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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1590**

State of Minnesota,
Respondent,

vs.

Carol Jane Baker,
Appellant.

**Filed June 18, 2012
Affirmed
Stauber, Judge**

Stearns County District Court
File No. 73CR085888

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

Janelle Kendall, Stearns County Attorney, Caitlyn M. Prokopowicz Wilson, Assistant
County Attorney, St. Cloud, Minnesota (for respondent)\

David W. Merchant, Chief Appellate Public Defender, Ngoc Nguyn, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Stauber, Presiding Judge; Schellhas, Judge; and
Muehlberg, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals
by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

STAUBER, Judge

On appeal from her conviction of first-degree controlled-substance crime and sentence of 48 months in prison, which represents a downward departure from the presumptive 86-month sentence, appellant argues that the district court abused its discretion by denying her motion for a downward dispositional departure because she presented substantial and compelling reasons justifying the departure. We affirm.

FACTS

In May 2008, appellant Carol Jane Baker was charged with two counts of first-degree controlled-substance crime. Appellant pleaded guilty to one count of first-degree controlled-substance crime and, under the terms of the plea agreement, the second count was dismissed. Appellant subsequently moved for a downward dispositional departure, which was denied. The district court, however, found that the presumptive 86-month sentence was “excessive” in light of appellant’s “age, her physical condition, [and] the mental health problems she’s had.” The district court sentenced appellant to 48 months in prison. This appeal follows.

DECISION

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 an appellate 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 she presented substantial and compelling reasons justifying a dispositional departure. According to appellant, these substantial and compelling reasons include her minimal criminal history, family support, her “medical condition and chronic pain management issues,” and the fact that she “successfully completed a treatment program in the spring of 2010.” Thus, appellant argues that the district court abused its discretion by denying her request for a dispositional departure and imposing an executed sentence.

We disagree. Even if there are reasons for departing downward, an appellate 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 600, 668 (Minn. 2006). Here, the district court found that “there are factors that cut both ways with regard to the motion.” But although the court noted that there were factors supporting a dispositional departure, the court

expressed concern with appellant's "amenability as far as treatment." The court found that despite appellant's claim in the presentence investigation that she had not used methamphetamine since she was a teenager, appellant tested positive for amphetamine in January 2011. The court also found that appellant has "a history of dropping out of treatment in 2008," as well as a "positive test for marijuana while on release conditions here." The court recognized that the marijuana usage may be tied, in part, to appellant dealing with her pain, but noted that "I've talked to physicians that have told me that there are better drugs available than marijuana . . . to deal with pain." The court reviewed all the materials submitted "several times" and concluded that probation was not appropriate in appellant's case. This is not the "rare" case in which the district court abused its discretion by denying appellant's motion for a dispositional departure from the presumptive sentence.

Affirmed.