This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1087

State of Minnesota,
Respondent,

vs.

Jennifer Lynn Matter,
Appellant.

Filed July 22, 2024
Affirmed
Wheelock, Judge

Goodhue County District Court
File No. 25-CR-22-869

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

Stephen F. O'Keefe, Goodhue County Attorney, Erin L. Kuester, Assistant County Attorney, Red Wing, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Wheelock, Judge; and Ede, Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

In this direct appeal from her sentence for second-degree intentional murder, appellant argues that the district court abused its discretion by (1) denying her motion for

a downward dispositional departure and (2) sentencing her to the midpoint of the guidelines' presumptive sentencing range instead of the bottom. We affirm.

FACTS

In the evening hours of December 6, 2003, appellant Jennifer Lynn Matter gave birth to a live male infant on an isolated, deserted beach on a river in Goodhue County. She was 31 years old and the mother of two children, ages six and nine, at the time. She placed the infant on the sand near the water's edge without clothing or a blanket and left the beach with no intention of returning. Matter had not told anyone that she was pregnant and did not notify anyone about the existence or location of the infant. The following day, four teenagers found the infant dead on the beach.

Four years prior, in 1999, Matter had given birth to a female infant who may have been stillborn and placed the infant in a river in Goodhue County. The infant was found in the river a few days later. Matter did not tell anyone about this pregnancy or that she had given birth. Law enforcement investigated the incident, but they were unable to identify a suspect or any relatives of the female infant.

In 2004, the Federal Bureau of Investigation compared DNA samples from the two infants and determined that they were related. In 2007, the Minnesota Bureau of Criminal Apprehension (BCA) compared DNA samples and confirmed the same. At that time, law enforcement was still unable to identify any relatives of the two infants, and the case went cold.

In 2020, the Goodhue County Sheriff's Department began reinvestigating the case, and further genetic testing and investigative leads led law enforcement to identify Matter

as the potential mother of both infants. In April 2022, BCA investigators went to Matter's home and conducted a recorded interview with her. Matter denied being the mother of the 1999 infant, denied being pregnant in 2003, and refused the investigators' request for a voluntary DNA sample. Investigators then obtained a warrant for a DNA sample and collected a sample of Matter's DNA, which enabled them to confirm that Matter was the mother of both infants.

On May 5, 2022, investigators conducted a second interview. Matter explained that she was in a "bad mental state" in 1999. She had been in and out of jail, was drinking too much, and had experienced chaotic life circumstances for a long time. Matter then admitted that she was the mother of the 1999 infant and said that she had been unaware she was pregnant until she gave birth and that the infant was born blue, was not breathing, and was not crying. She told the investigators that she now knows she should have gotten help but that she was scared and her "mind was not there" at the time. Because Matter was drinking heavily then, she did not remember how much time passed between giving birth and placing the infant in the river, but she estimated that it was approximately one day.

Matter also initially denied being the mother of the 2003 infant, claiming that she did not remember a second infant, but later in the interview, she admitted she was the mother of that child, too. She explained that, although she had known she was pregnant, she did not receive prenatal care, did not intend to keep the child, and did not know what she was going to do with the child once it was born. She had considered adoption but did not have a plan in place before the child arrived.

When describing the incident, Matter said that she did not know she was about to give birth when she went to the beach that night; rather, she had gone to the isolated beach because she had a warrant out for her arrest and was trying to evade law enforcement. She admitted that the infant was breathing when born but asserted that she did not remember if the baby was crying. She also admitted that she did not call 911 or tell anyone about the infant but said she hoped that someone in the nearby houses would find the baby.

Respondent State of Minnesota charged Matter with second-degree intentional murder of the infant born in 2003 in violation of Minn. Stat. § 609.19, subd. 1(1) (2002). Matter pleaded guilty pursuant to a plea agreement. In the factual-basis portion of the plea petition, Matter admitted that the outdoor temperatures on the date of the offense would typically be at or below freezing, that she knew the infant would not survive in those conditions, and that her actions caused the death of the infant.

In exchange for Matter's guilty plea, the state agreed that (1) it would withdraw its motion to seek an aggravated sentence; (2) Matter could seek a downward sentencing departure; and (3) Matter's sentence would be capped at 326 months—the midpoint of the 2003 Minnesota Sentencing Guidelines' presumptive range of 319 to 333 months. *See* Minn. Sent'g Guidelines IV (Supp. 2003).

