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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1090**

State of Minnesota,
Respondent,

vs.

Yolonda Shannon,
Appellant.

**Filed April 8, 2013
Affirmed
Stauber, Judge**

Stearns County District Court
File No. 73CR106786

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

Janelle Kendall, Stearns County Attorney, Michael J. Lieberg, Assistant County Attorney, St. Cloud, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Cathryn Young Middlebrook, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Stauber, Presiding Judge; Bjorkman, Judge; and
Connolly, Judge.

UNPUBLISHED OPINION

STAUBER, Judge

On appeal from her conviction of and sentence for second-degree drug sale, appellant argues that the district court abused its discretion by denying her motion for a downward dispositional departure. We affirm.

FACTS

In August 2010, appellant Yolonda Shannon was charged with one count of second-degree sale of a controlled substance. The complaint alleged that on seven separate occasions between September 23, 2009, and November 9, 2009, appellant sold narcotics, including morphine and hydrocodone, to a confidential informant working under police supervision.

Appellant pleaded guilty to the charged offense pursuant to a plea agreement reached with the state. At the sentencing hearing, the state requested a 50-month sentence, which was at the low end of the applicable box on the sentencing guidelines grid. Conversely, appellant moved for a dispositional departure, arguing that she is amenable to probation under the *Trog* factors.¹ The district court denied appellant's motion for a dispositional departure and sentenced appellant to 50 months in prison and restitution. This appeal followed.

DECISION

The district court must order the presumptive sentence unless “substantial and compelling circumstances” justify departure. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn.

¹ See *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982).

1981). Whether to depart from the sentencing guidelines rests within the district court's discretion, and this court will not reverse the decision absent a clear abuse of that discretion. *State v. Oberg*, 627 N.W.2d 721, 724 (Minn. App. 2001), *review denied* (Minn. Aug. 22, 2001). Only in a "rare" case will an appellate court reverse a sentencing court's refusal to depart. *Kindem*, 313 N.W.2d at 7.

In weighing whether to impose a downward dispositional departure from the presumptive sentence, a district court considers "the defendant as an individual and [focuses] on whether the presumptive sentence would be best for [the defendant] and for society." *State v. Heywood*, 338 N.W.2d 243, 244 (Minn. 1983). One factor to consider is the defendant's amenability to probation. *Id.* Other relevant factors include the defendant's age, prior criminal history, remorse, cooperation, attitude while in court, and support from family and friends. *Id.* (citing *Trog*, 323 N.W.2d at 31).

Appellant argues that she presented substantial and compelling reasons justifying a downward dispositional departure. According to appellant, these substantial and compelling reasons include: (1) the support she has from her family and friends; (2) her remorse and cooperation during the criminal proceedings; (3) the fact that she was 49 years old at the time of the offense; and (4) her relative lack of a prior record. Appellant argues that because the district court failed to "properly" consider these factors, the district court abused its discretion by denying her departure motion.

We disagree. In considering appellant's motion, the district court found that appellant has support from her family and friends, which "weighs in favor of the departure." But the district court also found that appellant's present age of 52 is not

“old” and is generally not in the age-group category that is typically considered in caselaw as a substantial reason to depart. Moreover, the district court found that appellant had a prior conviction in 1994 for dealing drugs and, therefore, she understood that the sale of controlled substances was wrong. The district court concluded that because this offense involved a similar situation to her prior offense, her prior record did not constitute a substantial reason to depart. Further, the district court was “hesitant” to find that appellant was remorseful because, by entering an *Alford/Norgaard* plea, she did not accept full responsibility for her actions. The district court specifically considered each *Trog* factor and concluded that when it “balance[s]” all of the factors, “there are not substantial and compelling circumstances to warrant a departure in this case.” Although appellant disagrees with the district court’s conclusion, appellant fails to demonstrate how the court’s thorough consideration of each of the *Trog* factors was improper.

Appellant also contends that mitigating factors make her case unique from the “usual drug sale case,” and that also supported her motion for a dispositional departure. Specifically, appellant claims that “she is not a drug dealer” and that she was simply “helping out a friend whom she believed was in pain and in medical need.” But appellant’s claim is refuted by the record. As stated above, appellant has a prior conviction for dealing drugs. Moreover, appellant did not sell controlled substances on only one occasion. Rather, as the state points out, she sold drugs to a confidential informant on seven separate occasions over the course of two months. And, despite appellant’s claim that she never profited from the drug sales, the district court questioned the credibility of appellant’s claim that she did not keep any of the \$1,200 she received

from the informant during the transactions. Further, even if there were reasons to depart, an appellate court will not disturb the district court's sentence if the district court had reasons for refusing to depart. *State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006). The district court specifically found that the *Trog* factors did not weigh in favor of a dispositional departure and did not believe appellant's claim that this was such a unique case that its mitigating factors constituted a substantial reason to depart. Accordingly, this is not the "rare" case in which the district court abused its discretion by denying appellant's motion for a downward dispositional departure.

Affirmed.