This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2010).

STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0210

State of Minnesota,
Respondent,

vs.

Melanie June Sledge,
Appellant.

Filed September 17, 2012
Affirmed
Schellhas, Judge

Otter Tail County District Court
File No. 56-CR-09-1619

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

David J. Hauser, Otter Tail County Attorney, Ryan C. Cheshire, Fergus Falls, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Sara J. Euteneuer, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Wright, Presiding Judge; Schellhas, Judge; and Larkin, Judge.

U N P U B L I S H E D O P I N I O N

SCHELLHAS, Judge

In this challenge to the postconviction court's denial of relief, appellant argues that the court erred by not reversing the imposition of a presumptive sentence for her

controlled-substance conviction because (1) her amenability to probation and treatment warranted a downward dispositional departure and the sentencing court insufficiently considered the *Trog* factors, and (2) appellant's history of mental-health and trauma issues warranted a downward dispositional departure. We affirm.

FACTS

Respondent State of Minnesota charged appellant Melanie Sledge with the crime of first-degree controlled-substance possession in violation of Minn. Stat. § 152.021, subd. 2(1) (2008). To that charge, Sledge entered an *Alford* plea in January 2010, admitting that, during a May 2009 search of her apartment, police recovered "more than 25 grams of methamphetamine" that she knew was there.[1] The district court accepted Sledge's plea and ordered Sledge to undergo a mental-health evaluation before sentencing.

Sledge's mental-health evaluation report detailed a "significant history" of "traumatic experiences" beginning at age three and "mental health problems," including "excessive[]" alcohol consumption beginning at age 13 and inhalant use beginning at age 15. The report noted that, although Sledge was supposed to be taking at least three psychiatric medications, she admitted to "a history of drinking binges lasting months at a time and during which she would discontinue her psychiatric medications" and that she "discontinued all of her medications about a month prior to [her] visit [with the evaluator]

[1] *See North Carolina v. Alford*, 400 U.S. 25, 37, 91 S. Ct. 160, 167 (1970) (upholding acceptance of plea even though defendant maintained innocence); *State v. Goulette*, 258 N.W.2d 758, 760–61 (Minn. 1977) (following *Alford* in accepting plea without admission of guilt).

and resumed drinking." The report further noted that a November 2008 report determined Sledge's prognosis to be "poor in regard to [her] ability to maintain abstinence."

The evaluator diagnosed Sledge with "Bipolar I Disorder, most recent episode manic with psychotic features"; "Posttraumatic Stress Disorder, chronic"; "Borderline Personality Disorder"; "Amphetamine Dependence, early full remission in a controlled environment"; "Alcohol Dependence, with psychological dependence, early full remission in a controlled environment"; and "Nicotine Dependence, with psychological dependence, early full remission in a controlled environment." The evaluator recommended that Sledge continue psychiatric care for "serious and persistent mental illness" and "opined with a reasonable degree of psychological certainty that without [sufficient] therapeutic endeavors, [Sledge] is of high likelihood to have future episodes requiring inpatient treatment and given her significant history of relapse and instability in regard to her mental health, her prognosis remains highly guarded."

Sledge moved for a downward departure based on her "amenability to probation," "willingness to enter into a chemical dependency treatment program and strong family support." The sentencing court denied Sledge's motion and sentenced her to the presumptive sentence of 98 months. The court acknowledged Sledge's mental-health diagnoses and that she had recently attempted to enroll in a substance-abuse treatment program but explained in detail numerous reasons why it concluded that no substantial and compelling reasons supported a downward departure. Sledge filed a postconviction-relief petition in September 2011, requesting that her sentence be reversed and remanded

for imposition of a "downward dispositional departure sentence." She did not request an evidentiary hearing, and the postconviction court denied her petition.

This appeal follows.

D E C I S I O N

Scope of Review

Although Sledge's notice of motion to the sentencing court referenced only a downward *durational* departure, Sledge's sole argument on appeal concerns her desire for a downward *dispositional* departure. Generally, appellate courts "will not decide issues which were not raised before the district court," but appellate courts may, in their discretion, "deviate from this rule when the interests of justice require consideration of such issues and doing so would not unfairly surprise a party to the appeal." *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996).

