

STATE OF MINNESOTA
IN COURT OF APPEALS

A23-1434

State of Minnesota,

Appellant,

vs.

Mitchell Gregory Turner,

Respondent.

ORDER OPINION

St. Louis County District Court
File No. 69VI-CR-22-735

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

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

1. In this sentencing appeal, appellant State of Minnesota argues that the district court abused its discretion by granting respondent Mitchell Gregory Turner's motion for a downward dispositional departure. Because the record supports the district court's finding of substantial and compelling reasons to depart, we affirm.

2. In July 2022, the state charged Turner by complaint with nine counts of possession of child pornography in violation of Minn. Stat. § 617.247, subd. 4(a), (b)(3) (child under 14 years of age) (Supp. 2021). Turner pleaded guilty to three counts of possession of child pornography, two in violation of subdivision 4(a) and one in violation of subdivision 4(b)(3).

3. The district court ordered a presentence investigation (PSI) to be completed, and Turner cooperated with its completion. The PSI recommended the presumptive executed guidelines prison sentence. The district court also ordered that Turner complete a psychosexual evaluation, which he completed. The evaluator recommended that he complete sex-offender treatment.

4. On July 31, 2023, Turner appeared for sentencing and sought a downward dispositional departure. Turner argued that his compliance with pretrial release conditions, his general cooperation throughout the prosecution of his offenses, and his completion of chemical-dependency treatment before sentencing “shows that he is 100 percent amenable to probation.” Though the state opposed the departure motion, it asked the district court, if it granted the departure, to sentence Turner to one year of jail at the Northeast Regional Corrections Center (NERCC) and to order him to participate in sex-offender treatment. Turner agreed to one year of jail, to include sex-offender treatment, at NERCC.

5. Following a brief recess, the district court granted Turner’s motion, finding “substantial and compelling reasons to depart” and that Turner was “amenable to probation.” The district court added on the departure report that Turner is particularly amenable to sex-offender treatment. In granting the dispositional departure, the district court stayed execution of a 36-month prison sentence subject to probationary conditions. The district court ordered Turner to serve one year at NERCC and complete sex-offender treatment.

6. The Minnesota Sentencing Guidelines establish presumptive sentences for felony offenses. *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014). “[A] district court may

depart from the presumptive guidelines sentencing range only if there exist identifiable, substantial, and compelling circumstances to support a sentence outside the range on the grids.” *Tucker v. State*, 799 N.W.2d 583, 586 (Minn. 2011) (quotation omitted). “We review a district court’s decision to depart from the presumptive guidelines sentence for an abuse of discretion.” *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016).

7. If the district court chooses to depart from a presumptive sentence, “it must exercise that discretion by deliberately considering circumstances for and against departure.” *State v. Mendoza*, 638 N.W.2d 480, 483 (Minn. App. 2002), *rev. denied* (Minn. Apr. 16, 2002). We examine the record to determine whether the reasons given by the district court justify the departure. *Black v. State*, 725 N.W.2d 772, 777 (Minn. App. 2007). “If the reasons given are improper or inadequate but there is sufficient evidence in the record to justify the departure,” we will affirm. *Id.* (quotation omitted). But “[i]f the reasons given are improper or inadequate and there is insufficient evidence of record to justify the departure, the departure will be reversed.” *State v. Geller*, 665 N.W.2d 514, 516 (Minn. 2003) (quotation omitted).

8. A defendant’s “particular amenability to probation” is one such basis for departure. *See Solberg*, 882 N.W.2d at 625. To determine a person’s particular amenability to probation, courts have often considered “[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.” *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982).

9. The state claims that the district court abused its discretion by granting Turner a downward dispositional departure based on his amenability to probation, noting

that mere amenability to probation does not justify departing from the presumptive disposition of the sentencing guidelines. Even if we assume that the district court identified inadequate reasons to depart, our review of the record persuades us that the departure was justified.

10. The record shows that the district court relied on permissible reasons to grant Turner a downward dispositional departure. *See Black*, 725 N.W.2d at 777. In arguing for a downward dispositional departure, Turner cited his compliance with pretrial release conditions, his general cooperation throughout this prosecution, and his completion of chemical-dependency treatment before sentencing. *See Trog*, 323 N.W.2d at 31 (providing factors for determining an individual's particular amenability to probation). The record supports these arguments as a basis for departure along with Turner's completion of a psychosexual evaluation and his amenability to treatment. At the start of Turner's sentencing hearing, the district court noted that it had reviewed three sentencing worksheets, Turner's PSI, and his psychosexual evaluation. The district court initially stated that it had not planned on granting Turner's departure motion but ultimately found there were substantial and compelling reasons to depart, demonstrating that the district court carefully considered the arguments made and information presented before making its sentencing determination. *See Mendoza*, 638 N.W.2d at 483.

11. The record also supports Turner's argument that he is particularly amenable to probation. The record shows that Turner cooperated with court orders during his pretrial release, including completing a psychosexual evaluation. The district court explained it reviewed Turner's psychosexual evaluation, which noted that Turner took responsibility

for his actions, demonstrated a motivation for change, and that his risk of reoffending could be lowered by sex-offender treatment. The record also shows that Turner sought, and successfully completed, chemical-dependency treatment before sentencing, which suggests his willingness to change behaviors that may have contributed to his crimes.

12. The state claims that there are aspects of the record which also suggest Turner is not particularly amenable to probation. As we have explained, there are aspects of the record that favor, as well as disfavor, his particular amenability to probation. The district court considered the competing arguments and determined that Turner's behavior during his pretrial release did not negate the substantial and compelling reasons to depart. *Id.*

13. In sum, the record supports the district court's determination that Turner is particularly amenable to probation and, therefore, the district court did not abuse its discretion in granting Turner's motion for a downward dispositional departure.

IT IS HEREBY ORDERED:

1. The district court's sentence 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 4, 2024

BY THE COURT



Judge Randall J. Slieter