

*This opinion is nonprecedential except as provided by  
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A24-0895**

State of Minnesota,  
Respondent,

vs.

Win Naing Aung,  
Appellant.

**Filed June 30, 2025  
Affirmed  
Kirk, Judge\***

Ramsey County District Court  
File No. 62-CR-23-2600

Keith Ellison, Attorney General, St. Paul, Minnesota; and

John Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rebecca Ireland, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larson, Presiding Judge; Bentley, Judge; and Kirk, Judge.

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\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

## NONPRECEDENTIAL OPINION

**KIRK**, Judge

Appellant challenges his 60-month prison sentence, arguing that the district court abused its discretion when it denied his downward dispositional and durational departure motions. We affirm.

### FACTS

On May 9, 2023, respondent State of Minnesota charged appellant Win Naing Aung with one count of unlawful possession of a firearm. Aung entered into a *Norgaard* plea.<sup>1</sup> He moved for a downward dispositional departure, or alternatively, a downward durational departure.

The district court denied both motions and sentenced Aung to the presumptive term of 60 months' imprisonment. In denying the dispositional departure motion, the district court noted the struggles that Aung has experienced. It also emphasized that, while on conditional release, Aung did not remain law abiding or report to the supervisory agency Justice Point as required. The district court stated that Aung has had "a number of opportunities on probation supervision in the community," that he has not attempted to remain in contact with probation or the pretrial supervision agency, and that Aung's history indicates an "unwillingness to comply" with probation supervision conditions. In denying

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<sup>1</sup> A *Norgaard* plea allows a defendant to "plead guilty even though he or she claims a loss of memory, through amnesia or intoxication, regarding the circumstances of the offense." *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994); see *State ex rel. Norgaard v. Tahash*, 110 N.W.2d 867, 870, 871 (Minn. 1961) (ruling that, "under the facts and circumstances," the district court did not err by accepting petitioner's guilty plea even though petitioner "had no recollection of what took place on the night in question").

the durational departure motion, the district court expressed concern that Aung was “significantly impaired by drug use while carrying a weapon,” that the “weapon was stolen from a vehicle,” and that the weapon was “loaded at the time that [Aung was] in an overdose in the public.” Aung appeals.

## **DECISION**

The Minnesota Sentencing Guidelines establish presumptive sentences for criminal offenses to “maintain uniformity, proportionality, rationality, and predictability in sentencing.” Minn. Stat. § 244.09, subd. 5 (2022). A district court must pronounce the presumptive sentence “unless there exist identifiable, substantial, and compelling circumstances to support a departure.” Minn. Sent’g Guidelines 2.D.1 (2022). If such circumstances exist, the district court has broad discretion in its decision whether to depart. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

“A 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. Pegel*, 795 N.W.2d 251, 255 (Minn. App. 2011) (quotation omitted). Only a “rare” case warrants reversal of the refusal to depart from the presumptive sentence. *Kindem*, 313 N.W.2d at 7.

### **I.**

When considering whether to grant a dispositional departure, the district court focuses “more on the defendant as an individual and on whether the presumptive sentence would be best for him and society.” *State v. Heywood*, 338 N.W.2d 243, 244 (Minn. 1983). A defendant’s particular amenability to probation justifies a downward dispositional

departure. *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014). “Numerous 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 particular-amenability determination. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). Even if there is evidence that the defendant would be particularly amenable to probation, a district court is not required to grant a dispositional departure. *State v. Olson*, 765 N.W.2d 662, 664-65 (Minn. App. 2009).

The district court did not abuse its broad discretion by denying Aung’s request for a dispositional departure. The district court considered documents from the dispositional advisor, arguments from Aung’s attorney, the presentence investigation (PSI), and the Justice Point reports. It considered Aung’s cooperation, noting that Aung did not comply with his conditional release order or remain law abiding. The district court noted that it did not see that Aung had made an effort to maintain contact with probation or the pretrial supervision agency. Because the record demonstrates that the district court “carefully evaluated all the testimony and information presented before making a determination,” this court may not interfere with the district court’s sentencing determination. *Pegel*, 795 N.W.2d at 255 (quotation omitted).

Aung asserts that the district court found, without record support, that Aung had “many prior ‘opportunities’ on probation to address his needs.” Aung claims that there is little information in the record about prior treatments, and “the limited information in the PSI certainly does not permit the conclusion that Aung ever received appropriate medical care for any of his conditions.” However, the district court’s statement that Aung had “a

number of opportunities to be stabilized through the support of probation supervision” does not suggest that Aung received medical care. The record indicates that Aung has multiple prior adult felony convictions and has violated probation several times. The record supports the district court’s findings.

## II.

“A durational departure must be based on factors that reflect the seriousness of the offense, not the characteristics of the offender.” *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016). To justify a durational departure, a defendant’s conduct must have been “significantly less serious than that typically involved in the commission of the offense.” *Id.* (quotation omitted).

The district court did not abuse its discretion in denying Aung’s durational departure motion. In considering the seriousness of Aung’s offense, the district court expressed concern that Aung was impaired by drug use while carrying a loaded weapon and that the weapon was stolen from a vehicle. At sentencing, Aung did not provide reasons for a durational departure other than referencing the state’s original offer of 36 months’ imprisonment.

In sum, the district court did not abuse its discretion in denying Aung’s departure motions.

**Affirmed.**