STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0122

State of Minnesota,
Respondent,

vs.

Albert George Goerdt,
Appellant.

Filed October 15, 2013
Affirmed
Worke, Judge

St. Louis County District Court
File No. 69DU-CR-11-2791

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

Mark S. Rubin, St. Louis County Attorney, Nathaniel Todd Stumme, Assistant County Attorney, Duluth, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Richard Schmitz, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Presiding Judge; Worke, Judge; and Rodenberg, Judge.

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

WORKE, Judge

Appellant challenges his 144-month prison sentence following conviction for first-degree criminal sexual conduct, arguing that the district court abused its discretion by

denying his requests for a downward dispositional or durational sentencing departure. We affirm.

FACTS

In 2011, appellant Albert George Goerdt confessed to law enforcement that he had sexually molested his then-13-year-old step-daughter, G.L.E., in 2006. Although originally charged with six counts of first-degree criminal sexual conduct, appellant pleaded guilty to only one count of first-degree criminal sexual conduct in exchange for dismissal of all other counts.

Before imposing sentence, the district court ordered a psychosexual evaluation and presentence investigation (PSI). The PSI report noted that appellant gave differing accounts of the sexual assault and at times stated that he did not recall committing the crime. The PSI recommended that the court impose the presumptive sentence of 144 months. The psychologist who completed the psychosexual evaluation administered five tests and conducted a clinical interview. During the interview, appellant "denied ever having sexual contact with his step-daughter." The psychologist noted that appellant's test results were inconsistent, ruled out a neurological reason for this, and suggested that appellant was being defensive or deceptive, or was in denial.

Before sentencing, appellant, a military veteran, obtained documents from the United States Department of Veterans Affairs (VA) that could bear upon his sentence. The VA submitted 224 pages of confidential documents that include medical and psychological treatment notes. The documents establish that appellant served in active duty. He was deployed to Iraq in 1990-1991, and in 2010. He sustained a traumatic

brain injury in 1987 or 1988 when he was involved in a traffic accident and hit the windshield of a vehicle, and during his military service he was injured by mortar and roadside bomb detonations. Appellant was diagnosed with post-traumatic stress disorder (PTSD) in August 2008, and has a history of depression. Appellant reported seeing his "best friend crushed to death" while serving in the military. The VA documents do not make a recommendation as to any particular type of treatment that appellant should receive as a sex offender due to his mental-health conditions related to his military service.

G.L.E. submitted a victim-impact statement describing how she suffers from lack of trust and feels worthless because of appellant's conduct, how she was diagnosed with depression and PTSD after appellant's sexual assaults, and how she lost her family because of appellant's conduct, as they now refuse to speak with her. She also stated that she wants appellant to serve a prison sentence so that he can understand how he hurt her.

Appellant sought a downward dispositional sentencing departure. He argued that factors favoring his being placed on probation included his extensive cooperation with law enforcement, amenability to probation, lack of prior criminal record, remorse, extensive military career, attitude in court, support of family and friends, and particular suitability to treatment. The state strongly opposed a dispositional departure, but stated at sentencing that "[i]f the court wanted to grant a modest durational departure of . . . 12 months, the State would not oppose that." The probation officer noted that this was a "tough case," but did not alter his recommendation to impose the presumptive sentence after reviewing the VA documents, because to do so would ignore the impact on G.L.E.

The district court also noted the difficulty of the case but found that there were not substantial and compelling circumstances to support a dispositional departure, and imposed the 144-month presumptive sentence. The court referenced appellant's "exemplary" military record but found that it did not relieve the court of its obligation to impose the presumptive sentence.

