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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2116**

State of Minnesota,
Respondent,

vs.

Michael Duane Iverson,
Appellant.

**Filed June 11, 2012
Affirmed
Stauber, Judge**

Otter Tail County District Court
File No. 56CR111028

David J. Hauser, Otter Tail County Attorney, Ryan C. Cheshire, Assistant County Attorney, Fergus Falls, Minnesota (for respondent)

Jamison W. Cichosz, Fergus Falls, Minnesota (for appellant)

Considered and decided by Stauber, Presiding Judge; Cleary, Judge; and Rodenberg, Judge.

UNPUBLISHED OPINION

STAUBER, Judge

On appeal from the district court's imposition of the presumptive sentence for appellant's conviction of first-degree controlled-substance crime, appellant argues that the district court abused its discretion by denying his request for a downward dispositional departure because the court failed to discuss or consider his amenability to

probation, his familial support, and his successful completion of inpatient chemical-dependency treatment. We affirm.

FACTS

In May 2011, appellant Michael Duane Iverson was charged with two counts of controlled-substance crime in the first degree after he allegedly sold methamphetamine to a confidential reliable informant on four separate occasions between March 30, 2011 and April 12, 2011. Appellant pleaded guilty to one count of first-degree controlled-substance crime and, pursuant to a plea agreement, the second count was dismissed. Appellant then moved for a downward dispositional departure from the sentencing guidelines based upon his young age, his lack of any criminal history, his lack of previous opportunities on probation, the family support in place for him, and his remorse for his actions. The district court denied the departure request and sentenced appellant to the presumptive sentence of 86 months. This appeal follows.

D E C I S I O N

The district court must order the presumptive sentence unless “substantial and compelling circumstances” justify departure. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). Whether to depart from the sentencing guidelines rests within the district court’s discretion, and this court will not reverse the decision absent a clear abuse of that discretion. *State v. Oberg*, 627 N.W.2d 721, 724 (Minn. App. 2001), *review denied* (Minn. Aug. 22, 2001). Only in a “rare” case will this court reverse a sentencing court’s refusal to depart. *Kindem*, 313 N.W.2d at 7.

In weighing whether to impose a downward dispositional departure from the presumptive sentence, a district court considers “the defendant as an individual and [focuses] on whether the presumptive sentence would be best for [the defendant] and for society.” *State v. Heywood*, 338 N.W.2d 243, 244 (Minn. 1983). One factor to consider is the defendant’s amenability to probation. *Id.* Other relevant factors include the defendant’s age, prior criminal history, remorse, cooperation, attitude while in court, and support from family and friends. *Id.* (citing *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982)).

Appellant argues that the district court ignored and failed to discuss the factors relating to his amenability to probation. Appellant claims that these factors include his age, his remorse and desire to become a productive member of society, his status as an Eagle Scout, and his lack of criminal history. Appellant also claims that the court failed to recognize that he “never had the chance to successfully exist on supervision previously.” Appellant argues that because the district court failed to consider these factors, it abused its discretion by denying his request for a downward dispositional departure.

We acknowledge that the record may have supported a decision to depart. Appellant is only 21 years old; has no prior juvenile, misdemeanor, or felony offenses on his record, and appears to have strong family support. It also appears that law enforcement specifically attempted to pursue a first-degree controlled-substance charge against appellant. Law enforcement could have charged appellant with a lesser offense after his first controlled-substance transaction. But instead, they continued to utilize

appellant in these transactions until they purchased the amount necessary to charge him with a first-degree controlled-substance crime. Moreover, although the corrections agent who interviewed appellant during his treatment program initially reported that appellant was not “any different than the day he got here,” the record reflects that appellant did complete the treatment program and received his certificate. In light of these factors, appellant may have been eligible for alternatives to prison, such as the Teen Challenge Program.

However, even if there are reasons for departing downward, this court will not disturb the district court’s sentence if the record supports the district court’s determination that there are not substantial and compelling reasons to depart. *State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006). Here, the state admitted on the record that Otter Tail County has a limited budget for prison alternative programs, which essentially negated these types of programs from being an option for appellant. And, despite appellant’s claim that the district court did not consider the *Trog* factors, the district court stated on the record that it had reviewed the materials submitted by appellant in support of his motion. The district court also specifically referenced appellant’s age and the support he has from his family. Although the district court may not have specifically addressed every single *Trog* factor raised by appellant before it imposed the presumptive sentence, it was not required to do so. *See State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985) (stating that if the district court “considers reasons for departure but elects to impose the presumptive sentence,” an explanation for denying departure it not required). Instead, the district court found that “[e]ach of [the] four sales [were] yet another

conscious choice that [appellant] made—to continue that lifestyle.” The district court further noted that it was influenced by appellant’s “early lack of any real meaningful participation or progress made at the treatment program,” which affected his credibility regarding his sincerity in staying sober. The record demonstrates that the district court deliberately considered circumstances for and against departure, and exercised its discretion in making its decision. Thus, we cannot conclude that the district court abused its discretion by denying appellant’s request for a downward dispositional departure from the presumptive sentence.

Affirmed.