Matter moved for both a dispositional and a durational departure. In reaching its sentencing decision, the district court considered the following: Matter's testimony; 12 letters of support from Matter's family, friends, and employer; a letter written by law-enforcement investigators; the presentence-investigation report; arguments of counsel; and two written and oral victim-impact statements. The first victim-impact statement was

written by the father of one of Matter's children, born in 2008, and included a statement from that child as well. The father described an incident that occurred when Matter was approximately six months pregnant with the child in which she refused to call 911 or receive medical care after she sustained injuries in a serious car accident. He believed that Matter intentionally got into the accident in an attempt to end her pregnancy. The child's portion of the statement described the pain and negative impact of learning that her mother had abandoned the two infants and her traumatic childhood experiences of witnessing Matter's alcohol use, arrest by law enforcement, and dishonest and erratic behavior.

The second victim-impact statement was written by a couple who had volunteered to bury both infants with the couple's deceased daughter. The statement described their reaction to hearing about both incidents, how they worked with law enforcement to arrange the burials and funerals, support they received from the community, and their interviews with the media. The victim-impact statements and the state's argument opposing Matter's departure motions asserted that the victims of Matter's offense included the deceased infant, the teenagers who found the infant, the officers who handled the infant, and the officers and community members who expended effort and resources to solve the case.

The letters of support from Matter's family and friends show that Matter was treated poorly as a child, struggled with alcohol addiction, and lacked coping skills, but that she became a good mother to the two children she raised and was a loving grandmother. Her supporters noted that after Matter was charged and her actions came to light, she quit drinking alcohol, began working full time, and demonstrated motivation to make positive changes in her life. The letter from law enforcement advocated for a shorter prison

sentence based on Matter's difficult life circumstances at the time of the offense, positive life circumstances at the time of sentencing, and her cooperation at the end of the investigation.

The presentence-investigation report recommended the presumptive sentence while acknowledging the numerous mitigating circumstances that are described in the letters of support. After considering all of the information presented, the probation agent who wrote the report concluded that "there does not appear to be any one right answer" and stated that "[t]here is no punishment that 'fits' this crime; it will always be too much and too little."

The district court denied Matter's departure motions and imposed a 326-month prison sentence—the midpoint of the presumptive sentencing range. With regard to the dispositional-departure request, the district court acknowledged that some mitigating factors were present, including Matter's remorse, cooperation during the proceedings, support from friends and family, alcohol addiction and mental-health problems at the time of the offense, and current positive life circumstances. The district court noted, however, that at the time of the offense, Matter was in her thirties and already a mother—she was not a young girl who did not know what was happening with her body—and that she already had an extensive criminal record. Ultimately, the district court determined that staying Matter's sentence and placing her on probation was not warranted because the severity of the offense outweighed the mitigating factors.

With regard to the durational-departure request, the district court stated that Matter did not play a minor or passive role in the offense, the victim was clearly not the aggressor,

and Matter's conduct was not less serious than other second-degree intentional murders because of the vulnerability of the infant victim.

Matter appeals.

DECISION

Matter argues that the district court abused its discretion by (1) denying her motion for a downward dispositional departure and (2) sentencing her to the midpoint of the presumptive sentencing range instead of the bottom.

The Minnesota Sentencing Guidelines establish presumptive sentences for felony offenses. Minn. Stat. § 244.09, subd. 5(2) (2002); Minn. Sent'g Guidelines I (Supp. 2003). To determine an offender's presumptive sentence, the district court locates the cell on the applicable sentencing grid that appears at "the intersection of the column defined by the criminal history score and the row defined by the offense severity level." Minn. Sent'g Guidelines II.C (Supp. 2003); *see also* Minn. Sent'g Guidelines IV (providing sentencing grids). When the applicable cell contains three numbers, these numbers represent the offender's minimum presumptive sentence, maximum presumptive sentence, and presumptive "fixed" sentence. *State v. Jackson*, 749 N.W.2d 353, 359 n.2 (Minn. 2008); Minn. Sent'g Guidelines IV. A district court must impose a sentence in the presumptive range "unless the individual case involves substantial and compelling circumstances." Minn. Sent'g Guidelines II.D (Supp. 2003). "Because the guidelines' goal is to create uniformity in sentencing, departures are justified only in exceptional cases." *State v. Solberg*, 882 N.W.2d 618, 625 (Minn. 2016).

