

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1325**

State of Minnesota,
Respondent,

vs.

Ashley Monique Swart,
Appellant.

**Filed August 29, 2022
Affirmed
Smith, Tracy M., Judge**

St. Louis County District Court
File Nos. 69HI-CR-20-960, 69HI-CR-20-694

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Kimberly Maki, St. Louis County Attorney, Stacey M. Scholz, Assistant County Attorney,
Hibbing, Minnesota (for respondent)

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

Considered and decided by Smith, Tracy M., Presiding Judge; Connolly, Judge; and
Larkin, Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

Appellant Ashley Swart argues that the district court abused its discretion by
(1) refusing to grant downward dispositional departures from the presumptive sentences,

(2) declining to impose downward durational departures, and (3) imposing sentences in the middle of the presumptive range rather than at the bottom of the range. We affirm.

FACTS

In March 2021, pursuant to a plea agreement, Swart pleaded guilty, in two separate files, to two counts of first-degree sale of methamphetamine in violation of Minn. Stat. § 152.021, subd. 1(1) (2020). In exchange, the state agreed to request presumptive sentences under the Minnesota Sentencing Guidelines, that any sentences would be concurrent, and that Swart would be free to move for a departure. The plea agreement also included resolution of charges in other files.

Before sentencing, Swart moved for dispositional departures, asserting that she had experienced a history of assaults and mental-health difficulties and that she required mental-health and chemical-dependency treatment rather than punishment. Swart also wrote a letter to the district court in which she alleged that she was sexually assaulted by a drug-task-force officer who threatened her with prosecution if she reported the assault. Swart's presentence investigation report (PSI) noted this allegation. There is no further evidence of the alleged assault in the record, and neither the parties nor the district court addressed it during sentencing.

At a hearing on April 15, 2021, the district court heard Swart's dispositional-departure motion. Swart argued that she was particularly amenable to probation and asked to be placed into the Minnesota Adult and Teen Challenge program. The district court indicated that it intended to impose concurrent 65- and 85-month sentences for the two counts, but it continued the hearing and postponed its final sentencing decision until Swart

had the opportunity to be released to and to successfully complete programming at Minnesota Adult and Teen Challenge.

Swart entered the Minnesota Adult and Teen Challenge program but, on May 5, 2021, left the program without notifying her probation officer. On July 15, 2021, the district court held a joint hearing on the violation of condition and on sentencing for the offenses in the present appeal. The district court denied Swart's motion for dispositional departures and imposed concurrent prison sentences of 65 and 85 months. Swart appeals.

DECISION

The Minnesota Sentencing Guidelines establish presumptive sentences for felony offenses. Minn. Stat. § 244.09, subd. 5 (2020). The sentencing guidelines seek to “maintain uniformity, proportionality, rationality, and predictability in sentencing” of felony crimes. *Id.* “Consequently, departures from the guidelines are discouraged and are intended to apply to a small number of cases.” *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016).

A district court may depart from the guidelines sentence only “if aggravating or mitigating circumstances are present, and those circumstances provide a substantial and compelling reason not to impose a guidelines sentence.” *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014) (emphasis omitted) (quotations and citations omitted); *see also* Minn. Sent. Guidelines 2.D.1 (2020) (stating that a district court “must” sentence within the guidelines range “unless there exist identifiable, substantial, and compelling circumstances to support a departure”). But even if substantial and compelling circumstances exist, a district court is not required to depart from the guidelines. *State v. Walker*, 913 N.W.2d 463, 468 (Minn. App. 2018); *see also State v. Wall*, 343 N.W.2d 22, 25 (Minn. 1984)

(stating that the presence of a mitigating factor does not obligate a district court “to place defendant on probation”); Minn. Sent. Guidelines 2.D.1 (stating that a district court “may” depart from the presumptive disposition).

District courts are afforded “great discretion in the imposition of sentences,” and appellate courts will reverse a sentencing decision “only for an abuse of that discretion.” *Soto*, 855 N.W.2d at 307-08 (quotation omitted). A district court abuses its discretion when its decision is “based on an erroneous view of the law or is against logic and the facts in the record.” *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019) (quotation omitted). When a district court imposes a presumptive sentence, an appellate court “may not interfere with the [district] court’s exercise of discretion, as long as the record shows the [district] court carefully evaluated all the testimony and information presented before making a determination.” *State v. Van Ruler*, 378 N.W.2d 77, 80-81 (Minn. App. 1985). An explanation is not required when a district court denies a departure and imposes a presumptive sentence as long as the district court considered the reasons for a departure. *Id.* at 80. Only in a “rare case” will an appellate court reverse the district court’s refusal to depart from the presumptive sentence. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

I. The district court did not abuse its discretion by denying downward dispositional departures.

Swart first argues that the district court abused its discretion by denying her motion for downward dispositional departures.

