichtsinn* is distinguishable from this case.<sup>3</sup> Because there is no requirement that the court provide reasons for imposing a presumptive guidelines sentence, and because the record shows the district court carefully evaluated the information and arguments presented regarding both the dispositional and durational departure requests, we conclude that the district court did not err on that basis.

Hyde next argues that the district court abused its discretion due to the presence of substantial and compelling circumstances in support of a downward dispositional departure. “[T]he presence of mitigating factors does ‘not obligate the court’” to depart from the presumptive sentence. *Wells v. State*, 839 N.W.2d 775, 781 (Minn. App. 2013) (quoting *State v. Wall*, 343 N.W.2d 22, 25 (Minn. 1984)). If the district court considered the defendant’s arguments and concluded that the presumptive sentence is appropriate, we

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<sup>2</sup> As a nonprecedential case, *Lichtsinn* is not binding authority, and its usefulness is limited to its persuasive value. See *State v. Mayl*, 836 N.W.2d 368, 372 n.2 (Minn. App. 2013) (appellant’s reliance on an unpublished case “is not binding upon” this court); *City of Saint Paul v. Eldredge*, 788 N.W.2d 522, 526-27 (Minn. App. 2010).

<sup>3</sup> In *Lichtsinn*, the defendant did not file a motion for a downward dispositional departure, and the district court understood the defendant’s request to be for a stay of execution under Minn. Stat. § 609.342, subd. 3, which relies on different factors than a downward dispositional departure under the sentencing guidelines. *Lichtsinn*, 2011 WL 1743908, at \*3-4. Thus, *Lichtsinn* does not support Hyde’s argument that the district court’s lack of explanation for imposing the presumptive sentence is reason to reverse and remand in this case.

will not reverse absent a sufficient showing that the circumstances represent the “rare” case compelling reversal. *Olson*, 765 N.W.2d at 665.

Hyde argues that his case is the rare case that compels reversal, and, in his effort to convince us of this, he argues that he is able to demonstrate his particular amenability to probation on the basis of nearly every *Trog* factor. Hyde first relies on his past enrollment in chemical-dependency treatment programs, his continuing efforts to seek treatment, and his compliance with pretrial release conditions. The PSI report identified many of the same facts but did not recommend a dispositional departure, observing that Hyde was unsuccessfully discharged from his most recent chemical-dependency treatment program due to attendance and behavior issues and that he admitted that he had used nonprescription drugs in violation of his conditional release. In assessing Hyde’s amenability to probation as “questionable,” the PSI report expressed concern that this offense occurred less than three months after Hyde’s prior controlled-substance offense, that he was in possession of a firearm during the prior offense, and that he was on conditional release for that offense at the time this offense occurred. While Hyde’s involvement with chemical-dependency treatment is important, these facts do not present substantial and compelling circumstances that support reversal of the district court on the basis that Hyde is particularly amenable to probation and to individualized treatment in a probationary setting. *See Soto*, 855 N.W.2d at 308-09 (articulating the standard for justifying a downward dispositional departure).

Hyde next asserts that his age, prior record, and network of friends and family weigh in favor of a dispositional departure because his criminal history “does not appear extensive,” and he has close relationships with his mother, who resides in Chicago, and his

children, two of whom reside in Minnesota. At age 28, however, Hyde's record includes previous convictions for felony aggravated fleeing and misdemeanor reckless conduct, along with the juvenile felony that resulted in his being prohibited from possessing firearms. With respect to a supportive network, Hyde claims relatively few local connections. Hyde further contends that his attitude and cooperation with the judicial process weigh in favor of a dispositional departure. While Hyde attended all court appearances and remained in contact with probation, the PSI report notes that Hyde missed his first two PSI interview appointments and used controlled substances in violation of his conditional release as previously discussed. None of these factors establish a rare case compelling reversal.

Finally, Hyde contends that his GED program enrollment and job-seeking efforts demonstrate remorse and motivation to change. We recognize that remorse "bears on [the offender's] ability to be rehabilitated." *Solberg*, 882 N.W.2d at 625. The PSI report states that at the time of the interview, Hyde had enrolled in a GED program but had yet to begin classes, was starting part-time work, and had performed one session of volunteering. But the relative recency of these developments could reflect Hyde's self-interest in the sentencing process as opposed to his motivation to change. Furthermore, the record reveals no expressions of remorse on Hyde's part; rather, Hyde attempts first to equate reasons he could be motivated to change with showing remorse, and then he offers justifications for carrying a gun. Hyde states that he needed protection due to having been shot soon after moving to Minnesota, knowing few people in the community, and carrying large amounts of cash because he was unable to open a bank account. These justifications and lack of



any record evidence demonstrating remorse belie Hyde's assertion on appeal that he has shown remorse that makes him particularly amenable to probation and supports a reversal of the district court's imposition of an executed sentence.

In determining Hyde's sentence, the district court carefully evaluated the information and arguments presented. The facts on which Hyde relies to support his arguments on appeal do not establish particular amenability that "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 (quoting Minn. Sent. Guidelines 2.D.1); nor do these facts support a conclusion that this is the rare case compelling reversal, *Olson*, 765 N.W.2d at 665. The district court's denial of a downward dispositional departure was not an abuse of discretion, and we will not reverse its decision.

**Affirmed.**