STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1726

State of Minnesota,
Respondent,

vs.

Eric Alan Gramentz,
Appellant.

Filed June 16, 2025
Affirmed
Bjorkman, Judge

Brown County District Court
File No. 08-CR-22-278

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

Ronald Hocevar, Scott County Attorney, Elisabeth Johnson, Assistant County Attorney, Shakopee, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Kathryn J. Lockwood, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Bratvold, Judge; and Harris, Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant challenges his presumptive prison sentences for first- and second-degree criminal sexual conduct, arguing that the district court abused its discretion by denying a

dispositional departure because (1) he is particularly amenable to probation, (2) his background as a police officer makes him particularly unamenable to prison, (3) the district court failed to consider the victim impact statements, and (4) the district court improperly considered a community impact statement from another officer. We affirm.

FACTS

Appellant Eric Alan Gramentz pleaded guilty to first-degree criminal sexual conduct and two counts of second-degree criminal sexual conduct, admitting that he committed acts of sexual penetration and contact with his two minor daughters between April 2015 and March 2022. At sentencing, he moved for a downward dispositional departure, arguing that he is particularly amenable to probation, he is particularly unamenable to prison because of his prior employment as a police officer, and the victims and their mother "support" a departure. The district court granted the motion and stayed execution of Gramentz's prison sentences, citing (1) his psychosexual evaluation, which indicated he is "amenable" to probation and outpatient treatment; (2) the victims' impact statements and requests that he not be sent to prison, and its own concern that Gramentz's daughters would "feel responsible" if he went to prison; and (3) his "comprehensive and strict probationary conditions."

The state appealed, and we agreed that the articulated departure reasons are invalid. *State v. Gramentz*, No. A23-1010, 2024 WL 764011, at *2-4 (Minn. App. Feb. 26, 2024). We explained that (1) mere amenability (as opposed to particular amenability) to probation does not justify departure, and the district court neither found Gramentz particularly amenable to probation nor made findings addressing the factors articulated in *State v. Trog*,

323 N.W.2d 28, 31 (Minn. 1982); (2) the "perceived effect of a prison sentence on a victim is not an offender-related characteristic" and therefore not a valid departure basis; and (3) probationary conditions cannot independently support a sentencing departure. *Id.* at *2-3 & nn.2-3. We reversed and remanded for resentencing, stating that the district court had discretion "to reopen the record, consider the motion for sentencing departure, and determine the appropriate sentence." *Id.* at *4.

On remand, Gramentz reiterated his departure request. The district court conducted a new sentencing hearing, noting that it would also consider the record from the first hearing. The court heard from the victims, who said they want Gramentz to go to jail instead of prison and reiterated concern about Gramentz's police tattoos leading to him "receiv[ing] hate." It also heard from Gramentz's probation agent; his sex-offender treatment therapist; and another law-enforcement officer who lives and works in Brown County, where the offenses occurred. In a detailed written sentencing order that addresses each *Trog* factor, the district court determined that Gramentz is not particularly amenable to probation. Accordingly, the court denied the departure motion and imposed presumptive prison sentences.

Gramentz appeals.

DECISION

The Minnesota Sentencing Guidelines establish the presumptive disposition and duration of a sentence depending on the seriousness of the offense and the defendant's criminal history. Minn. Sent'g Guidelines 1.A, 2.C.1 (2014). A district court generally must impose the presumptive sentence. Minn. Sent'g Guidelines 2.D.1 (2014). It has

discretion to depart from the presumptive disposition or duration if "identifiable, substantial, and compelling circumstances" justify a departure. *Id.* But departures "are discouraged and are intended to apply to a small number of cases." *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016). We review a district court's decision whether to grant a sentencing departure for an abuse of discretion and will reverse the decision to impose the presumptive sentence only in a "rare" case. *State v. Musse*, 981 N.W.2d 216, 220 (Minn. App. 2022) (quotation omitted), *rev. denied* (Minn. Dec. 28, 2022).

A dispositional sentencing departure focuses on characteristics of the defendant. *Solberg*, 882 N.W.2d at 623. A defendant's particular amenability to probation may warrant a departure from a presumed prison sentence. *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014). Mere amenability to probation is insufficient; the defendant must be amenable to probation in a way that "distinguishes [them] from most others and truly presents the substantial and compelling circumstances that are necessary to justify a departure." *Id.* at 308-09 (quotation omitted). Factors that may indicate particular amenability to probation include age, prior record, remorse, cooperation, attitude while in court, and the support of friends or family. *Trog*, 323 N.W.2d at 31. And a defendant's particular unamenability to prison may warrant a downward dispositional departure if it is unique to the defendant. *State v. Wright*, 310 N.W.2d 461, 462 (Minn. 1981).

Gramentz argues that the district court abused its discretion by denying a downward dispositional departure because: (1) he is particularly amenable to probation, (2) his background as a police officer makes him particularly unamenable to incarceration, (3) the district court failed to consider the victim impact statements, and (4) the district court

improperly considered a statement from another officer as a representative of the community affected by the crime. None of these arguments persuade us to reverse.