We may review any sentence "to determine whether the sentence is inconsistent with statutory requirements, unreasonable, inappropriate, excessive, unjustifiably disparate, or not warranted by the findings of fact issued by the district court." Minn. Stat. § 244.11, subd. 2(b) (2022). "Whether to depart from sentencing guidelines rests within the district court's discretion, and the district court will not be reversed absent an abuse of that discretion." *State v. Pegel*, 795 N.W.2d 251, 253 (Minn. App. 2011). "Only in a 'rare case' will a reviewing court reverse imposition of a presumptive sentence." *State v. Delk*, 781 N.W.2d 426, 428 (Minn. App. 2010) (quoting *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981)), *rev. denied* (Minn. July 20, 2010). An appellate court may not intrude on the district court's broad discretion in cases in which there are "arguments for departing downward" but "also reasons for not doing so." *Kindem*, 313 N.W.2d at 8. And we will 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 determination." *State v. Van Ruler*, 378 N.W.2d 77, 81 (Minn. App. 1985).

I. The district court acted within its discretion in denying Matter's motion for a downward dispositional departure.

Matter contends that that the district court abused its discretion when it denied her motion for a downward dispositional departure, arguing that there were substantial and compelling reasons to depart from the sentencing guidelines' presumptive imprisonment sentence because she is particularly amenable to probation.

When deciding whether to grant a downward dispositional departure, "a district court may consider both offender- and offense-related factors." *State v. Walker*,

913 N.W.2d 463, 468 (Minn. App. 2018). Offender-related factors focus on whether the defendant is particularly amenable to probation and may include "the defendant's age, [their] prior record, [their] remorse, [their] cooperation, [their] attitude while in court, and the support of friends and/or family." *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982) (discussing what are known as the *Trog* factors). A district court may also consider whether placing the defendant on probation would pose a threat to public safety. *State v. Soto*, 855 N.W.2d 303, 313 (Minn. 2014).

Offense-related factors focus on the proportionality of the sentence to the severity of the offense, meaning "whether the defendant's conduct was significantly more or less serious than that typically involved in the commission of the crime in question." *State v. Martinson*, 671 N.W.2d 887, 892 (Minn. App. 2003) (quotation omitted), *rev. denied* (Minn. Jan. 20, 2004). These factors include whether the defendant played a "minor or passive role" in the commission of the offense, *State v. Stempfley*, 900 N.W.2d 412, 418 (Minn. 2017) (quotation omitted), "the means by which the defendant committed the offense," and "the resulting damage or loss," *State v. Myers*, 416 N.W.2d 736, 738 (Minn. 1987) (quotation omitted), which may include the impact on any direct or indirect victims, *State v. Chaklos*, 528 N.W.2d 225, 229 n.2 (Minn. 1995). The sentencing guidelines state that mitigating factors that may support a downward dispositional departure include whether the victim was an aggressor, whether the defendant committed the offense "under circumstances of coercion or duress," and whether the defendant "lacked substantial capacity for judgment" because of physical or mental impairment not including the voluntary use of intoxicants. Minn. Sent'g Guidelines II.D.2.a (Supp. 2003).

Matter's argument focuses exclusively on the offender-related factors that make her amenable to probation: her remorse, cooperation and attitude, and support from friends and family. The district court acknowledged that these factors supported amenability to probation, and the record supports those findings. But the district court went on to state that it was denying the motion for a downward dispositional departure because "[t]he severity of the case far outweighs any amenability of Ms. Matter to probation or treatment." This statement demonstrates that the district court's decision was based on *offense*-related factors rather than *offender*-related factors. Matter does not argue that the district court erred by relying on offense-related factors or that the district court's findings on that subject are not supported by the record.

The state argues that the district court properly concluded that the offense was not less serious than a typical second-degree intentional murder because the victim was a newborn infant. The state points to two Minnesota appellate decisions affirming the denial of downward departures in cases in which mothers caused the death of their newborn infants. *State v. Kinsky*, 348 N.W.2d 319 (Minn. 1984); *State v. Heiges*, 779 N.W.2d 904 (Minn. App. 2010), *aff'd on other grounds*, 806 N.W.2d 1 (Minn. 2011).

