STATE OF MINNESOTA
IN COURT OF APPEALS
A11-636

State of Minnesota,
Respondent,

vs.

Joshua Corey Laine,
Appellant.

Filed September 26, 2011
Affirmed
Hudson, Judge

Stearns County District Court
File No. 73-CR-10-4025

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Janelle P. Kendall, Stearns County Attorney, Carl Ole Tvedten, Assistant County Attorney, St. Cloud, Minnesota (for respondent)

Ryan Garry, Minneapolis, Minnesota (for appellant)

Considered and decided by Hudson, Presiding Judge; Minge, Judge; and Ross, Judge.

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

HUDSON, Judge

Appellant challenges the district court's imposition of the presumptive guideline sentence following his conviction of criminal vehicular homicide, arguing that the district

court failed to exercise its discretion in sentencing and abused its discretion by failing to order a downward dispositional departure. We affirm.

FACTS

In September 2010, the state charged appellant Joshua Corey Laine with criminal vehicular homicide arising from an incident in which appellant was driving in St. Cloud with two passengers and lost control of his vehicle. Appellant and one passenger were seriously injured; the other passenger, appellant's fiancée, K.K., was ejected from the vehicle and died from her injuries. Appellant's blood sample taken after the accident showed an alcohol concentration of .21.

Appellant pleaded guilty to one count of criminal vehicular homicide or operation for causing death by driving a vehicle with an alcohol concentration of .08 or more, in violation of Minn. Stat. § 609.21, subds. 1(4), 1a(a) (2008). Appellant moved for a downward dispositional or durational sentencing departure. He argued that in 2008, nearly 52% of defendants sentenced for criminal vehicular homicide received a probationary sentence; that substantial and compelling circumstances, including his amenability to probation and acceptance of responsibility, supported a departure; and that Minnesota appellate courts had upheld downward departures in factually similar cases. In support of his motion, appellant submitted a police report showing his cooperation at the scene of the accident, chemical-dependency-treatment records showing that he attended scheduled group sessions and individual therapy, reported no chemical use, and had negative results in random drug testing; and letters of support from 11 of his friends and relatives, including the other victim in the accident. At sentencing, appellant's

attorney also read a letter of support from appellant's chemical-dependency counselor. The father of K.K.'s three daughters submitted a victim-impact statement emphasizing the loss of the children's relationship with their mother.

The district court sentenced appellant to 48 months, the middle of the presumptive range for his offense with his zero criminal-history score. The district court stated at sentencing:

> I did have an opportunity to review the very thorough Pre-sentence Investigation report, and the very thorough motion brought on behalf of the Defendant, Mr. Laine, and all of the letters in support of Mr. Laine . . . . I read the letter from your ex-wife about your kids, and this isn't an easy decision for the Court. And we have the sentencing guidelines here in the state of Minnesota, and the purpose of the sentencing guidelines is to establish rational and consistent sentencing standards which reduce sentencing disparity and ensure sanctions following conviction of a felony are proportional to the severity of the offense of conviction and the extent of the offender's criminal history. Equity in sentencing requires, A, that convicted felons similar with respect to relevant sentencing criteria ought to receive similar sanctions; and, B, that convicted felons substantially different from a typical case with respect to relevant criteria ought to receive different sanctions. These are presumptive sentences. The Court here does have the authority to depart if, in fact, there are substantial and compelling reasons to do so. Mr. Laine, your attorney has made very good arguments on your behalf as to why this Court should grant your request for a departure. However, I don't make the rules. I don't make the laws. I'm simply here to enforce them. And in this case it's the judgment of this Court that the presumptive guidelines are appropriate.

This sentencing appeal follows.

D E C I S I O N

A district court is required to order the presumptive sentence under the Minnesota Sentencing Guidelines unless substantial and compelling circumstances warrant a departure. *State v. Cameron*, 370 N.W.2d 486, 487 (Minn. App. 1985), *review denied* (Minn. Aug. 29, 1985); Minn. Sent. Guidelines II.D. The district court has broad discretion in determining whether to depart, and only in a rare case will this court reverse the imposition of a presumptive sentence. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

The presence of mitigating factors does not require the district court to issue a durational or dispositional departure. *State v. Wall*, 343 N.W.2d 22, 25 (Minn. 1984). If a district court considers reasons for departure but elects to impose the presumptive sentence, the court need not issue a written explanation of its decision to not depart. *State v. Curtiss*, 353 N.W.2d 262, 263 (Minn. App. 1984). "The reviewing court 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. Van Ruler*, 378 N.W.2d 77, 80–81 (Minn. App. 1985).

