This opinion is nonprecedential except as provided by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
A22-0511

State of Minnesota,
Respondent,

vs.

Angela Marie Edge,
Appellant.

Filed February 21, 2023
Affirmed
Johnson, Judge

Mower County District Court
File Nos. 50-CR-19-2632, 50-CR-20-68

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

Kristen Nelsen, Mower County Attorney, Scott K. Springer, Assistant County Attorney, Austin, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sara J. Euteneuer, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Connolly, Judge; and Johnson, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

Angela Marie Edge pleaded guilty to a second-degree drug offense and to a charge of escape from custody. Before sentencing, she moved for a downward dispositional departure from the presumptive sentencing range on the ground that she is particularly

amenable to probation. The district court denied the motion. We conclude that the district court did not err by concluding that Edge is not particularly amenable to probation. Therefore, we affirm.

FACTS

In November 2019, Edge was arrested after state troopers found drugs and drug-related items in a vehicle that she was driving. Specifically, troopers found heroin, THC oil, drug paraphernalia, more than $4,000 in cash, numerous scales, and a drug ledger book.

In December 2019, the state charged Edge with first-degree controlled substance crime, in violation of Minn. Stat. § 152.021, subd. 2(a)(3) (2018), for possessing 25 or more grams of heroin; fifth-degree controlled substance crime, in violation of Minn. Stat. § 152.025, subd. 2(1) (2018), for possessing THC oil; and driving after revocation, in violation of Minn. Stat. § 171.24, subd. 2 (2018).

The district court initially ordered that Edge be detained with an opportunity for release upon payment of bail. Shortly after being charged, Edge asked the district court to order a furlough that would allow her to participate in an in-patient chemical-dependency treatment program. At a hearing in early January 2020, the district court granted her request, effective at 6:00 a.m. two days later. The district court specifically informed Edge that she must be either in treatment or in jail. Edge was released from jail, but she did not show up at the treatment facility and did not return to jail.

The next day, the state filed a new complaint in a second case, charging Edge with escape from custody, in violation of Minn. Stat. § 609.485, subd. 2(1) (2018). The court

issued a warrant for her arrest, and she was arrested one week later. The district court again ordered that she be detained with an opportunity for release upon payment of bail.

A few weeks later, Edge again requested a furlough, this time to participate in the Adult & Teen Challenge program. The district court again granted the request. The district court specifically instructed Edge to not "do what you did the last time" and informed her that she must report to jail within 24 hours if and when she is discharged from the program. Edge was transported to the Adult & Teen Challenge facility and participated in its treatment program.

In October 2020, Edge pleaded guilty to charges in both cases pursuant to a plea agreement. Specifically, she agreed to plead guilty to a charge of second-degree controlled substance crime, which is a lesser-included offense of the offense charged in count 1 of the first case, and to the escape-from-custody charge in the second case. In exchange, the state agreed to dismiss counts 2 and 3 in the first case, to agree to the imposition of concurrent sentences on the two offenses, and to not oppose a motion for a downward dispositional departure so long as Edge fully complied with the terms of the Adult & Teen Challenge treatment program.

Shortly after pleading guilty, Edge left the Adult & Teen Challenge treatment facility "against staff advice." She did not appear for a January 2021 sentencing hearing. The district court issued a warrant for her arrest. She was arrested five months later, in June 2021.

Before the rescheduled sentencing hearing, Edge moved for a downward dispositional departure and filed a memorandum of law. In support of the motion, she

submitted several letters of support. She also submitted a 22-page document entitled "dispositional recommendation report," which was prepared by a dispositional advisor employed by the office of the district public defender.

The district court held a sentencing hearing in January 2022. At the outset of the hearing, the district court stated that it had reviewed the pre-sentence investigation (PSI) report, the sentencing worksheets, a restitution affidavit, Edge's departure motion, the dispositional advisor's report and its supporting documents, and two letters from the department of corrections. Edge's attorney presented oral argument in support of the motion, and the prosecutor argued in opposition to the motion. Edge spoke in allocution. The district court acknowledged that the dispositional advisor's report had provided the court with a lot of information about Edge's circumstances. The district court commented that Edge has shown "insight into . . . the seriousness of [her] behavior" but has not shown remorse. The district court also found that Edge's "attitudes toward completing treatment" had not changed and, thus, she is not particularly amenable to probation. Accordingly, the district court concluded that there were no substantial and compelling reasons to depart from the presumptive sentence. The district court imposed concurrent prison sentences of 108 months on the drug offense and 23 months on the escape offense. Edge appeals.

DECISION

Edge argues that the district court erred by denying her motion for a downward dispositional departure.

The Minnesota Sentencing Guidelines generally provide for presumptive sentences for felony offenses. Minn. Sent'g Guidelines 2.C (2018). For any particular offense, the

presumptive sentence is "presumed to be appropriate for all typical cases sharing criminal history and offense severity characteristics." Minn. Sent'g Guidelines 1.B.13 (2018). Accordingly, a district court "must pronounce a sentence . . . within the applicable [presumptive] range unless there exist identifiable, substantial, and compelling circumstances to support a departure." Minn. Sent'g Guidelines 2.D.1 (2018). The sentencing guidelines provide non-exclusive lists of mitigating and aggravating factors that may justify a departure. *See* Minn. Sent'g Guidelines 2.D.3 (2018). One of the listed mitigating factors is "particular amenability to probation." Minn. Sent'g Guidelines 2.D.3.a(7).

