**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A23-0813**

State of Minnesota,
Respondent,

vs.

Keonta Germaine Wickliffe,
Appellant.

**Filed July 1, 2024**
**Affirmed**
**Florey, Judge***

Hennepin County District Court
File No. 27-CR-21-22637

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

Mary F. Moriarty, Hennepin County Attorney, Elizabeth Scoggin, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Minnesota; and

Andrew C. Wilson, Special Assistant Public Defender, Wilson & Clas, Minneapolis, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Bjorkman, Judge; and Florey, Judge.

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

## NONPRECEDENTIAL OPINION

**FLOREY**, Judge

In this appeal from criminal conviction and sentencing, appellant argues that the district court abused its discretion by (1) failing to consider arguments both for and against departure before imposing a sentence at the top of the presumptive guidelines range and (2) denying his request for a downward dispositional departure. We affirm.

## FACTS

Respondent State of Minnesota charged appellant Keonta Germaine Wickliffe with (1) first-degree criminal sexual conduct in violation of Minn. Stat. § 609.342, subd. 1(e)(i) (2020); (2) kidnapping in violation of Minn. Stat. § 609.25, subd. 1 (2020); (3) third-degree criminal sexual conduct in violation of Minn. Stat. § 609.344, subd. 1(c); (4) domestic assault by strangulation in violation of Minn. Stat. § 609.2247, subd. 2 (2020); (5) malicious punishment of a child in violation of Minn. Stat. § 609.377, subd. 1 (2020); and (6) violating a domestic abuse no contact order (DANCO) in violation of Minn. Stat. § 629.75, subd. 2(b) (2020). The following facts were established at trial.

Wickliffe and the victim, M.J., started dating in high school. They had a child together when M.J. was 18 and Wickliffe was 19. Following repeated instances of domestic abuse by Wickliffe against M.J., the district court issued a DANCO against Wickliffe protecting M.J. and the child. The DANCO had no exceptions. Wickliffe continued to contact M.J. after the district court issued the DANCO.

On August 17, 2022, M.J. and the child were walking to a store when Wickliffe pulled up to them in a car. Wickliffe took the child from M.J.'s arms and told M.J. that he

would keep the child for several days. Wickliffe said that M.J. could either come with him or not, and M.J. decided to go with Wickliffe because she did not trust him with the child.

Wickliffe drove M.J. and the child to his mother's house, and Wickliffe's mother was at the home. The next day, Wickliffe's mother left, leaving M.J. and the child alone with Wickliffe. Wickliffe began physically assaulting M.J. in front of the child. When the child cried, Wickliffe slapped and punched the child. Wickliffe continued physically assaulting M.J., and then Wickliffe sexually assaulted M.J.

Wickliffe eventually left the house, and M.J. escaped with the child. On August 22, Wickliffe was arrested for violating the DANCO after going to the house where M.J. was staying.

The jury found Wickliffe guilty of all six charges. Prior to sentencing, a presentence investigation (PSI) and a psychosexual evaluation were completed. The PSI stated that Wickliffe "adamantly denies the offense," "considered [M.J.]'s story to be entirely fabricated," and "offers no remorse for [M.J.] or the offense." It added that Wickliffe's "willingness to following through and exacerbate his initial actions is of grave concern. [Wickliffe] is therefore deemed an ongoing risk to the victims and to community safety." The PSI recommend that the district court execute a sentence of 144 months' incarceration. The psychosexual evaluation recommended that Wickliffe complete sexual-offender treatment and opined that Wickliffe could benefit from psychiatric medication evaluation, individual therapy, substance use treatment, and domestic-violence programming.

At the sentencing hearing, the state requested an executed sentence of 168 months—the presumptive sentence prescribed by the sentencing guidelines. Wickliffe argued for a downward dispositional departure, noting that he was young and could benefit from treatment for his mental-health conditions.

The district court denied Wickliffe's request for a downward dispositional departure, explaining:

> Mr. Wickliffe, I don't typically say a whole lot at these sentencings. You are young, the victim in this case is young, you guys got together at a very young age, and there seemed to be difficulty going back and forth in [the] relationship and difficulty with the families and everything as it came out in the—in the hearing here, and it sounds like that's something you're—you're saying here. I didn't see anything in what the victim said, [M.J.] said, during her testimony that would indicate to me that things were so bad that she'd go as far as you are accusing her of going in this particular case.
>
> As I said, I did read the presentence report. Probation found no substantial and compelling reasons to depart. Your attorney's asking me to do that. In order for me to do that, I'd have to find that you are particularly amenable to probation. I don't find that. There's no remorse, no acceptance. And you're certainly welcome to maintain that you're—your innocence, but the jury convicted you of all these things, and that's what—what I have to go on as far as my—my sentencing in this—in this particular case.

The district court sentenced Wickliffe to an executed sentence of 201 months—the top of the guidelines range.

Wickliffe appeals.

## DECISION

Wickliffe argues that the district court abused its discretion by not adequately considering the reasons for and against a downward dispositional departure. Wickliffe also argues that the district court abused its discretion by not granting his request for a downward dispositional departure.

District courts have great discretion in the imposition of sentences, and appellate courts will not reverse the district court unless it abused its discretion. *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014). "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." *State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985). An appellate court "may not interfere with the sentencing courts exercise of discretion, as long as the record shows the sentencing court carefully evaluated all the testimony and information presented before making a determination." *Id.* at 80-81.

