

*This opinion is nonprecedential except as provided by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
A22-0417**

State of Minnesota,
Respondent,

vs.

Jason Michael Slattum,
Appellant.

**Filed December 5, 2022
Affirmed in part, reversed in part, and remanded
Reilly, Judge**

Dakota County District Court
File No. 19HA-CR-20-2318

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

Kathryn M. Keena, Dakota County Attorney, Jessica A. Bierwerth, Assistant County Attorney, Hastings, Minnesota (for respondent)

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

Considered and decided by Reyes, Presiding Judge; Larkin, Judge; and Reilly, Judge.

NONPRECEDENTIAL OPINION

REILLY, Judge

On appeal from his conviction of and sentence for third-degree murder, appellant argues that the district court abused its discretion by denying his motion for a downward dispositional departure and downward durational departure. Appellant also argues the

district court abused its discretion in ordering restitution without considering his ability to pay. We affirm in part, reverse in part, and remand.

FACTS

In July 2020, appellant Jason Michael Slattum sold heroin to the victim and her husband. Early the following morning, officers responded to a call for emergency medical services for the victim who was found unconscious and later pronounced dead after ingesting heroin that tested positive for fentanyl. Appellant first met the victim a few months earlier when he responded to an advertisement that she posted on Craigslist seeking help with pain relief. The couple communicated with appellant via text message and bought drugs, mainly pills and heroin, on several occasions. The first time appellant supplied them with heroin, he also provided a dose of Narcan. Appellant reported he did not know the heroin he sold to the victim contained fentanyl.

Respondent State of Minnesota charged appellant with third-degree murder for his role in the victim's death.¹ He pleaded guilty to the offense after the parties reached a plea agreement. Appellant filed a motion for the district court to depart from the sentencing guidelines and grant either a downward durational or dispositional departure. In February 2022, the district court denied his motion and sentenced appellant to 114 months in prison.

¹ The particular statute provides: "Whoever, without intent to cause death, proximately causes the death of a human being by, directly or indirectly, unlawfully selling, giving away, bartering, delivering, exchanging, distributing, or administering a controlled substance classified in Schedule I or II, is guilty of murder in the third degree and may be sentenced to imprisonment for not more than 25 years or to payment of a fine of not more than \$40,000, or both." Minn. Stat. § 609.195(b) (2018).

DECISION

I. The district court did not abuse its discretion by denying appellant’s motion for a sentencing departure.

As we afford the district court “great discretion in the imposition of sentences,” we review sentencing decisions only for an abuse of that discretion. *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014). The district court must pronounce a sentence of the applicable disposition and within the applicable range determined by the Minnesota Sentencing Guidelines, unless “identifiable, substantial, and compelling circumstances” support a departure. Minn. Sent’g Guidelines 2.D.1 (Supp. 2019). There are two types of sentencing departures: dispositional and durational. *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016). A dispositional departure places the offender in a different setting than called for by the guidelines. *Id.* “For example, a downward dispositional departure occurs when the presumptive guidelines sentence calls for imprisonment, but the district court instead stays execution or imposition of the sentence.” *Id.* A durational departure is a sentence that departs in length from the presumptive guidelines range. *Id.*

Yet, even if substantial and compelling circumstances exist, a district court need not depart from the guidelines. *See State v. Wall*, 343 N.W.2d 22, 25 (Minn. 1984). We will affirm the decision not to depart and the imposition of a presumptive guidelines sentence when “the record shows that the [district] court carefully evaluated all the testimony and information presented before making a determination.” *State v. Johnson*, 831 N.W.2d 917, 925 (Minn. App. 2013) (quotation omitted), *rev. denied* (Minn. Sept. 17, 2013). Only in a

“rare” case do we reverse the district court’s refusal to depart from a presumptive sentence. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

A. The district court did not abuse its discretion by denying appellant’s motion for a downward dispositional departure.

Appellant argues the district court abused its discretion in denying his motion for a downward dispositional departure. A dispositional departure focuses on individual characteristics of the defendant that show whether “the defendant is particularly suitable for individualized treatment in a probationary setting.” *Solberg*, 882 N.W.2d at 623 (quotation omitted). “The defendant’s amenability to probation distinguishes the defendant from most others and truly presents the substantial and compelling circumstances that are necessary to justify a departure.” *Soto*, 855 N.W.2d at 309 (quotation omitted). Several factors, including the defendant’s age, prior record, remorse, cooperation, attitude while in court, and support from friends or family, are relevant to determining whether a defendant is particularly amenable to probation. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). The district court need not discuss every factor as long as the district court considered the circumstances for and against departure and exercised its discretion. *State v. Pegel*, 795 N.W.2d 251, 254 (Minn. App. 2011).

Appellant claims he is entitled to a downward dispositional departure because his criminal history relates to his chemical dependence, he is committed to his sobriety and recovery, and he has a supportive network of friends and family. The record shows that the district court weighed the arguments in support of the departure motion but did not find substantial or compelling reasons to depart from the guidelines.

In examining appellant's criminal record, the district court referenced the presentence investigation report (the PSI) during the sentencing hearing. The district court acknowledged that appellant's chemical addiction contributed to his criminal offenses. It noted appellant's history of probation violations and a statement by his supervising probation agent concluding that appellant is "unamenable to probation supervision" and "a significant risk to public safety and the community." The district court also considered appellant's chemical dependence and amenability to treatment by acknowledging appellant's three attempts at treatment were followed by terminations from the program or relapses. Despite a preexisting recommendation for long-term residential treatment, the district court noted that he did not seek such treatment before this offense occurred.

