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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0311**

State of Minnesota,
Respondent,

vs.

Kelsi Renae Sanderson,
Appellant.

**Filed December 10, 2012
Affirmed
Rodenberg, Judge**

McLeod County District Court
File No. 43CR111036

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

Michael K. Junge, McLeod County Attorney, Glencoe, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Anders J. Erickson, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Rodenberg, Judge; and
Hooten, Judge.

UNPUBLISHED OPINION

RODENBERG, Judge

On appeal from her conviction of aiding and abetting aggravated robbery in the first degree, appellant argues that the district court abused its discretion in denying her request for a downward dispositional departure under the Minnesota Sentencing

Guidelines. She contends that the district court did not properly analyze the *Trog* factors and apply them individually to her case. *See generally State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982) (setting forth factors for consideration when determining whether a downward dispositional departure is warranted). We affirm.

FACTS

In June 2011, appellant Kelsi Sanderson and two others went to an apartment in Hutchinson, Minnesota, and robbed its occupant at gunpoint. Appellant gained entry into the apartment by knocking on the door. Although appellant herself did not wield a gun, she knew that the two co-defendants were carrying handguns and intended to use them to facilitate the robbery. Appellant and her co-defendants stole numerous items of property from the apartment. Appellant was under the influence of drugs and alcohol at the time of the robbery.

The state charged appellant with three counts of aiding and abetting aggravated robbery in the first degree. Appellant pled guilty to count three, and the state dismissed the remaining charges.

At sentencing, appellant moved for a dispositional departure. Defense counsel argued that appellant was amenable to probation due to her young age, her completion of chemical-dependency treatment, her support network and stable living situation with her grandparents, her remorse and cooperative attitude in court, and her lack of a criminal history.

At the hearing, the district court indicated that it had carefully reviewed appellant's file and gained an understanding of "[her] background, [her] life, what

brought [her] here today, the family situation.” It acknowledged that appellant’s grandparents provided a “most positive influence” in her life. It acknowledged appellant’s remorse and the fact that she had taken full responsibility for her actions. The court also considered appellant’s age, observing that even though she was young, she would still be young when she got out of prison.

The district court denied the request for a dispositional departure and imposed and executed the presumptive sentence of 48 months. It reasoned that the severity of the offense and the uncertain prognosis for appellant’s sobriety warranted the presumptive sentence. It noted that those involved with appellant’s chemical-dependency treatment for methamphetamine addiction were “considerably guarded” as to her ability to remain sober, and they recommended that she remain in a highly-structured environment, as she had relapsed just over a month prior to sentencing. The district court observed that a Drug Court program would provide such a structured environment, but that appellant was ineligible for such a program due to the violent nature of her offense. The district court therefore determined that commitment to the Department of Corrections would provide appellant with a structured environment and with resources to assist her rehabilitation.

This appeal followed.

DECISION

Appellant argues that the district court abused its discretion by denying her motion for a dispositional departure. In particular, she contends that the court failed to properly analyze the *Trog* factors and therefore failed to exercise its discretion.

A district court must impose the presumptive guidelines sentence unless the case involves “identifiable, substantial, and compelling circumstances” in support of departure. Minn. Sent. Guidelines II.D (2010). Substantial and compelling circumstances are those which “make the facts of a particular case different from a typical case.” *State v. Peake*, 366 N.W.2d 299, 301 (Minn. 1985).

Even when substantial and compelling circumstances exist, the district court has “broad discretion” in deciding whether or not to grant a departure from the sentencing guidelines. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). Appellate courts generally will not interfere with a district court’s exercise of discretion. *Id.* at 7; *see also State v. Hickman*, 666 N.W.2d 729, 731 (Minn. App. 2003) (recognizing that a district court’s decision whether to depart “will not be reversed absent a clear abuse of discretion”). The district court’s decision to impose the presumptive 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. *Kindem*, 313 N.W.2d at 7.

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.” *Trog*, 323 N.W.2d at 31. 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. In considering these circumstances to the extent they are relevant, 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*. However, courts are not required to discuss all of the *Trog* considerations before imposing the presumptive sentence. *See State v. Pegel*, 795 N.W.2d 251, 254 (Minn. App. 2011) (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.”). This is particularly true when, as in this case, the record shows that the district court exercised its discretion by considering the circumstances for and against departure. *See Pegel*, 795 N.W.2d at 254.

At the beginning of the sentencing hearing, the district court indicated on the record that it had reviewed all of the relevant submissions and was familiar with appellant’s background and circumstances. Additionally, the court expressly considered appellant’s age, her remorse, her attitude in court, her family support system, her past participation in treatment, and the availability of additional resources in a correctional setting. Based on the recommendation that appellant remain in a structured environment, the guarded prognosis regarding her ability to remain sober, and her ineligibility for participation in Drug Court due to the violent nature of her offense, the district court determined that commitment to the Department of Corrections would best fit the needs of appellant and the interests of society. The record reflects that the district court fully

considered all relevant factors and appropriately exercised its discretion to impose the presumptive sentence.

Appellant argues that the district court failed to adequately consider her lack of a prior criminal record. However, the district court indicated that it had thoroughly reviewed appellant's presentence investigation, which included information regarding her criminal history. Additionally, because the presumptive sentence already takes into account a defendant's criminal-history score, a clean record does not, by itself, justify departure. *Trog*, 323 N.W.2d at 31.

Appellant also argues that the district court impermissibly relied on the severity of the offense in denying a dispositional departure. The district court observed that "[t]he crime for which you pled guilty is extremely serious," and that appellant's culpability was extreme.¹ But the seriousness of the offense is a valid reason for adhering to the presumptive sentence.² *See* Minn. Sent. Guidelines II.D.2 (2010) (listing offense-related factors that may be considered as reasons for departure); *Kindem*, 313 N.W.2d at 7–8 (affirming imposition of the presumptive sentence where factors relating to the defendant's culpability and seriousness of the offense weighed against granting

¹ Initially, the district court erroneously indicated that appellant had provided the firearms used during the robbery. However, and upon the prosecutor's indication that the court's statement was incorrect, the court subsequently corrected itself, and expressly noted that the correction did not change its reasoning or the outcome.

² Appellant relies on *State v. Hanf*, which observed in dictum that courts generally rely on the *Trog* factors to support dispositional departures rather than the factors listed in the guidelines. *See* 687 N.W.2d 659, 662 (Minn. App. 2004), *rev'd on other grounds* (Minn. Dec. 13, 2005). *Hanf* did not limit courts' ability to also consider the offense-related factors in addition to the *Trog* factors. Appellant does not cite any caselaw holding that courts may not consider the seriousness of the offense in imposing the presumptive sentence.

dispositional departure. Moreover, the district court did not rely exclusively on appellant's culpability. It also considered the relevant *Trog* factors.

In sum, the record reflects that the district court fully considered all relevant factors in determining whether to depart from the recommended guidelines sentence. The court was commendably thorough in weighing the relevant considerations, including appellant's ineligibility for Drug Court programming and her need for a structured environment. Its decision to impose the presumptive sentence reflects a careful resolution of the motion for departure based upon the appropriate considerations.

Affirmed.