STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1799

State of Minnesota,
Respondent,

vs.

Chia Neng Vue,
Appellant.

Filed April 29, 2013
Affirmed
Worke, Judge

Ramsey County District Court
File No. 62-CR-12-3396

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

John J. Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney, St. Paul, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Jennifer L. Lauermann, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Schellhas, Presiding Judge; Kalitowski, Judge; and Worke, Judge.

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

WORKE, Judge

On appeal from his sentence for possession of a firearm by an ineligible person, appellant argues that the district court abused its discretion by denying his motion for a

downward dispositional departure. Appellant argues that his lack of adult criminal history, his remorse, and his eligibility for inpatient substance-abuse treatment warranted a downward departure, and that the district court failed to properly consider the factors supporting departure. Because we conclude the district court did not abuse its discretion, we affirm.

D E C I S I O N

On appeal, we review a sentence to "determine whether the sentence is inconsistent with statutory requirements, unreasonable, inappropriate, excessive, unjustifiably disparate, or not warranted by the findings of fact issued by the district court." Minn. Stat. § 244.11, subd. 2(b) (2010). We review a district court's decision to grant or deny a motion for a dispositional departure for abuse of discretion. *State v. Pegel*, 795 N.W.2d 251, 253 (Minn. App. 2011). The district court's decision to impose the guideline sentence must be affirmed "as long as the record shows that the sentencing court carefully evaluated all of the testimony and information presented before making a determination." *State v. Van Ruler*, 378 N.W.2d 77, 81 (Minn. App. 1985). Thus, only a "rare case" will merit reversal for a court's refusal to depart. *State v. Weaver*, 796 N.W.2d 561, 575 (Minn. App. 2011) (quotation omitted).

In considering whether to grant a dispositional departure, the district court must consider the defendant's "particular amenability to individualized treatment in a probationary setting." *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). Relevant considerations may include the defendant's age, prior record, remorse, cooperation, attitude in court, and the available support network of friends or family. *Id.* at 31. When

considering a dispositional departure, the district court "can focus more 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).

Appellant argues that the district court failed to adequately address the considerations set forth in *Trog*. Relying on *State v. Mendoza*, 638 N.W.2d 480, 483 (Minn. App. 2002), *review denied* (Minn. April 16, 2002), appellant asserts that the district court was required to "deliberately consider factors for departure by comparing them side by side with factors for non-departure." However, in *Mendoza* we reversed the district court's imposition of a presumptive sentence because the district court improperly considered the defendants' immigration status, which is not a *Trog* factor. *Mendoza*, 638 N.W.2d at 484. In this case, appellant has not shown that the district court considered factors which were beyond the scope of appropriate inquiry or that it failed to consider factors relevant to sentencing.

Moreover, district courts are not required to discuss all of the *Trog* factors before imposing a presumptive sentence. *Pegel*, 795 N.W.2d at 254 (rejecting appellant's argument that the district court failed to discuss all of the *Trog* factors, and observing that "there is no requirement that the district court must do so"); *see also Van Ruler*, 378 N.W.2d at 80 ("[A]n explanation is not required when the court considers reasons for departure but elects to impose the presumptive sentence."). Rather than discussing all *Trog* factors, the district court need only show that it "deliberately considered circumstances for and against departure and exercised its discretion." *Pegel*, 795 N.W.2d at 254. In this case, the district court judge observed that she was impressed by

appellant's arguments, and that she considered the letters of support written by appellant's family and friends. A defendant's support network is one of the *Trog* factors. *See Trog*, 323 N.W.2d at 31. The district court judge concluded, however, that appellant's criminal history, also a *Trog* factor, weighed in favor of imposing the guidelines sentence. *See id.* These statements on the record demonstrate that the district court exercised its discretion, and therefore it is not necessary to remand the case. *Cf. Pegel*, 795 N.W.2d at 253 ("When the record demonstrates that an exercise of discretion has not occurred, the case must be remanded for a hearing on sentencing and for consideration of the departure issue.").

Finally, appellant argues that his "lack of adult criminal history, his remorse and acceptance of responsibility, [his] eligibility and amenability for inpatient drug and alcohol treatment . . . should have been [factors] considered by the court." However, as previously stated, there is no requirement that the district court consider *all* the *Trog* factors. *Pegel*, 795 N.W.2d at 254. Moreover, "the mere fact that a mitigating factor is present in a particular case does 'not obligate the court to place defendant on probation or impose a shorter term than the presumptive term.'" *Id.* at 253-54 (quoting *State v. Wall*, 343 N.W.2d 22, 25 (Minn. 1984)). The district court carefully considered at least some of the *Trog* factors and weighed the merits of imposing a downward dispositional departure. Therefore, the district court did not abuse its discretion by concluding that a dispositional departure was not warranted in appellant's case.

Affirmed.