The district court also recognized the letters submitted by appellant's family members expressing their willingness to support him and provide resources and found them to be sincere. During the hearing, appellant apologized to the victim's family and took responsibility for contributing to her death. But, when considering appellant's remorse, the district court observed that appellant stated in his PSI that he felt as if his own life was ruined by the incident, causing the district court to question the degree of appellant's remorse.

Upon review, the record shows the district court considered the circumstances for and against departure. The determination that appellant was not particularly amenable to treatment in a probationary setting and not entitled to a downward dispositional departure from the presumptive sentence was well within the district court's discretion and supported by the record.

B. The district court did not abuse its discretion by denying appellant's motion for a downward durational departure.

Rather than examining the “individual characteristics of the offender,” the district court examines the nature of the offense when considering a durational departure. *Solberg*, 882 N.W.2d at 625. “Substantial and compelling circumstances for a durational departure are those which demonstrate that the defendant’s conduct was significantly more or less serious than that typically involved in the commission of the crime in question.” *State v. Rund*, 896 N.W.2d 527, 532 (Minn. 2017) (quotation omitted). But the presence of a mitigating factor does not obligate the district court to impose a shorter sentence. *Wells v. State*, 839 N.W.2d 775, 781 (Minn. App. 2013), *rev. denied* (Minn. Feb. 18, 2014).

Appellant contends that his offense was significantly less serious than a typical third-degree murder case because he did not solicit the victim and her husband to buy drugs. Appellant points to the fact that the couple first approached him and that the number of text messages sent by the victim outnumber those sent by appellant. We disagree. Recently, we addressed a similar argument in an unpublished opinion and concluded that the statute criminalizing third-degree murder contemplates the willing participation of the victim. *State v. Guzik*, A20-0183, 2020 WL 4743459, at *3 (Minn. App. Aug. 17, 2020). Although not precedential, we find the reasoning persuasive. In *Guzik*, the defendant argued his third-degree murder offense was less serious than the typical controlled-substance murder because the victim was a willing participant in the drug transaction and provided money for the purchase. *Id.* at *3. This court held that the willing participation of the victim did not render the defendant’s conduct any less serious under statute. *See* Minn. Stat.

§ 609.195(b) (stating a person guilty of third-degree murder engages in “directly or indirectly, unlawfully selling, giving away, bartering, delivering, exchanging, distributing, or administering a controlled substance”). Here too, the victim’s act of seeking drugs from appellant does not detract from the seriousness of appellant’s own conduct. The district court noted that it read the text messages and observed that when the victim sought heroin, appellant willingly sold it to the couple.

Appellant also argues that his offense differs from the typical offense because, one time, he gave the victim and her husband Narcan to “help avoid the possibility of the adverse effects from the drugs.” While recognizing that this fact may suggest appellant was trying to promote the victim’s safety, the district court remarked it also illustrated appellant knew about heroin’s danger and chose to sell it for money to feed his addiction rather than refusing to sell it because of the risk. Even if providing Narcan is a substantial and compelling reason to depart, the district court is not required to do so. *Wells*, 839 N.W.2d at 781. Moreover, providing Narcan during a previous sale does not make this sale less serious than the typical offense. In sum, the district court acted within its discretion by denying appellant’s motion for a durational departure.

II. The district court abused its discretion by ordering appellant to pay restitution and failing to follow the requirements of Minnesota Statutes Section 611A.045 (2020).

We review orders for restitution for an abuse of the district court’s discretion. *State v. Wigham*, 967 N.W.2d 657, 662 (Minn. 2021). Victims of a crime have the right to receive restitution as part of the disposition of a criminal charge if the offender is convicted or found delinquent. Minn. Stat. § 611A.04, subd. 1(a) (2020). The district court must

consider “the income, resources, and obligations of the defendant” in determining whether to award restitution and in what amount. Minn. Stat. § 611A.045, subd. 1(a)(2). An order for restitution must include “a provision requiring a payment schedule or structure” and the district court “may assign the responsibility for developing the schedule or structure to the court administrator, a probation officer, or another designated person.” *Id.* at subd. 2(a). In *Wigham*, the Minnesota Supreme Court articulated that the district court does not have to “make specific findings regarding the defendant’s income, resources, and obligations” but it must “affirmatively take into account the defendant’s ability to pay.” 967 N.W.2d at 663. A district court fulfills its statutory duty “when it expressly states, either orally or in writing, that it considered the defendant’s ability to pay” and “the record include[s] sufficient evidence about the defendant’s income, resources, and obligations” to consider ability to pay. *Id.* at 664-65.

Though there is some evidence in the record of appellant’s financial circumstances, the district court failed to make clear on the record at appellant’s sentencing hearing or in the written restitution order, that it considered appellant’s ability to pay. Respondent contends that the district court’s direction that restitution would be withheld from appellant’s prison wage is enough to satisfy the statutory requirement. Even so, the bright-line rule set forth by *Wigham* makes clear that an express statement by the district court on ability to pay is necessary and “avoids the need to scour bits and pieces of information to try to glean what the district court may have considered.” *Id.* at 664 n.5 (emphasis omitted). Further, the district court’s order did not include a provision requiring a payment schedule or assign the responsibility for developing a schedule to another, as required by statute.

Because the district court did not follow the requirements of the restitution statute, it abused its discretion. Thus, we reverse and remand the matter to the district court solely for further proceedings on the issue of restitution consistent with this decision.

Affirmed in part, reversed in part, and remanded.