Particular Amenability to Probation

Gramentz contends he is particularly amenable to probation under all of the *Trog* factors. But the district court found otherwise with respect to several factors—age, remorse, and his record on probation—and we discern no flaw in its reasoning. With regard to the first factor, the district court reasoned that Gramentz's age—45 at the time of resentencing and mid-30s at the time of the offenses—is "not a significant consideration." *See Soto*, 855 N.W.2d at 310 (explaining that, if an offender in their late 30s is particularly amenable to probation because of age, "it is difficult to see which defendants [this factor] would not reach"). As to remorse, the district court observed that Gramentz had "outwardly expressed remorse" and seemed "not indifferent" to the harm he caused his daughters. Still, the court did not find him remorseful, instead observing that "it is difficult to assess the depth or sincerity of his remorse." And with regard to Gramentz's assertion that his record on probation demonstrates his particular amenability, the district court noted his compliance with certain aspects of his probation requirements. But the court expressed doubts about the adequacy of both the agent's supervision and Gramentz's compliance, stating only that "there is not sufficient information to justify commencing violation proceedings as of this time." We see no abuse of discretion by the district court in finding Gramentz is not particularly amenable to probation.

Particular Unamenability to Incarceration

Gramentz asserts that he is uniquely ill-suited to incarceration because he was a police officer. He acknowledges that unamenability to incarceration is "rarely used" to support a dispositional departure. But he contends it is appropriate here, likening himself to the defendant in *Wright*, in which the supreme court recognized this departure factor. This argument is unavailing. In *Wright*, the defendant had a psychiatric condition that rendered him "more child than man" and more "easily . . . victimized in prison and/or led by other prisoners into criminal activity in order to gain peer approval." 310 N.W.2d at 461-62. A psychiatrist who examined Wright at the court's request "strongly opposed incarceration" because of Wright's "unique" psychiatric issues. *Id.* This case presents no such considerations. Gramentz's claimed unamenability is solely based on his prior occupation as a police officer and the "blue line" and "police shield" tattoos he chose to showcase this background. But even if these voluntary features of his background and appearance may elevate his risk of being mistreated in prison, they do not place him in a situation similar to someone whose medical condition makes them vulnerable to attack or manipulation in prison. Nor does Gramentz have the type of professional endorsement of his concerns that the defendant had in *Wright*. On this record, we discern no abuse of discretion by the district court in not departing based on particular unamenability to incarceration.

Victim Impact Statements

Gramentz next argues that the district court "failed to" and "refused to" consider the victim impact statements, which "supported" his request for a departure. And he contends

this was improper because, under *State v. Yanez*, 469 N.W.2d 452, 455 (Minn. App. 1991), *rev. denied* (Minn. June 19, 1991), victim impact statements can support a sentencing departure. We disagree in both respects.

First, the district court did consider the statements. Gramentz urges us to conclude otherwise by pointing to language in the district court's decision (1) quoting the guidance from this court that "perceived effect of a prison sentence on a victim" cannot support a departure and (2) noting that this court "did not mention" *Yanez* in its opinion. But the district court did cite *Yanez* as authority for considering the victim impact statements and expressly discussed the statements:

> [Gramentz] does have the support of his daughters and former wife, the victims of his offenses, to the extent that they do not desire for him to go to prison for a lengthy period of time. They do not necessarily desire to have contact with him for the foreseeable future. However, they do not want him to go to prison for a long time and instead express a preference for additional time in the county jail.

That the court ultimately rejected Gramentz's request for a probationary sentence does not negate this assessment of the victim impact statements and what they indicate regarding family support.

Second, Gramentz misstates *Yanez*. That decision does not say, as Gramentz suggests, that a victim impact statement can independently support a sentencing departure. To the contrary, it expressly states that nothing in the statute authorizing courts to consider victim impact statements indicates that a statement "constitutes an additional and separate basis for departure." *Yanez*, 469 N.W.2d at 455. Rather, a district court "may consider the victim's impact statement *to the extent* that it states a proper reason for departure from the

guidelines." *Id.* The district court complied with this directive by considering the victim impact statements as they pertain to Gramentz's family support.

Community Impact Statement

Much as a victim may submit an impact statement, a "representative of the community affected by the crime" may submit an impact statement, orally or in writing, that "describe[s] the adverse social or economic effects the offense has had on persons residing and businesses operating in the community where the offense occurred." Minn. Stat. § 611A.038(a), (b) (2024). Pursuant to this statute, the district court received a statement from a law-enforcement officer who lives and works in Brown County. The officer spoke about the effect of Gramentz's offenses on the community, including how they implicated the law-enforcement community and its ability to do its work. Gramentz contends the district court erred because this case involves intrafamilial sexual abuse and therefore is not one "for which a larger community impact statement would be appropriate." But the statute imposes no such limitation, and Gramentz identifies no authority recognizing one. And even if it was improper for the district court to receive the officer's statement, reversal is not warranted because nothing in the court's sentencing order suggests that the statement influenced it to deny a sentencing departure. *See State v. Romine*, 757 N.W.2d 884, 895 (Minn. App. 2008) (concluding that any error in receipt of the victim impact statement was not reversible because it apparently "had little to no impact on the district court's sentence"), *rev. denied* (Minn. Feb. 17, 2009).

In sum, Gramentz has not demonstrated any flaw in the district court's determination that he is neither particularly amenable to probation nor particularly

unamenable to prison within the meaning of *Wright*, or in its consideration of the impact statements. Moreover, even if the district court had determined that Gramentz is particularly amenable to probation, it still was "not required" to depart. *State v. Olson*, 765 N.W.2d 662, 664-65 (Minn. App. 2009). Based on this record, we discern no basis for concluding that this is the rare case in which we would disturb the district court's imposition of presumptive sentences.

Affirmed.