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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-751**

State of Minnesota,  
Respondent,

vs.

Tammi Jo Dupay,  
Appellant.

**Filed March 18, 2008  
Affirmed  
Johnson, Judge**

Wright County District Court  
File No. CR-06-734

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

Thomas N. Kelly, Wright County Attorney, Brian A. Lutes, Assistant County Attorney, 10 Second Street Northwest, Suite 400, Buffalo, MN 55313 (for respondent)

John M. Stuart, State Public Defender, Ngoc Nguyen, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

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

**UNPUBLISHED OPINION**

**JOHNSON**, Judge

Tammi Jo Dupay pleaded guilty to first-degree sale of a controlled substance, methamphetamine. Before sentencing, she moved for a downward dispositional

departure. The district court denied the motion, imposing a sentence of 74 months of imprisonment, which is within the guidelines range. On appeal, Dupay argues that the district court abused its discretion when it denied her motion. We conclude that the district court did not abuse its discretion and, therefore, affirm.

## **FACTS**

Using information about Dupay obtained from an informant, the Wright County Drug Task Force planned and carried out an arranged drug purchase on March 15, 2006. While monitored by police officers, the informant purchased from Dupay a white crystalline substance that field-tested positive as methamphetamine. Police officers apprehended Dupay in her vehicle and found the purchase money that had been supplied by the task force and additional white crystalline substance that also tested positive as methamphetamine.

The state charged Dupay with first- and second-degree controlled substance offenses. After being charged, Dupay participated in an outpatient treatment program in April and May of 2006, but she was discharged from the program for lack of cooperation. She refused to participate until August 11, when she re-enrolled and remained sober through September 10, 2006. Dupay subsequently completed an outpatient program, enrolled in an aftercare program, and attended Narcotics Anonymous.

Dupay pleaded guilty on November 6, 2006, to the first-degree charge pursuant to a plea agreement. In exchange for her plea, the state dismissed the second-degree charge as well as charges related to a similar incident that occurred four months earlier.

At sentencing, Dupay moved for a downward dispositional departure, as permitted by the plea agreement. She testified that she was not a regular drug dealer but had contacted the informant only recently in an attempt to earn more money that would help her make house payments, which was unusually difficult because she was out of work due to an injury. She also submitted letters of support from family members and friends. She testified that she sincerely wanted to work through her addiction and that she had not been taking the medication prescribed for her bipolar disorder at the time of her arrest because the medication was not working. A dispositional advisor retained by Dupay's counsel submitted a memorandum in support of Dupay's motion, citing Dupay's minimal criminal history, untreated mental illness, chemical dependency, and family history of substance abuse.

The state opposed a downward departure, arguing for an executed sentence of 86 months, the presumptive guidelines sentence. The state contended that Dupay's offense was not an isolated incident because she was alleged to have sold methamphetamine in November 2005 and because it appeared that she was living off proceeds from drug transactions between the November 2005 and March 2006 arrests.

The court denied Dupay's request for a departure and sentenced Dupay to an executed guidelines sentence of 74 months of imprisonment. Dupay appeals.

## **DECISION**

Dupay argues that the district court erred by refusing to grant a downward departure. A sentencing judge should depart from the Minnesota Sentencing Guidelines range only if there are "substantial" and "compelling" reasons to do so. *State v. Kindem*,

313 N.W.2d 6, 7 (Minn. 1981); *see also* Minn. Sent. Guidelines cmt. II.D.03 (2006). The factors that a district court may consider for a dispositional departure include the defendant's age, prior record, remorse, cooperation, attitude while in court, and the support of friends or family. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982).

A district court has broad discretion in determining an appropriate sentence, and reviewing courts will not interfere absent an abuse of that discretion. *Kindem*, 313 N.W.2d at 7. Even if reasons exist for departing downward, a reviewing court will not disturb the district court's sentence if the district court had reasons for refusing to depart. *State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006); *Kindem*, 313 N.W.2d at 7-8. This court has reversed a denial of a request for a downward departure only rarely, such as when the district court incorrectly believed that it was constrained from exercising its discretion or otherwise failed to exercise its discretion. *See, e.g., State v. Mendoza*, 638 N.W.2d 480, 484 (Minn. App. 2002), *review denied* (Minn. Apr. 16, 2002).

The district court did not find substantial and compelling reasons to grant a dispositional departure from Dupay's presumptive sentence. Rather, the district court cited several reasons for adhering to the sentencing guidelines. Most notably, the district court was concerned about Dupay's history of chemical addictions and her unamenability to treatment. Although Dupay had completed some treatment, the district court was troubled by the fact that she had not consistently remained in treatment prior to her guilty plea.

Dupay contends that there were mitigating factors making her amenable to probation and treatment. She points to her limited criminal history, the demonstrated

support for her treatment from friends and family, and her completion of a rehabilitation program prior to sentencing. She also argues that her history of mental health issues complicated her circumstances.

Although these factors may have permitted the district court, in its discretion, to grant a downward departure, the district court did not abuse its discretion by denying the motion. The district court carefully weighed the *Trog* factors before making its determination and cited specific reasons for declining to depart from the guidelines. During the sentencing hearing, the district judge told Dupay, “I have given [your case] probably more effort and more energy than any other motion or consideration for departure that’s been before me in at least the last two years.” Our review of the record confirms that the district court thoroughly considered all relevant information and conscientiously exercised its discretion before denying Dupay’s motion.

We have reviewed and considered Dupay’s supplemental pro se brief, which does not urge any grounds for reversal separate and distinct from those put forward by her counsel.

**Affirmed.**