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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-2059**

State of Minnesota,
Respondent,

vs.

James Kent Johnson,
Appellant.

**Filed September 15, 2009
Affirmed
Wright, Judge**

Dodge County District Court
File No. 20-CR-06-1170

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul,
MN 55101; and

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appellant)

Considered and decided by Stoneburner, Presiding Judge; Kalitowski, Judge; and
Wright, Judge.

UNPUBLISHED OPINION

WRIGHT, Judge

Appellant challenges the district court's imposition of the presumptive guidelines sentence, arguing that there are substantial and compelling reasons for a downward dispositional departure, including appellant's (1) completion of a substance-abuse treatment program and willingness to seek continued substance-abuse treatment and relapse counseling; (2) employment and ability to support his family; and (3) community support from his family and friends. We affirm.

FACTS

In November 2006, appellant James Johnson was arrested during a traffic stop for a broken taillight and loud muffler. Prior to the traffic stop, Dodge County Deputy Sheriff David Crable had seen Johnson parked at a business where recent illegal activity had been detected. Deputy Crable knew Johnson from prior contacts and reports of Johnson's use and sale of narcotics. During the traffic stop, Deputy Crable advised Johnson that he had received reports of Johnson's recent involvement in drug distribution. Johnson responded, "Narcotics! Man that's crazy—you can go ahead and search my car if you want." A search of Johnson and his vehicle produced a large bag containing seven smaller bags of methamphetamine, a knife, a small pipe containing methamphetamine, a small bag of banned mushrooms, a digital scale, and \$780. Johnson subsequently was charged with first-degree controlled substance crime, a violation of

Minn. Stat. § 152.021, subd. 2 (2006) (possession of one or more mixtures of a total weight of 25 grams or more containing methamphetamine).

Johnson pleaded guilty with the intention of moving for a downward dispositional departure. When he entered his guilty plea, Johnson understood that the state would seek a sentence in the middle of the presumptive guidelines range. The presentence investigation report found “no support to depart from the sentencing guidelines,” citing public safety concerns based on Johnson’s prior unsuccessful probation and lengthy criminal history; evidence of Johnson’s possible intent to sell the methamphetamine, which included multiple small bags of methamphetamine, a scale and cash; Johnson’s high risk for relapse and lack of a plan for remaining abstinent; and a random drug test in May 2008 in which Johnson tested positive for methamphetamine. At the sentencing hearing, after receiving testimony from Johnson in support of his downward departure motion, the district court denied the motion and imposed the presumptive guidelines sentence of 158 months’ imprisonment. This appeal followed.

D E C I S I O N

The district court must impose the presumptive guidelines sentence unless there are “substantial and compelling circumstances” that warrant a downward departure. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). “[A] sentencing court has no discretion to depart from the sentencing guidelines unless aggravating or mitigating factors are present.” *State v. Spain*, 590 N.W.2d 85, 88 (Minn. 1999). The decision to depart from the sentencing guidelines rests within the district court’s sound discretion. *State v. Oberg*, 627 N.W.2d 721, 724 (Minn. App. 2001), *review denied* (Minn. Aug. 22, 2001);

State v. Anderson, 463 N.W.2d 551, 555 (Minn. App. 1990) (applying abuse-of-discretion standard in evaluating downward departure), *review denied* (Minn. Jan. 14, 1991). Even if reasons for departing downward from the presumptive guidelines sentence exist, we ordinarily will not disturb the district court's sentencing decision. *State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006).

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). A relevant factor for consideration when determining whether to impose a downward dispositional departure 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 *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982)). If the district court “considers reasons for departure but elects to impose the presumptive sentence,” an explanation for denying the downward departure motion is not necessary. *State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985).

Johnson argues that the district court abused its discretion because he presented substantial and compelling reasons for a downward dispositional departure, including his (1) completion of a substance-abuse treatment program and willingness to seek continued substance-abuse treatment and relapse counseling; (2) employment and ability to support his family; and (3) community support from his family and friends. Johnson asserts that the district court considered neither the significant progress he has made nor that relapses

are characteristic of drug addiction. Finally, because he was found amenable to probation and received a stayed sentence for a first-degree burglary offense that he committed a few months prior to the instant offense, Johnson argues that a similar sentence was warranted in the instant case. Johnson's arguments are unavailing.

The existence of mitigating factors does not require the imposition of a downward departure. *State v. Wall*, 343 N.W.2d 22, 25 (Minn. 1984). Here, in addition to evidence and arguments in support of Johnson's motion, the district court considered Johnson's lengthy criminal history, which included felony burglary and robbery convictions and the commission of crimes and use of drugs while on probation.

Our careful review of the record establishes that there is an ample basis for the district court's decision to deny the downward-departure motion and impose the presumptive sentence. Accordingly, the district court's sentencing decision was not an abuse of discretion.

Affirmed.