A sentence imposed in accordance with the sentencing guidelines is presumed to be appropriate. Minn. Sent'g Guidelines 2.D.1 (2021). And the district court can depart from the guidelines only if aggravating or mitigating circumstances are present. *Soto*, 855 N.W.2d at 308.

There are two types of sentencing departures, each serving different purposes. "A dispositional departure places the offender in a different setting than that called for by the presumptive guidelines sentence." *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016). Thus, "[a] dispositional departure typically focuses on characteristics of the defendant that show whether the defendant is particularly suitable for individualized treatment in a

probationary setting." *Id.* at 623 (quotation omitted). A durational departure changes the "length from the presumptive guidelines range." *Id.* Unlike dispositional departures, "[a] durational departure must be based on factors that reflect the seriousness of the offense, not the characteristics of the offender." *Id.* (emphasis omitted).

"[A] defendant's *particular* amenability to individualized treatment in a probationary setting will justify departure in the form of a stay of execution of a presumptively executed sentence." *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982) (emphasis added). The factors that can support a downward dispositional departure include "the defendant's age, his prior record, his remorse, his cooperation, his attitude while in court, and the support of friends and/or family." *Id.* The district court need not impose a downward dispositional departure even when a defendant is particularly amenable to probation. *State v. Olson*, 765 N.W.2d 662, 664–65 (Minn. App. 2009).

## I. The district court did not abuse its discretion because it properly considered Wickliffe's argument for a downward dispositional departure.

"If the district court has discretion to depart from a presumptive sentence, it must exercise that discretion by deliberately considering circumstances for and against departure." *State v. Pegel*, 795 N.W.2d 251, 253 (Minn. App. 2011); *see also State v. Curtiss,* 353 N.W.2d 262, 264 (Minn. App. 1984) (noting that the record had suggested factors for departure that the district court should deliberately consider). If the record shows that an exercise of discretion has not occurred, "the case must be remanded for a hearing on sentencing and for consideration of the departure issue." *Id.* But there is no

requirement that the district court address each *Trog* factor before denying a downward dispositional departure. *Id.* at 254.

The record shows that the district court considered the factors weighing for and against a downward dispositional departure before it denied Wickliffe's request. The district court said that it had reviewed the PSI and the psychosexual evaluation. These documents contained information about Wickliffe's amenability to probation, including *Trog* factors such as his young age, his lack of remorse, his lack of cooperation, and his lack of close family and friends. The PSI also included information on his criminal history, including a burglary charge as a juvenile, two pending charges for violating a DANCO, and pending charges for domestic assault. The PSI recommended Wickliffe complete chemical-dependency treatment but also noted that Wickliffe did not believe that he needed treatment or mental-health services. The psychosexual evaluation recommended that Wickliffe participate in sexual-offender treatment and suggested that he pursue treatment for his mental health and substance use. Before pronouncing the sentence, the district court reiterated that it had reviewed the PSI and then stated that it did not find Wickliffe particularly amenable to probation because "[t]here's no remorse, no acceptance."

In short, the district court evaluated the documents that contained information supporting a finding that Wickliffe was particularly amenable to probation and information that did not support a finding that Wickliffe was particularly amenable to probation. Then the district court noted two *Trog* factors that weighed against a downward dispositional departure and found that Wickliffe was not particularly amenable to probation. We conclude that the district court did not abuse its discretion because it evaluated the

arguments for and against a probationary sentence before it denied Wickliffe's request for a downward dispositional departure.

## II. The district court did not abuse its discretion by denying Wickliffe's request for a downward dispositional departure.

Wickliffe argues that the district court abused its discretion because three factors—his young age, his lack of prior felonies, and his need for treatment—favor a downward dispositional departure and because the district court focused on the severity of the offense instead of Wickliffe's personal characteristics when it denied his request.

Although several factors may have weighed in favor of a downward dispositional departure, even if a district court finds the existence of one or more *Trog* factors based on the record, the district court still need not depart. *Wells v. State*, 839 N.W.2d 775, 781 (Minn. App. 2013), *rev. denied* (Minn. Feb. 18, 2014). Moreover, the record supports the factors that weigh against a downward dispositional departure because Wickliffe lacked remorse and did not accept his responsibility after the jury found him guilty.

And although the district court did state that Wickliffe's offense was "more egregious than most of the . . . criminal sexual conduct cases," that was in the context of sentencing Wickliffe to a top-of-the-guidelines sentence. The district court properly focused on Wickliffe's characteristics that demonstrate that he is not particularly amenable to probation when it denied his request for a downward dispositional departure, and it properly focused on the characteristics of the offense when it decided his length of

incarceration.[1] We conclude that the district court did not abuse its discretion by denying Wickliffe's request for a downward dispositional departure.

**Affirmed.**

[1] We note that even though the district court determined that Wickliffe's offense was "more egregious than most," because the imposed sentence fell within the presumptive guidelines range, it was not a departure, and thus required no additional findings on the severity of the offense. *See State v. Jackson*, 749 N.W.2d 353, 359 n.2 (Minn. 2008) ("All three numbers in any given cell [on the sentencing guidelines grid] constitute an acceptable sentence based solely on the offense at issue and the offender's criminal history score—the lowest is not a downward departure, nor is the highest an upward departure."); *State v. Delk*, 781 N.W.2d 426, 428 (Minn. App. 2010) ("This court will not generally review a district court's exercise of its discretion to sentence a defendant when the sentence imposed is within the presumptive guidelines range."), *rev. denied* (Minn. July 20, 2010).