

*This opinion will be unpublished and  
may not be cited except as provided by  
Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A12-0519**

State of Minnesota,  
Respondent,

vs.

Shayne Carl Nelson,  
Appellant.

**Filed February 4, 2013  
Affirmed  
Ross, Judge**

Cass County District Court  
File No. 11-CR-11-630

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

Christopher J. Strandlie, Cass County Attorney, Benjamin T. Lindstrom, Assistant  
County Attorney, Walker, 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 Schellhas, Presiding Judge; Ross, Judge; and Kirk,  
Judge.

**UNPUBLISHED OPINION**

**ROSS**, Judge

After Shayne Nelson pleaded guilty to first-degree driving while impaired for  
operating a motor vehicle under the influence of a controlled substance, the district court

sentenced him to 42 months in prison followed by five years of conditional release. This sentence was a downward durational departure from the presumptive sentence but not the downward dispositional departure that Nelson had requested. Nelson appeals his sentence, arguing that the district court abused its discretion by failing to order a downward dispositional departure. Because the district court sentenced Nelson within its discretion, we affirm.

### **FACTS**

A Cass County sheriff's deputy stopped Shayne Nelson's car, suspecting drunk driving. Nelson failed field sobriety tests, but a preliminary breath test did not indicate that he had consumed alcohol. Nelson admitted to taking pain medication and presented two pill bottles to the deputy. The deputy found more pill bottles and a pill grinder in the front seat of Nelson's car. The deputy arrested Nelson and took him to a nearby hospital where Nelson provided a blood sample that indicated amphetamine, a schedule II controlled substance, as well as multiple schedule IV controlled substances.

The state charged Nelson with first-degree driving while impaired—operating a motor vehicle under the influence of a controlled substance under Minnesota Statutes sections 169A.20, subdivision 1(2), and 169A.24, subdivision 1(2) (2010). Nelson pleaded guilty. Because Nelson has been twice convicted of first-degree drunk driving (in 2005 and 2009) the presumptive guidelines sentence was imprisonment for 51 to 72 months. The state requested a sentence at the bottom end of that range. Nelson argued instead for a downward dispositional departure that would result in probation. The district court refused Nelson's request for a dispositional departure but did grant a downward

durational departure, sentencing Nelson to only 42 months in prison followed by five years of conditional release. Nelson appeals.

## D E C I S I O N

Shayne Nelson argues that the district court abused its discretion by refusing to depart downward dispositionally from the guidelines' presumptive incarceration sentence. We review a district court's decision not to downward depart for an abuse of discretion. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). If the record shows that the sentencing court "carefully evaluated all the testimony and information presented before making a determination," we will defer to the district court's exercise of discretion. *State v. Pegel*, 795 N.W.2d 251, 255 (Minn. App. 2011). The district court must order the presumptive sentence unless substantial and compelling circumstances justify a departure. *Kindem*, 313 N.W.2d at 7; Minn. Sent. Guidelines II.D. (2011). The supreme court predicted in 1981 that only in a "rare case" would the circumstances lead an appellate court to reverse a sentencing court's refusal to depart. *Kindem*, 313 N.W.2d at 7. That prediction has proven accurate, and this is not a rare case requiring the district court to grant a downward departure.

Nelson points to no substantial and compelling circumstances requiring the district court to grant a downward dispositional departure. The sentencing guidelines provide a nonexclusive list of factors that the district court may consider when considering departure. Minn. Sent. Guidelines II.D.2. The supreme court has also summarized factors bearing on whether a defendant is particularly suitable for treatment in a probationary setting, including age, prior record, remorse, cooperation, attitude in court, and the

support of family and friends. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). Nelson emphasizes that his offense did not involve alcohol, that he has not used alcohol for five years, that he accepted responsibility for his actions and cooperated with the court, and that probation has been successful for him previously. But the presence of mitigating factors does not require the district court to depart in sentencing. *State v. Wall*, 343 N.W.2d 22, 25 (Minn. 1984). And the district court is not required to discuss each factor before denying a departure request as long as it “deliberately considered circumstances for and against departure and exercised its discretion.” *Pegel*, 795 N.W.2d at 254.

The district court considered the reasons for and against departure. It recognized several mitigating factors and was persuaded by them to grant a downward *durational* departure; it simply did not find that the circumstances warranted a *dispositional* departure. The court considered that a prison sentence of 72 months was justified because of Nelson’s two prior felony first-degree driving-while-impaired convictions, but it chose a much lower 42-month sentence because the circumstances of this case differed factually from Nelson’s previous convictions, which had involved alcohol. The district court commended Nelson for taking the steps to restore his driver’s license, and it was satisfied that Nelson’s drug use was “an effort at self-medication for a work-related injury.” It discussed ordering probation, including the condition that Nelson participate in the Teen Challenge program, but the district court doubted Nelson’s eligibility. It is evident that the court weighed mitigating factors against the benefits of custodial treatment.

The district court's careful weighing of circumstances demonstrates that it exercised its proper discretion when it decided not to depart dispositionally. We see no abuse of discretion in the district court's sentencing.

**Affirmed.**