A dispositional departure “places the offender in a different setting than that called for by the presumptive guidelines sentence.” *Solberg*, 882 N.W.2d at 623. Substantial and

compelling circumstances justifying a downward dispositional departure “include a finding that a defendant is particularly amenable to correction on probation and unamenable to correction by imprisonment.” *State v. Malinski*, 353 N.W.2d 207, 209 (Minn. App. 1984), *rev. denied* (Minn. Oct. 16, 1984); *see also* Minn. Sent. Guidelines 2.D.3.a.7 (2020). Several factors are relevant to determining whether a defendant is particularly amenable to probation. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). These factors include the defendant’s age, prior record, remorse, cooperation, attitude while in court, and support from friends or family. *Id.* Additional factors include the admission of guilt and taking responsibility for one’s criminal conduct. *State v. Hickman*, 666 N.W.2d 729, 732 (Minn. App. 2003).

Our review of the record assures us that the district court acted within its discretion in declining to dispositionally depart from the presumptive sentences. First, it is apparent from the record that the district court carefully considered the reasons that Swart advanced for departure. The district court explained that it “looked over every piece of reports in [Swart’s] file, going back since last year” before imposing sentence. Moreover, the district court seriously considered the possibility of a dispositional departure when it postponed imposing a sentence to give Swart the chance to demonstrate that she could successfully participate in treatment in a probationary setting.

Second, we discern no abuse of discretion in the district court’s determination that a substantial and compelling reason to depart is not present. Swart argues that the district court failed to consider the *Trog* factors, “including Swart’s progress and the availability of other community programs” and that these factors support a finding that she is

particularly amenable to individualized treatment in the community and to probation. While an examination of some factors in the record supports a determination that Swart is particularly amenable to probation (for example, her age and acceptance of responsibility), other factors do not. Specifically, as the district court explained, weighing heavily against a finding of particular amenability to probation was the fact that Swart absconded from the Minnesota Adult and Teen Challenge program and did not inform her probation officer. At her sentencing hearing, Swart explained that she left the program to be with her mother, who had been injured in a serious car accident, which occurred ten days prior to Swart's leaving the program. However, as the district court suggested at the hearing, Swart should have known that it was important to keep the probation officer informed.

Swart also argues that the district court failed to give adequate weight to the reasons why she was selling drugs—her struggles with addiction; her involvement with the drug task force, which kept her involved in the world of drugs; and trauma and mental-health problems due to a history of sexual assault, including, she alleges, by a drug-task-force member. Without minimizing any of the struggles and challenges that Swart identifies, based on the record as a whole, we discern no abuse of discretion in the district court's determination that Swart was not particularly amenable to probation and that a substantial and compelling reason for departure was not present.

II. The district court did not abuse its discretion by declining to impose downward durational departures.

Swart next argues that the district court abused its discretion by not granting downward durational departures.

A durational departure is a sentence that departs in length from the presumptive guidelines range. *Solberg*, 882 N.W.2d at 623. A durational departure must be based on factors that reflect the seriousness of the offense, not the characteristics of the offender. *Id.* A downward durational departure is justified “only if the defendant’s conduct was significantly less serious than that typically involved in the commission of the offense.” *Id.* at 624 (quotation omitted).

We note at the outset that Swart did not argue for a downward durational departure in the district court. Her memorandum to the district court focused entirely on her request for a dispositional departure. We generally do not address issues that were not presented to the district court. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). But, even if this issue were properly before us, we would not agree that the district court abused its discretion. The district court was not required to explain its decision to impose presumptive sentences as long as it carefully considered the full record and arguments presented, *see Van Ruler*, 378 N.W.2d at 80, and, as explained above, it is evident that the district court did so here.

Swart asserts that her criminal operation was not sophisticated and that her offenses were nonviolent and motivated by her addiction. While aspects of the record may support Swart’s argument, we are unconvinced that the district court’s decision not to depart from the presumptive sentences was against logic and the facts in the record. We therefore conclude that the district court did not abuse its discretion by declining to durationally depart from the guideline sentences.

III. The district court did not abuse its discretion by imposing middle-of-the-box sentences.

Swart also argues that the district court abused its discretion by imposing middle-of-the-box sentences rather than sentences at the low end of the guidelines range.

“A sentence within the presumptive-sentence range is not a departure from the presumptive sentence but is a presumptive sentence and is generally not subject to appellate review of the district court’s exercise of its discretion.” *State v. Delk*, 781 N.W.2d 426, 427 (Minn. App. 2010), *rev. denied* (Minn. July 20, 2010). Only in a “rare case” will an appellate court reverse the district court’s imposition of a presumptive sentence. *Kindem*, 313 N.W.2d at 7.

Swart argues that the middle-of-the-box sentences imposed by the district court, while within the presumptive range, are an abuse of discretion because they unfairly exaggerate the criminality of Swart’s conduct. She asserts that the presumptive range is broad and that compelling circumstances exist that demand a sentence at the low end of the range. Swart again cites her history of addiction and trauma, and she also asserts that the district court did not properly consider her allegation of sexual assault by a drug-task-force agent.

We disagree that this is the rare case in which a presumptive sentence must be reversed. Each of the concurrent sentences imposed is in the middle of the guidelines range. The allegation of sexual assault by a drug-task-force agent, while referenced in the PSI, was not part of the sentencing hearing. And the other circumstances identified by Swart,

while difficult, do not lead us to conclude that the guideline sentences unfairly exaggerate the criminality of Swart's conduct.

Affirmed.