I

Appellant argues that the case should be remanded for resentencing because the district court failed to exercise its discretion by indicating that it considered the relevant mitigating factors for a downward dispositional departure. "If the district court has discretion to depart from a presumptive sentence, it must exercise that discretion by

deliberately considering circumstances for and against departure." *State v. Mendoza*, 638 N.W.2d 480, 483 (Minn. App. 2002), *review denied* (Minn. Apr. 16, 2002). When the record contains evidence of factors for a dispositional departure that should have been, but were not, considered, the case must be remanded for an additional hearing to consider the reasons for departure. *Curtiss*, 353 N.W.2d at 264.

Appellant points out that before imposing the presumptive sentence, the district court stated on the record that it "[did]n't make the rules," "[did]n't make the laws," and was "simply here to enforce them." Appellant argues that this language shows that the district court did not exercise its judgment in sentencing because the record showed the existence of substantial and compelling circumstances supporting departure, including several mitigating factors listed in *State v. Trog*, 323 N.W.2d 28 (Minn. 1982). *See id*. at 31 (reciting factors relevant to consideration of a downward dispositional departure including "the defendant's age, his prior record, his remorse, his cooperation, his attitude while in court, and the support of friends and/or family").

We are troubled by the district court's suggestion that it lacked discretion in sentencing appellant. But when the record shows that the district court did carefully consider the circumstances for and against departure, the district court is not required to discuss all of the *Trog* factors in imposing the presumptive sentence. *State v. Pegel*, 795 N.W.2d 251, 254 (Minn. App. 2011). The district court stated on the record that it considered the information in the presentence investigation (PSI) and in appellant's motion, including the letters written in his support. These documents contain information on several of the *Trog* factors. The district court referred to appellant's "very thorough"

sentencing brief and the "very thorough" PSI, noted that appellant's attorney made "very good arguments" in support of departure, and stated that its sentencing decision was not "an easy decision." Although the district court did not explicitly state which *Trog* factors it considered, the court's statements demonstrate that it performed the requisite task of evaluating all of the information presented, including the information on mitigating sentencing factors, before imposing the presumptive sentence. *See Van Ruler*, 378 N.W.2d at 80–81 (stating that this court does not interfere with sentencing court's exercise of discretion if record shows district court "carefully evaluated all the testimony and information presented before making a determination"). We therefore reject appellant's argument that the district court failed to properly exercise its discretion when it ordered the presumptive sentence.

II

Appellant argues in the alternative that the district court abused its discretion by failing to issue a downward dispositional departure based on the presence of substantial and compelling circumstances. "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).

Appellant maintains that a downward sentencing departure is warranted, based on the mitigating circumstances of his amenability to treatment, young age, lack of criminal history, remorse, support, and acceptance of responsibility. We have determined in some cases that these factors justify a downward departure. *See, e.g.*, *State v. Donnay*, 600 N.W.2d 471, 474 (Minn. App. 1999) (concluding that a defendant's amenability to

probation justified a downward departure, based on his young age, lack of prior record, cooperation, remorse, and support from friends and family), *review denied* (Minn. Nov. 17, 1999); *State v. Gebeck*, 635 N.W.2d 385, 389–90 (Minn. App. 2001) (affirming a downward dispositional departure based on the defendant's positive discharge summary from treatment and probationary conditions that provided greater leverage to assure success in rehabilitation). But the presence of some mitigating factors does not require the district court to order a dispositional departure. *See, e.g.*, *State v. Bertsch*, 707 N.W.2d 660, 668 n.7 (Minn. 2006) (affirming district court's refusal to depart downward in dissemination-of-child-pornography case, despite defendant's young age, lack of criminal history, expression of remorse, and large support network, when probation department recommended executed sentence, based on level of defensiveness that would make treatment difficult).

When considering a downward dispositional departure, the district court may focus "on the defendant as an individual and on whether the presumptive sentence would be best for him and for society." *State v. Heywood*, 338 N.W.2d 243, 244 (Minn. 1983). We recognize that appellant has demonstrated some factors that would support a downward departure. But we also note that his alcohol concentration taken immediately after the accident was .21, which is more than twice the legal limit for operating a motor vehicle. Though appellant's chemical-dependency-treatment records show his cooperation with treatment, they also show continuing challenges, and his risk level has not been reduced through treatment. In addition, the victim-impact statement submitted by the father of K.K.'s children states the substantial harm resulting from the loss of their

mother. We cannot conclude that this is the "rare case" that warrants a reversal of a district court's refusal to depart, *Kindem*, 313 N.W.2d at 7, and the district court did not abuse its discretion by declining to do so.

Affirmed.