D E C I S I O N

A district court must impose the presumptive guidelines sentence absent "identifiable, substantial, and compelling circumstances" justifying departure. Minn. Sent. Guidelines II.D (2006); see *State v. Misquadace*, 644 N.W.2d 65, 69 (Minn. 2002) (stating that sentencing departure is warranted if there are "substantial and compelling circumstances"). This court reviews a district court's sentencing decision for an abuse of discretion, and will not alter a sentence "as long as the record shows the sentencing court carefully evaluated all the testimony and information presented before making a determination." *State v. Van Ruler*, 378 N.W.2d 77, 80-81 (Minn. App. 1985); *see also State v. Franklin*, 604 N.W.2d 79, 82 (Minn. 2000). Only in a "rare case" with "compelling circumstances" will this court modify a presumptive sentence. *State v. Delk*, 781 N.W.2d 426, 428 (Minn. App. 2010) (quotations omitted), *review denied* (Minn. July 20, 2010).

Generally, a district court does not abuse its discretion by refusing to depart dispositionally "from a presumptively executed prison sentence, even if there is evidence in the record that the defendant would be amenable to probation." *State v. Olson*, 765 N.W.2d 662, 663 (Minn. App. 2009); *Van Ruler*, 378 N.W.2d at 81 (stating that when

"the record shows [that] the sentencing court carefully evaluated all the testimony and information presented before making a determination[,]" an appellate court will affirm the imposition of a presumptive sentence). This court reviews de novo whether there are substantial and compelling circumstances that merit a sentencing departure. *Dillon v. State*, 781 N.W.2d 588, 595 (Minn. App. 2010), *review denied* (Minn. July 20, 2010).

In considering whether to grant a dispositional departure, the district court considers the defendant's "particular amenability to individualized treatment in a probationary setting." *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). Relevant factors may include the defendant's age, prior record, remorse, attitude in court, and the support of friends or family. *Id*.

Appellant asserts that he should not have received the presumptive sentence because he self-reported the offense and because, as a military veteran, he qualified for special consideration. Minn. Stat. § 609.115, subd. 10 (2006) provides that when a veteran "appears in court and is convicted of a crime" and "has been diagnosed as having a mental illness," the district court may:

> (1) order that the officer preparing the [presentence investigation] report under subdivision 1 consult with the [VA], Minnesota Department of Veterans Affairs, or another agency or person with suitable knowledge or experience, for the purpose of providing the court with information regarding treatment options available to the defendant, including federal, state, and local programming; and
>
> (2) consider the treatment recommendations of any diagnosing or treating mental health professionals together with the treatment options available to the defendant in imposing sentence.

Here, the court received information from the VA that revealed appellant's diagnoses of PTSD and depression, but the VA did not include information linking these illnesses to appellant's criminal offense or to treatment options available to appellant. Because the VA materials did not offer the court a basis for an alternative disposition to the presumptive sentence, the district court did not abuse its discretion by imposing the presumptive sentence.

Appellant also argues that the district court erred by failing to consider the *Trog* factors in reaching its sentencing decision. While "the [district] 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." *Van Ruler*, 378 N.W.2d at 80. "The reviewing court may not interfere with the sentencing court's exercise of discretion, as long as the record shows the sentencing court carefully evaluated all the testimony and information presented before making a decision." *Id*. at 80-81. Here, the district court, on the record, acknowledged and considered the evidence presented before reaching its decision, which included the *Trog* factors argued by appellant. The court did all that it was legally required to do.

Alternatively, appellant argues that the district court failed "to consider the state's compromise proposal of a one[-]year downward durational departure." The state made the offer at the sentencing hearing. The court did not specifically address its reason for rejecting the state's offer, but the court's imposition of the presumptive sentence was an implicit rejection of the offer. Even if the parties agreed on a particular sentence

following trial, the court had no duty to impose that sentence as long as it imposed a sentence authorized by law.

The district court fully considered the information presented by the parties before imposing sentence. The district court carefully considered appellant's military records and weighed the statements of the victim, the probation officer, the psychologist, and appellant. The district court chose a presumptive sentence at the lower end of the presumptive range. Under these circumstances, we must affirm the district court's exercise of its discretion.

Affirmed.