

*This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A08-0474**

State of Minnesota,  
Respondent,

vs.

Robert L. Cassell,  
Appellant.

**Filed March 24, 2009  
Affirmed  
Johnson, Judge**

Steele County District Court  
File No. 74-K7-06-000530

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Douglas L. Ruth, Steele County Attorney, Christy M. Hormann, Assistant County Attorney, 303 South Cedar, Owatonna, MN 55060 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Andrea Barts, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Ross, Judge; and Johnson, Judge.

**UNPUBLISHED OPINION**

**JOHNSON**, Judge

Robert L. Cassell caused a single-vehicle accident that resulted in the death of his passenger and her unborn child. After pleading guilty to criminal vehicular homicide,

Cassell requested a downward dispositional departure from the presumptive guidelines sentence of 48 months of imprisonment. The district court denied his request and imposed the presumptive sentence. We conclude that the district court did not abuse its discretion in denying Cassell's motion for a downward dispositional departure and, therefore, affirm.

### **FACTS**

On the afternoon of February 11, 2005, Cassell, who then was 19 years old, was driving east on Highway 14 from Waseca to Owatonna, transporting his girlfriend, Angela Jade Ryan, who was approximately 18 to 22 weeks pregnant, to an appointment. Several witnesses testified that Cassell drove between 75 and 90 miles per hour in a 55-miles-per-hour zone. At one point, Cassell drove around a curve at 85 miles per hour while passing three cars in a no-passing zone. Although the road was dry, Cassell lost control of the car, which left the road and hit a telephone pole. Emergency responders extricated Ryan from the vehicle, and a helicopter was summoned to transport her to a hospital. But Ryan and her fetus died at the scene. Cassell provided a blood sample, which revealed that he had marijuana in his system.

In April 2006, the state charged Cassell with criminal vehicular homicide, in violation of Minn. Stat. § 609.21, subd. 1(1) (2004), and criminal vehicular homicide of an unborn child, in violation of Minn. Stat. § 609.21, subd. 3(1) (2004). In August 2007, Cassell pleaded guilty to count 1, criminal vehicular homicide. Pursuant to the plea agreement, the state voluntarily dismissed count 2.

Before sentencing, Cassell filed a motion for a downward dispositional departure from the presumptive guidelines sentence, arguing that he was amenable to probation. He submitted a letter from his therapist, a clinical nurse specialist, who stated that Cassell had undergone “considerable emotional and psychological growth” during his four months of therapy and that she had “never met a person who is as invested in the process as Robert is.” Cassell also submitted the results of a recent drug test, which was negative.

At the sentencing hearing in December 2007, the preparer of the pre-sentence investigation report testified that Cassell was likely to follow through with probation. Cassell’s mother and aunt gave oral statements in which they urged the district court to order probation. The state read a letter written by Ryan’s mother in which she stated that Cassell should speak at high schools about being a responsible driver and making good choices. Ryan’s father also supported a public-speaking requirement or, in the alternative, a prison sentence. Cassell expressed sorrow and remorse, stating that he wished he could have taken Ryan’s place that day. The state argued against a downward departure, arguing that a prison term was necessary for purposes of deterrence and treatment.

At the conclusion of the sentencing hearing, the district court reviewed the evidence and determined that substantial and compelling circumstances did not exist to support a downward dispositional departure. The district court imposed the presumptive guidelines sentence of 48 months of imprisonment. Cassell appeals.

## DECISION

Cassell argues that the district court erred by denying his motion for a downward dispositional departure because of the existence of mitigating factors, primarily his amenability to probation.

A district court must order the presumptive sentence provided by the sentencing guidelines unless there are “substantial and compelling circumstances” to warrant a departure. Minn. Sent. Guidelines II.D.; *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). A departure from the guidelines in the form of a stay of execution of a sentence may be justified by a “defendant’s particular amenability to individualized treatment in a probationary setting.” *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). In determining whether a defendant is amenable to probation so as to justify a downward dispositional departure, a district court may consider several 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.” *Id.* The district court’s focus is “on the defendant as an individual and on whether the presumptive sentence would be best for him and for society.” *State v. Heywood*, 338 N.W.2d 243, 244 (Minn. 1983).

A district court has broad discretion in determining whether to depart from the sentencing guidelines. *Kindem*, 313 N.W.2d at 7. Nonetheless, a district court must “deliberately consider[]” the factors that are offered by a defendant in support of a motion for a downward dispositional departure. *State v. Curtiss*, 353 N.W.2d 262, 264 (Minn. App. 1984) (holding that district court erred by ignoring arguments for departure). A district court’s refusal to depart from the sentencing guidelines will not be reversed

absent a clear abuse of discretion. *State v. Givens*, 544 N.W.2d 774, 776 (Minn. 1996). Only in a “rare” case will a reviewing court reverse a district court’s imposition of a presumptive sentence. *Kindem*, 313 N.W.2d at 7.

In this case, the district court “deliberately considered” the factors offered by Cassell in support of a downward dispositional departure. *Curtiss*, 353 N.W.2d at 263. The district court expressly considered Cassell’s young age, his remorse, and the forgiveness of Ryan’s family. The district court also considered factors that did not support a downward departure, such as Cassell’s use of chemicals, his failure to obtain treatment, and his prior convictions for reckless driving, an equipment violation, and speeding. The district court put particular emphasis on Cassell’s use of chemicals, stating that it was “very concerned about the use of chemicals here,” and the fact that Cassell did not “take it to the next level” by obtaining any treatment or assessment during the 34-month period between the accident and the sentencing hearing. Although a chemical assessment had been recommended by the probation report, Cassell did not follow through on that recommendation and failed to persuade the district court at the sentencing hearing that he did not need an assessment or treatment. In short, Cassell did not convince the court that he was amenable to probation. *See State v. Hennessy*, 328 N.W.2d 442, 443 (Minn. 1983) (noting that determination of defendant’s amenability to probation is based on variety of factors).

The supreme court has stated that “ordinarily [an appellate court] will not interfere with a sentence that falls within the presumptive sentence range even if there are grounds that would justify departure.” *State v. Back*, 341 N.W.2d 273, 275 (Minn. 1983). For

example, in *State v. Bertsch*, 707 N.W.2d 660 (Minn. 2006), the supreme court held that the district court did not abuse its discretion in denying a motion for a downward dispositional departure for a defendant who was 22 years old, had no prior criminal history, quickly took responsibility for his offenses, expressed remorse, and had a large support network. *Id.* at 668 & n.7. The supreme court opined that the situation was “not the ‘rare case’ warranting our intervention with the district court’s discretion.” *Id.*

Likewise, this is not the “rare case” warranting reversal of a district court’s imposition of a presumptive sentence. *Id.* Although there are mitigating factors that could have supported a departure, the record reflects that Cassell used alcohol and illegal drugs after the accident and failed to obtain a chemical-dependency assessment, which had been recommended by Waseca County Community Corrections. For that reason, the district court concluded that Cassell “wouldn’t be a very good risk.” The district court was neither “mechanical” nor “callous” in imposing Cassell’s sentence. *Curtiss*, 353 N.W.2d at 264. The district court’s conclusion that there were no “substantial and compelling circumstances” to support a downward dispositional departure is supported by the record. Minn. Sent. Guidelines II.D.; *Kindem*, 313 N.W.2d at 7.

In sum, the district court did not abuse its discretion in denying Cassell’s motion for a downward dispositional departure and imposing the presumptive guidelines sentence of 48 months of imprisonment.

**Affirmed.**