The supreme court in *Kinsky* cited the following findings by the district court supporting its decision not to depart:

> [The] defendant's conduct manifested "a shocking disregard for the value of human life in infancy." In a sentencing statement, the trial judge noted that some of the factors present would have supported an upward departure in defendant's sentence, particularly the "vulnerability of the victim, her frailty, her absolute and total dependence upon her mother, the

> sudden manner in which her life was ended, and the indignity suffered upon her remains."

348 N.W.2d at 326. The district court here made strikingly similar findings, stating that the facts of this case would support an upward departure: the victim, a newborn infant, could not have been the aggressor; the court could not "conceive of a more vulnerable victim than a newborn infant"; and Matter did not play a passive role, but "rather, the opposite." The district court also considered that there was a long list of secondary victims, including Matter's family, law enforcement who investigated the case for decades, and members of the community who "were devastated by this case."

These findings demonstrate that the district court carefully considered the information before it and based its decision on appropriate factors pursuant to the sentencing guidelines and caselaw. We therefore conclude that the district court did not abuse its discretion by denying Matter's motion for a downward dispositional departure.

II. The district court acted within its discretion when it sentenced Matter to the midpoint of the presumptive sentencing range rather than the bottom.

Matter argues that the district court abused its discretion by imposing a sentence at the midpoint of the presumptive range instead of the bottom of the presumptive range and that we should exercise our authority to modify her sentence because compelling circumstances exist that warrant a shorter sentence. She does not argue that the district court should have granted her motion for a downward durational departure; rather, she argues that she deserves the shortest sentence that would not be deemed a departure.

"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." *Delk*, 781 N.W.2d at 428. When the sentence is within that range, we will not exercise our authority to modify it "absent compelling circumstances." *State v. Freyer*, 328 N.W.2d 140, 142 (Minn. 1982).

Matter argues that we should reduce her sentence based on the offender-related *Trog* factors and because three law-enforcement investigators supported a lower sentence. The Minnesota Supreme Court has explained that any sentence within the presumptive guidelines range "constitute[s] 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." *Jackson*, 749 N.W.2d at 359 n.2. In other words, "any sentence within the presumptive range . . . constitutes a presumptive sentence." *Delk*, 781 N.W.2d at 428. The district court had the discretion to sentence Matter within the presumptive guidelines range, and the 326-month midrange term imposed by the district court was a presumptive sentence. *See* Minn. Sent'g Guidelines IV; *see also Delk*, 781 N.W.2d at 428. And although it did, "the district court [was] not required to explain its reasons for imposing a presumptive sentence." *State v. Johnson*, 831 N.W.2d 917, 925 (Minn. App. 2013), *rev. denied* (Minn. Sept. 17, 2013). Based on the record, we conclude that the district court did not abuse its discretion by imposing a presumptive guidelines sentence of 326 months, and we will not exercise our authority to modify it because we discern no "compelling circumstances" to do so. *Freyer*, 328 N.W.2d at 142.[1]

[1] Matter also urges this court to reduce her sentence because "a justice system must have room for mercy and compassion," citing Justice Paul H. Anderson's concurring opinion in *State v. Streiff*, 673 N.W.2d 831, 841 (Minn. 2004) (Anderson, J., concurring). In *Streiff*, Justice Anderson's concurring opinion advised that the state, in exercising its prosecutorial

In sum, because the district court carefully considered the information before it, the district court did not abuse its discretion when it denied Matter's motion for a downward dispositional sentencing departure. And because we discern no compelling circumstances to warrant exercising our authority to modify her sentence, we affirm the district court's decision to impose the sentence duration of 326 months.

Affirmed.

discretion, should consider not only what is "just" but also what is "right." 673 N.W.2d at 839. Matter does not provide any analysis on how that discussion of prosecutorial discretion justifies the relief she seeks on appeal, and thus, we decline to address this issue. *See State v. Bursch*, 905 N.W.2d 884, 889 (Minn. App. 2017) (stating that an argument is inadequately briefed, and therefore forfeited, if it is "presented in a summary and conclusory form" and "fail[s] to analyze the law").