

STATE OF MINNESOTA
IN COURT OF APPEALS

A23-0868



State of Minnesota,
Respondent,

vs.

Bryant Joseph McConnell,
Appellant.

ORDER OPINION

Itasca County District Court
File No. 31-CR-22-231

Considered and decided by Schmidt, Presiding Judge; Slieter, Judge; and Wheelock, Judge.

BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND BECAUSE:

1. Appellant Bryant Joseph McConnell claims that the district court abused its discretion in denying his dispositional departure request at sentencing for a felony driving while impaired (DWI) test-refusal conviction. Because the district court carefully considered McConnell's dispositional departure request prior to denying it, it acted within its discretion by imposing the presumptive executed prison sentence.

2. Respondent State of Minnesota charged McConnell, as here relevant, with felony refusal to submit to a chemical test, pursuant to Minn. Stat. § 169A.20, subd. 2(1) (2020); gross misdemeanor driving after cancellation, pursuant to Minn. Stat. § 171.24, subd. 5 (2020); and misdemeanor leaving the scene of an accident, pursuant to Minn. Stat. § 169.09, subd. 5 (2020). The conditions of his release pending trial included that he

abstain from alcohol and be subject to testing for such use, submit to electronic alcohol monitoring, and remain law abiding (including, specifically, to not drive without a valid license). On March 22, 2022, McConnell was arrested in Aitkin County for driving after cancellation.

3. On August 4, 2022, the electronic-alcohol-monitoring company terminated McConnell from its program based on nonpayment. The company stated that McConnell had “6 violations” while he had been participating in the monitoring.

4. On September 6, 2022, McConnell failed to appear for a court appearance in Aitkin County and, pursuant to an arrest warrant, Itasca County sheriffs located McConnell at his home in Grand Rapids and arrested him. A search of his home uncovered cannabis, drug paraphernalia, and firearms.

5. In January 2023, McConnell entered a *Norgaard* guilty plea to the three offenses. *See State ex rel. Norgaard v. Tahash*, 110 N.W.2d 867, 872 (Minn. 1961) (recognizing that a defendant may enter a valid plea of guilty despite a failure to recall specifics of the offense).

6. At the sentencing hearing, McConnell sought a dispositional departure based on his particular amenability to probation. The district court denied McConnell’s departure motion and sentenced him to an executed prison sentence. It reasoned that “there is just no particular amenability to probation. [McConnell has] been on release and been on probation, had those opportunities for treatment, yet [he] put [him]self and others at risk by driving again. The conduct is repeated. And puts the public at risk and in danger.”

7. McConnell argues that the district court abused its discretion because he meets many of the *Trog* factors and because the district court in Aitkin County had found him “particularly amenable to probation” during a felony sentencing hearing shortly before his sentencing for the offenses in this appeal.¹ See *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982) (determining that a defendant’s “particular amenability” to probation, based upon various factors, can justify a probationary sentence).

8. Appellate courts review the imposition of a sentence for abuse of discretion. *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014). The district court has great discretion in the sentences it imposes. *Id.* at 307. A sentence imposed in accordance with the sentencing guidelines is presumed to be appropriate. Minn. Sent’g Guidelines 2.D.1 (Supp. 2021). The district court can depart from the guidelines only if aggravating or mitigating circumstances are present. *Soto*, 855 N.W.2d at 308. And the reviewing court cannot interfere with the district court’s exercise of discretion in sentencing when the record shows that the district 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).

9. “[A] defendant’s *particular* amenability to individualized treatment in a probationary setting will justify departure in the form of a stay of execution of a presumptively executed sentence.” *Trog*, 323 N.W.2d at 31 (emphasis added). The factors

¹ The state declined to file a responsive brief. We therefore decide the case on the merits. Minn. R. Civ. App. P. 142.03; Minn. R. Crim. P. 28.01, subd. 2 (“To the extent applicable, the Minnesota Rules of Civil Appellate Procedure govern appellate procedure unless these rules direct otherwise.”).

that can support a downward dispositional departure include “the defendant’s age, his prior record, his remorse, his cooperation, his attitude while in court, and the support of friends and/or family.” *Id.* The district court need not impose a downward dispositional departure even when a defendant is particularly amenable to probation. *State v. Olson*, 765 N.W.2d 662, 664-65 (Minn. App. 2009).

10. The record supports the district court’s conclusion that McConnell was not particularly amenable to probation. McConnell violated his conditions of pretrial release by driving without a license and being discharged from the alcohol monitoring program. Additionally, McConnell had violated probation five times in regard to previous criminal sentences.

11. McConnell has also cited no law, and we are aware of none, that a district court abuses its discretion in denying a departure because a different district court found a person particularly amenable to probation in a separate matter. Each district court must exercise its own broad discretion in determining McConnell’s particular amenability to probation. *See Soto*, 855 N.W.2d at 307-08; *see also Marquardt v. Schaffhausen*, 941 N.W.2d 715, 722 (Minn. 2020) (“[T]he fact that other district courts might have made a different decision . . . does not make the district court’s decision an abuse of discretion.”).

12. McConnell argues that he presented evidence of remorse, familial support, and motivation to change in support of a downward dispositional departure. We acknowledge that these factors are supported by the record. However, as we have already explained, the record also supports the district court’s denial of McConnell’s request for a downward dispositional departure. Moreover, even when factors support a dispositional

departure, the district court need not depart, so long as it carefully considers the evidence presented. *See Olson*, 765 N.W.2d at 664-65; *see also Van Ruler*, 378 N.W.2d at 80-81.²

IT IS HEREBY ORDERED:

1. The district court's order is affirmed.
2. Pursuant to Minn. R. Civ. App. P. 136.01, subd. 1(c), this order opinion is nonprecedential, except as law of the case, *res judicata*, or collateral estoppel.

Dated: April 5, 2024

BY THE COURT



Judge Randall J. Slieter

² We note that McConnell filed a *pro se* supplemental brief. Because his *pro se* brief repeats the arguments that his attorney made, we do not discuss it separately.