We exercise our discretion to review Sledge's appeal because, according to the record, Sledge has at every stage of this litigation argued in favor of a downward departure as if it were a downward dispositional departure. Moreover, we have no concerns that the state has been unfairly surprised on appeal because the state has never objected; at the sentencing hearing, the state treated Sledge's motion as one for a downward dispositional departure; and, on appeal, the state refers to Sledge's motion as a motion for a "dispositional departure."

Merits

Appellate courts apply the abuse-of-discretion standard to a postconviction court's denial of relief, *State v. Miller*, 754 N.W.2d 686, 707 (Minn. 2008), and to a sentencing

court's decision to not permit a downward sentencing departure, *State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006). "Departures from the presumptive sentence are justified *only* when substantial and compelling circumstances are present in the record." *State v. Jackson*, 749 N.W.2d 353, 360 (Minn. 2008). And "[i]t would be a rare case which would warrant reversal of the refusal to depart." *Id.*

Refusal to Dispositionally Depart Based on Amenability to Probation and Treatment

Sledge argues that the postconviction court abused its discretion by declining to grant her a downward dispositional departure because she was amenable to probation and treatment. Sledge's argument is unpersuasive. "A defendant's particular amenability to probation justifies a district court's decision to stay the execution of a presumptively executed sentence." *Bertsch*, 707 N.W.2d at 668. Sentencing courts may, "when justifying only a *dispositional* departure, . . . focus more on the defendant as an individual and on whether the presumptive sentence would be best for him and for society." *State v. Heywood*, 338 N.W.2d 243, 244 (Minn. 1983). But a sentencing court is not obligated to impose a downward dispositional departure merely due to a defendant's amenability to treatment in a probationary setting. *State v. Brusven*, 327 N.W.2d 591, 593 (Minn. 1982); *State v. Evenson*, 554 N.W.2d 409, 412 (Minn. App. 1996) ("Even assuming [the appellant] is exceptionally amenable to treatment, his amenability does not dictate the result."), *review denied* (Minn. Oct. 29, 1996).

In this case, the sentencing court found that Sledge did not have a sufficiently "strong orientation" to a treatment program outside of the prison system, based on the

court's past experience. *See State v. Case*, 350 N.W.2d 473, 475 (Minn. App. 1984) ("The sentencing court, in exercising its discretion, may go beyond the facts of any particular case and draw upon its own past experiences in other sentencing matters.").

Sledge also argues that the postconviction court abused its discretion because the sentencing court failed to consider all of the *Trog* factors, which she argues "reveal[] that [Sledge] was an excellent candidate for probation." Sledge's argument is unpersuasive. Under *Trog*, a defendant's "age," "prior record," "remorse," "cooperation," "attitude while in court," and "support of friends and/or family" are relevant to the issue of whether a defendant is amenable to treatment in a probationary setting. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). But sentencing courts are not required to "discuss all of the *Trog* factors before . . . impos[ing] the presumptive sentence" as long as they exercise their discretion by "deliberately considering circumstances for and against departure." *State v. Pegel*, 795 N.W.2d 251, 253–54 (Minn. App. 2011); *see State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985) ("Although the trial court is required to give reasons for departure, an explanation is not required when the court considers reasons for departure but elects to impose the presumptive sentence."). The record reflects that the sentencing court provided a detailed explanation at sentencing about its decision to deny Sledge's motion for a downward departure.

Refusal to Dispositionally Depart Based on Mental Impairment

Sledge also argues that the postconviction court abused its discretion because her significant history of mental impairments and trauma warranted a downward dispositional departure. Sledge's argument is unpersuasive. Sledge identifies two factors

which "may" justify a sentencing court's downward departure: (1) "[t]he offender, because of physical or mental impairment, lacked substantial capacity for judgment when the offense was committed" and (2) "[o]ther substantial grounds . . . which tend to excuse or mitigate the offender's culpability, although not amounting to a defense." Minn. Sent. Guidelines cmt. II.D.103(2)(a)(3), (5) (2008); *see also State v. Wilson*, 539 N.W.2d 241, 247 (Minn. 1995) (noting with respect to downward *durational* departures that "only *extreme* mental impairment justifies a mitigation of sentence"). Although the mental-health evaluator's report reveals that Sledge has a tragic personal history, we cannot say that this case presents one of the rare cases in which a sentencing court abused its discretion by declining to grant a downward departure.

Affirmed.