If a defendant requests a downward dispositional departure, a district court first must determine whether "'mitigating circumstances are present'" and, if so, whether "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) (quoting *State v. Best*, 449 N.W.2d 426, 427 (Minn. 1989), and Minn. Sent'g Guidelines 2.D.1 (2012)). If so, the district court has discretion to order a downward dispositional departure. *Id.*; *Best*, 449 N.W.2d at 427. This court generally applies an abuse-of-discretion standard of review to a district court's denial of a motion for a downward dispositional departure. *Soto*, 855 N.W.2d at 307-08. But a district court has discretion to depart from the presumptive range "only if aggravating or mitigating circumstances are present; if aggravating or mitigating circumstances are not present, the trial court has no discretion to depart." *Best*, 449 N.W.2d at 427 (emphasis omitted). A district court abuses its discretion if "'its decision is based

on an erroneous view of the law.'" *Soto*, 855 N.W.2d at 308 n.1 (quoting *Riley v. State*, 792 N.W.2d 831, 833 (Minn. 2011)).

Edge moved for a downward dispositional departure based on the mitigating factor of "particular amenability to probation." *See* Minn. Sent'g Guidelines 2.D.3.a(7). The guidelines require that a defendant be *particularly* amenable to probation to "ensure that 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 (alteration in original) (quoting Minn. Sent'g Guidelines 2.D.1 (2012)); *see also* Minn. Sent'g Guidelines cmt. 2.D.303 (2018). In addition, the requirement of *particular* amenability "limits the number of departures and thus fosters uniformity in sentencing, which is a primary purpose of the Sentencing Guidelines." *Soto*, 855 N.W.2d at 309. In determining whether a defendant is particularly amenable to probation so as to justify a downward dispositional departure, a district court may consider, among other factors, "the defendant's age, . . . prior record, . . . remorse, . . . cooperation, . . . attitude while in court, and the support of friends and/or family." *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). A district court need not discuss all of the *Trog* factors. *State v. Pegel*, 795 N.W.2d 251, 254 (Minn. App. 2011).

On appeal, Edge has filed both a redacted brief and a confidential brief without redactions, and we have carefully reviewed and considered both versions. In her redacted brief, she contends that an analysis of the *Trog* factors should have led the district court to conclude that she is particularly amenable to probation. She contends that such a conclusion is supported by her "determination to continue working with treatment

programs and engage in programing," her remorse, her "motivation to change," and her community support. She also notes that she is 37 years old, which she asserts is an age with a lower risk for recidivism. In addition, she explains that her criminal-history score is due to significant trauma she has experienced, both as a child and as an adult.

In response, the state argues that, for multiple reasons, the record supports the district court's finding that Edge is not particularly amenable to probation. The state notes that Edge twice was furloughed from jail to a treatment program but escaped both times, either before or after arriving at the treatment programs. The state asserts that Edge has 16 prior felony convictions and has been on probation "multiple times" in the past with multiple failures. The state further asserts that, during the pre-sentence investigation, Edge did not maintain contact with the corrections agent who was preparing the PSI report. The state also contends that the district court's decision is supported by its finding that Edge does not have remorse.

A review of the most relevant factors leads to the conclusion that the district court did not err by determining that Edge is not particularly amenable to probation. The record lacks evidence that Edge is likely to succeed in chemical-dependency treatment if she were placed on probation. The record includes a letter from a manager of the Adult & Teen Challenge program, which emphasizes Edge's struggles in her prior treatment and expresses little optimism that she would succeed there if she were given another opportunity. In this way, the record is similar to the record in *Soto*, in which a diagnostic assessment refrained from stating that the appellant was particularly amenable to probation. 855 N.W.2d at 309.

In addition, the corrections agent who wrote the PSI report opined that probation is *not* appropriate and recommended that the district court impose a presumptive sentence. The dispositional advisor retained by Edge urged the district court to depart from the presumptive sentencing range but did not form any conclusion as to whether Edge is particularly amenable to probation. It is significant that Edge twice was furloughed from pre-trial detention to a treatment program, twice absconded, and twice was arrested and returned to jail. Edge's argument for reversal emphasizes her unfortunate and disadvantaged background. That argument may help explain her past conduct, but it does not explain why she is likely to behave differently in the future if she were placed on probation.

In addition, Edge's age does not tend to prove that she is particularly amenable to probation. At the time of sentencing, she was 37, the same age as the appellant in *Soto*. The supreme court rejected the appellant's age-based arguments in that case by stating, "We cannot see how being 'only' 37 years old could make Soto *particularly* amenable to probation relative to other defendants." *Id.* at 310. Edge's age-based argument fails for the same reason.

Furthermore, Edge's criminal history also supports the district court's decision. She has more than a dozen prior felony convictions and several additional convictions of gross-misdemeanor and misdemeanor offenses. Her criminal record is more serious than that of the appellant in *Soto*, who had five prior convictions. *Id.* at 311. The supreme court stated in that case that there was nothing in Soto's criminal history "that would set him apart and

make him particularly amenable to probation." *Id*. The same reasoning applies in this case.

Moreover, the district court's decision is supported by its finding that Edge does not have remorse, which is "just one of several" factors that may be considered. *See id*. Lastly, community support, by itself, cannot justify a departure. *See id.* at 312.

Thus, the district court did not err by concluding that Edge is not particularly amenable to probation and by denying Edge's motion for a downward dispositional departure.

Affirmed.