

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0998**

State of Minnesota,
Respondent,

vs.

Ofiong Louis Sanders, a/k/a Ofiong Sanders,
a/k/a Dfiong Louis Sanders,
Appellant.

**Filed March 4, 2013
Affirmed
Kirk, Judge**

Ramsey County District Court
File No. 62-CR-10-10908

Lori Swanson, Attorney General, St. Paul, Minnesota; and

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

David W. Merchant, Chief Appellate Public Defender, Sara J. Euteneuer, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hudson, Presiding Judge; Kalitowski, Judge; and Kirk,
Judge.

UNPUBLISHED OPINION

KIRK, Judge

On appeal from his conviction of offering a forged check, appellant argues that the district court abused its discretion by denying his motion for a downward dispositional departure. We affirm.

FACTS

On December 30, 2010, the state charged appellant Ofiong Louis Sanders with one count of offering a forged check and later amended the complaint to add one count of possessing a stolen or counterfeit check. The complaint alleged that appellant deposited five stolen checks, totaling \$4,700, at a credit union in November 2010. All five checks were reported stolen and were drawn on a closed account. Appellant was arrested at the credit union after he deposited the fifth check; he told the police that he purchased the checks for \$2,000 from a woman he met at a casino.

In October 2011, appellant pleaded guilty to offering a forged check and subsequently moved for a downward dispositional departure. The district court denied appellant's motion, sentenced him to the presumptive sentence of 26 months in prison, and ordered him to pay \$4,700 in restitution. The state dismissed the second count of the complaint at the time of sentencing. This appeal follows.

DECISION

A district court must impose a presumptive sentence provided by the sentencing guidelines unless the case involves “identifiable, substantial, and compelling

circumstances” that warrant a departure. Minn. Sent. Guidelines II.D (2010). Substantial and compelling circumstances include “circumstances that make the facts of a particular case different from a typical case.” *State v. Peake*, 366 N.W.2d 299, 301 (Minn. 1985). The decision whether to depart from the guidelines is within the district court’s discretion and this court will not reverse absent a clear abuse of that discretion. *State v. Schmit*, 601 N.W.2d 896, 898 (Minn. 1999). Only a “rare case” warrants reversal of the district court’s decision not to depart. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

Although the district court is required to give reasons for its decision to depart from the guidelines, no explanation is required when it imposes a presumptive sentence. *State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985). This court “may not interfere with the [district] court’s exercise of discretion, as long as the record shows the [district] 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). But where compelling circumstances for departure exist, the district court must deliberately consider those circumstances before imposing the presumptive sentence. *State v. Curtiss*, 353 N.W.2d 262, 264 (Minn. App. 1984).

Appellant argues that the district court failed to consider all of the factors set forth in *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982), before denying his motion for a downward dispositional departure. In *Trog*, the Minnesota Supreme Court held that a district court may consider an individual’s amenability to probation, based on factors such as his “age, his prior record, his remorse, his cooperation, his attitude while in court,

and the support of friends and/or family,” when considering whether to grant a departure. 323 N.W.2d at 31. Appellant contends that several *Trog* factors support a departure from the presumptive sentence, including that he: (1) had not been convicted of a felony in over 14 years, prior to this case; (2) cooperated with the investigation; (3) regrets his actions and is willing to pay restitution; (4) is supported by his family, friends, and co-workers; and (5) has been successful on supervised release, including maintaining employment and receiving treatment for his gambling addiction.

The district court was not required to address all of the *Trog* factors before imposing the presumptive sentence. *See Van Ruler*, 378 N.W.2d at 80-81. And the record establishes that the district court carefully considered the parties’ arguments and other information in making its sentencing decision. *See id.* at 81. The district court stated that it seriously considered the presentence-investigation report (PSI), which discussed appellant’s life in detail, including his criminal, personal, and family histories, employment record, and finances. While the district court acknowledged that there were positive aspects of appellant’s background, particularly his job, it was not required to grant a departure solely due to the presence of a mitigating factor. *See Pegel*, 795 N.W.2d at 253-54 (“[T]he mere fact that a mitigating factor is present in a particular case does not obligate the [district] court to place defendant on probation or impose a shorter term than the presumptive term.” (quotation omitted)). The district court placed great weight on the fact that appellant has an extensive criminal history, which is supported by the record. The PSI establishes that while appellant’s most recent felony conviction

stems from a 1997 burglary, this is his tenth felony conviction and he was still on supervised release at the time he committed this offense. The district court did not abuse its discretion by imposing the presumptive sentence.

Affirmed.