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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0933**

State of Minnesota,
Respondent,

vs.

Dale Lynn Lofgren,
Appellant.

**Filed February 19, 2013
Affirmed
Kalitowski, Judge**

Lake of the Woods County District Court
File No. 39-CR-10-308

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

Philip K. Miller, Lake of the Woods County Attorney, Baudette, Minnesota (for
respondent)

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

Considered and decided by Larkin, Presiding Judge; Kalitowski, Judge; and
Klaphake, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

KALITOWSKI, Judge

On appeal from his conviction of Conspiracy to Commit Controlled Substance Crime in the Third-Degree—Sale, in violation of Minn. Stat. § 152.023, subd. 1(1) (2008), appellant Dale Lynn Lofgren challenges the district court’s imposition of a guidelines sentence and argues that the district court abused its discretion by denying his motion for a downward dispositional departure. We affirm.

DECISION

We review a district court’s ruling on a motion for a sentencing departure for abuse of discretion. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). Only in a “rare” case will we reverse a district court’s imposition of a guidelines sentence. *Id.*

When considering a motion for a dispositional departure, the district court focuses “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). The district court may depart “if a defendant is particularly amenable to probation, but it is not required to do so.” *State v. Olson*, 765 N.W.2d 662, 664-65 (Minn. App. 2009). The supreme court stated in *Trog* that “[n]umerous factors, including the defendant’s age, his prior record, his remorse, his cooperation, his attitude while in court, and the support of friends and/or family, are relevant to a determination whether a defendant is particularly suitable to individualized treatment in a probationary setting.” *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982).

If the record reflects that the district court carefully evaluated all of the testimony and information presented before making a sentencing determination, we may not interfere with the district court's exercise of discretion. *State v. Pegel*, 795 N.W.2d 251, 255 (Minn. App. 2011). The district court need not address every *Trog* factor on the record. *Id.* at 254. And "an explanation is not required when the court considers reasons for departure but elects to impose the presumptive sentence." *State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985).

Appellant argues that the district court abused its discretion by denying his motion for a downward dispositional departure because his willingness to cooperate and admit guilt, his attitude in court, and his ability to comply with the conditions of probation indicate that he is amenable to treatment in a probationary setting. Appellant also argues that the district court erred by failing to address every *Trog* factor on the record. We disagree.

The record reflects that the district court considered all of the information presented: the district court stated that its sentencing determination was based on all of the testimony offered as well as the presentence investigation report (PSI). Furthermore, the district court asked for more details on appellant's proposed sentencing alternatives and took the matter under advisement to give the case "serious consideration."

Moreover, the district court specifically considered whether appellant was amenable to probation. The PSI disclosed that appellant had participated in numerous substance-abuse treatment programs and yet continued to commit drug-related crimes. The district court specifically referenced appellant's attempts at rehabilitation over the

past 25 years and appellant’s relapse while serving jail time in 2011. Although there was testimony that appellant had recently been complying with the terms of his probation, the district court considered all of the information available—not just appellant’s conduct in recent months—and concluded that appellant was not amenable to probation.

Additionally, the district court considered whether the presumptive sentence was in the best interests of appellant and society. Although the district court utilized a “theories-of-punishment” framework, the court’s conclusion that “incapacitating [appellant] for the next several years . . . will certainly reduce the number of victims of his criminal behavior,” demonstrates that the district court considered whether the presumptive sentence would be best for society.

Finally, the district court’s failure to explicitly address each *Trog* factor on the record was not error. As long as the district court considered all of the possible reasons for departure—which the district court did here by considering appellant’s motion, reviewing the PSI, and receiving testimony—it need not even explain its decision to impose a guidelines sentence. Nevertheless, the district court did explain its reasoning: appellant is not amenable to probation and a guidelines sentence is more appropriate for both appellant and society.

We conclude that the district court did not abuse its discretion when it denied appellant’s motion for a downward dispositional departure and imposed a guidelines sentence.

Affirmed.