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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0658**

State of Minnesota,
Respondent,

vs.

Michael John Hill,
Appellant.

**Filed December 30, 2013
Affirmed
Peterson, Judge**

St. Louis County District Court
File No. 69DU-CR-12-2508

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

Mark Rubin, St. Louis County Attorney, Kristen Elizabeth Swanson, Assistant County Attorney, Duluth, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Anders Joseph Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Peterson, Judge; and
Ross, Judge.

UNPUBLISHED OPINION

PETERSON, Judge

Appellant Michael John Hill challenges the district court's imposition of a presumptive guidelines sentence for a first-degree-assault conviction that is based on

appellant's guilty plea. Because the district court did not abuse its discretion by imposing the presumptive sentence, we affirm.

FACTS

After committing two separate assaults, appellant agreed to plead guilty to first-degree assault and third-degree assault in exchange for imposition of a sentence at the low end of the presumptive sentencing guidelines' range for the first-degree offense and a gross-misdemeanor sentence for the third-degree offense. The plea agreement also permitted appellant to move for dispositional and durational sentencing departures on the first-degree offense. At his plea hearing, appellant admitted that because he was under the influence of synthetic drugs during the assaults, he remembered nothing about the assaults.

At the time of the assaults, appellant was on probation for a 2009 burglary conviction. He had five probation violations related to that conviction, most for using controlled substances or failing to participate in chemical-dependency assessment and treatment. According to appellant's presentence-investigation report, appellant also committed numerous non-felony offenses in Wisconsin from 2009 to 2010.

Appellant sought a dispositional departure on his sentence for first-degree assault, arguing that he is particularly amenable to probation. As a basis for the departure, appellant cited his age, 21 at the time of the offense, and the fact that he committed most of his prior offenses while under the influence of alcohol or controlled substances. He also asserted that he should be placed on probation to facilitate his attendance at a residential chemical-dependency treatment program to which he had been accepted.

The state argued that appellant's failure to successfully complete probation on his prior burglary conviction and appellant's numerous probation violations demonstrate that he is not amenable to probation. The state also pointed out that appellant was not successful in previous chemical-dependency treatment, has committed offenses while under the influence that show an escalation in physical violence, and has inflicted progressively more serious injuries on his victims, including serious brain damage to the victim of the current first-degree assault.

Consistent with appellant's plea agreement, the district court imposed an executed 94-month sentence, which is at the low end of the presumptive guidelines range. The district court stated at sentencing that appellant is a young man with a serious addiction problem who did not avail himself of "several opportunities" to obtain help. The court also characterized appellant as a person who has "serious disregard for rules and authority" and cited concern for public safety as a reason for rejecting a probationary sentence.

DECISION

Appellant argues that the district court abused its discretion by imposing the 94-month executed prison sentence, because he is amenable to treatment and because the court failed to properly analyze the *Trog* factors before rejecting his request for a probationary sentence. *See State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982) (stating that "[n]umerous factors, 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, are

relevant to a determination whether a defendant is particularly suitable to individualized treatment in a probationary setting”).

Although the [district] court is required to give reasons for departure, an explanation is not required when the court considers reasons for departure but elects to impose the presumptive sentence. 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) (citation omitted); *see State v. Olson*, 765 N.W.2d 662, 663 (Minn. App. 2009) (stating that generally a district court does not abuse its discretion by refusing to dispositionally depart “from a presumptively executed prison sentence, even if there is evidence in the record that the defendant would be amenable to probation”); *State v. Mendoza*, 638 N.W.2d 480, 483 (Minn. App. 2002) (stating that in exercise of its discretion to decide whether to depart from a presumptive sentence, the court “must exercise that discretion by deliberately considering circumstances for and against departure”), *review denied* (Minn. Apr. 16, 2002). Before imposing appellant’s sentence, the district court acknowledged and considered the evidence and information that both parties presented. The facts do not suggest that this is the “rare case” with “compelling circumstances” in which we should alter the district court’s decision to impose the presumptive sentence. *State v. Delk*, 781 N.W.2d 426, 428 (Minn. App. 20120) (quotations omitted), *review denied* (Minn. July 20, 2010). We, therefore, affirm the district court’s sentencing decision.

Affirmed.