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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A13-0458**

State of Minnesota,  
Respondent,

vs.

Darren Jay Drift,  
Appellant.

**Filed January 27, 2014  
Affirmed  
Halbrooks, Judge**

St. Louis County District Court  
File No. 69DU-CR-10-3798

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

Mark S. Rubin, St. Louis County Attorney, Jessica J. Fralich, Assistant County Attorney,  
Duluth, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Kathryn Lockwood, Assistant  
Public Defender, St. Paul, Minnesota (for appellant)

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

## UNPUBLISHED OPINION

**HALBROOKS**, Judge

Appellant challenges the district court's denial of his motion for a downward dispositional departure in his sentence after he pleaded guilty to third-degree assault. Because the district court did not abuse its discretion by concluding that a departure is unjustified and by imposing a presumptive sentence, we affirm.

### FACTS

Appellant Darren Drift pleaded guilty to third-degree assault in November 2012. He moved the district court for a downward dispositional departure one month later, arguing that a departure was appropriate because (1) he has not been on probation since 2005, (2) he wants to participate in chemical-dependency treatment and anger-management classes, (3) his offense occurred two years ago, (4) he is "more mindful of his behavior and more receptive to change," (5) prison time had not helped him previously, and (6) the community would benefit if he obtains effective services rather than being incarcerated again.

At the sentencing hearing, Drift's attorney acknowledged that Drift's criminal history is "at the very far end, if not off the chart," but added that Drift was ready to change. He stated that Drift was taking anger-management classes in Nett Lake, where Drift's family lived, and asked the district court to give Drift the opportunity to move there, continue taking classes, and begin chemical-dependency treatment. Drift's attorney also noted that Drift had not been involved in any incidents, other than protection-order violations, since the assault two years earlier.

The state responded that there was no substantial and compelling reason to grant a departure. The state argued that Drift poses a significant threat to public safety, has a criminal history that is “off the charts,” and that his prior probation and parole violations demonstrate that he is unamenable to probation. The state further noted that Drift had failed to seek treatment in the two years since his offense and that Drift stated in the PSI that he did not need treatment.

The district court denied Drift’s motion and imposed the presumptive 30-month sentence. This appeal follows.

### **D E C I S I O N**

The district court is required to impose the presumptive sentence provided in the sentencing guidelines unless “substantial and compelling circumstances” justify a sentencing departure. *State v. Pegel*, 795 N.W.2d 251, 253 (Minn. App. 2011); *see also* Minn. Sent. Guidelines 2.D. (2012) (providing that the district court has discretion to depart only if “identifiable, substantial, and compelling circumstances” exist). The district court has discretion to determine whether a departure is warranted. *State v. Oberg*, 627 N.W.2d 721, 724 (Minn. App. 2001), *review denied* (Minn. Aug. 22, 2001). And we will not reverse a departure decision absent an abuse of that discretion. *Pegel*, 795 N.W.2d at 253. Here, the district court read directly from the Minnesota Sentencing Guidelines and then stated, “[B]ased on the record before me, the presentence investigation documentation and documents prepared earlier by [the probation officer], I can’t articulate for the record a substantial and compelling circumstance that makes a departure warranted here or more appropriate than the presumptive sentence.”

Drift asserts that the district court “failed to account for the mitigating factors in his case.” He primarily relies on *State v. Trog*, in which the Minnesota Supreme Court identified “the defendant’s age, his prior record, his remorse, his cooperation, his attitude while in court, and the support of friends and/or family” as relevant factors when determining whether a defendant is suitable for probation. *See* 323 N.W.2d 28, 31 (Minn. 1982). According to Drift, many of these factors apply to his case. For example, Drift asserts that he has been cooperative and remained law abiding since his offense, was attending anger-management classes and enrolled in chemical-dependency treatment at the time of sentencing, remains interested in obtaining those services, and took responsibility for his offense by pleading guilty. He also states that his family is supportive and willing to help him if he receives probation.

“Only the rare case will merit reversal based on the district court’s refusal to depart.” *State v. Johnson*, 831 N.W.2d 917, 925 (Minn. App. 2013) (quotation omitted), *review denied* (Minn. Sept. 17, 2013). Even when mitigating factors are present, a district court does not abuse its discretion by denying a motion for a dispositional departure. *See State v. Jackson*, 749 N.W.2d 353, 360 (Minn. 2008) (stating that if mitigating factors are shown, district court may, but is not required to, depart); *State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006) (affirming denial of request for departure despite defendant’s argument that *Trog* factors were present). Accordingly, Drift’s argument that the district court ignored mitigating factors in his case does not mandate the conclusion that the district court erred by refusing to depart.

Drift also asserts that the district court “was required to consider the *Trog* factors.” He is incorrect. No explanation is required when the district court imposes a presumptive sentence. *Johnson*, 831 N.W.2d at 925. More specifically, there is no requirement that the district court address the *Trog* factors before imposing a presumptive sentence. *Pegel*, 795 N.W.2d at 254.

**Affirmed.**