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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A13-0030**

State of Minnesota,  
Respondent,

vs.

Christopher Thomas Elioff,  
Appellant.

**Filed August 12, 2013  
Affirmed  
Halbrooks, Judge**

St. Louis County District Court  
File No. 69VI-CR-11-92

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

Mark S. Rubin, St. Louis County Attorney, Michelle M. Anderson, Assistant County Attorney, Virginia, Minnesota (for respondent)

Richard L. Swanson, Chaska, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Halbrooks, Judge; and Hooten, Judge.

**UNPUBLISHED OPINION**

**HALBROOKS**, Judge

On appeal following his conviction of first-degree driving while impaired (DWI), appellant argues that, because he is amenable to probation, the district court abused its

discretion by denying his motion for a dispositional departure. Because the district court acted within its discretion in sentencing appellant, we affirm.

### **FACTS**

In 2011, appellant Christopher Thomas Elioff was charged by amended complaint with two counts of first-degree DWI in violation of Minn. Stat. § 169A.20, subd. 1(1), (5) (2010); gross misdemeanor driving after cancellation in violation of Minn. Stat. § 171.24, subd. 5(1) (2010); and giving a false name to a peace officer in violation of Minn. Stat. § 609.506, subd. 2 (2010). He pleaded guilty to one count of first-degree DWI in exchange for the state's agreement to recommend a presumptive sentence and dismissal of the remaining charges.

As a part of the presentence investigation, Elioff underwent a psychological assessment. Elioff moved for a dispositional departure on the ground that the psychological assessment recommended long-term treatment to address his chemical dependency and because he has been diagnosed with a bipolar disorder and an antisocial-personality disorder. The state opposed a sentencing departure, citing Elioff's lack of cooperation in past treatment settings, as indicated in the psychological assessment; concerns of accountability, appropriate supervision, and public safety; and Elioff's record of antisocial and criminal behavior.

The district court denied Elioff's motion for a dispositional departure and imposed a presumptive sentence of 54 months' imprisonment. This appeal follows.

## DECISION

The decision to depart from the sentencing guidelines rests within the district court's discretion and will not be reversed absent an abuse of discretion. *State v. Misquadace*, 644 N.W.2d 65, 68 (Minn. 2002). Only in a "rare" case will we reverse a district court's imposition of the presumptive sentence. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

The district court may depart from a presumptive sentence under the sentencing guidelines only if "substantial and compelling" circumstances are present. *Id.* "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. Mendoza*, 638 N.W.2d 480, 483 (Minn. App. 2002), *review denied* (Minn. Apr. 16, 2002). Provided the district court "carefully evaluated all the testimony and information presented before making a [sentencing] determination," we will not interfere with the district court's exercise of discretion. *State v. Pegel*, 795 N.W.2d 251, 255 (Minn. App. 2011) (quotation omitted).

Elioff argues that the district court abused its discretion by denying his motion for a dispositional departure because he is "particularly amenable to probation." This assertion fails for two reasons. First, probation made no finding of amenability, and the district court expressly refused to find that Elioff was amenable to probation, explaining:

In order to depart from the guidelines, I have to find that you're amenable to probationary supervision, and . . . [because] you have basically served out your time as you have indicated here, we did have, in a sense, a trial run at

probationary conditions here for three months or two months, and you ignored them, you didn't follow them . . . .

I can't in good faith make the conclusion that you're amenable to probationary supervision . . . .

Second, a district court's refusal to depart from a presumptive sentence, even when there is record evidence that the defendant is amenable to probation, does not, alone, constitute an abuse of discretion. *State v. Olson*, 765 N.W.2d 662, 664-65 (Minn. App. 2009). Nor does the mere presence of a mitigating factor "obligate the [district] court to place defendant on probation or impose a shorter term than the presumptive term." *Pegel*, 795 N.W.2d at 253-54 (quotation omitted). Consequently, even if the district court had made a finding of amenability here, it would not have been required to depart.

Without any supportive evidence or analysis, Elioff also asserts that the district court failed to consider evidence concerning his motivation and need for treatment. The record belies that assertion. The district court heard extensive argument from both counsel concerning the appropriate sentence and whether a dispositional departure was warranted. Elioff was given ample opportunity to address the district court, and Elioff availed himself of that opportunity by speaking at length about his psychological condition. In imposing the presumptive sentence, the district court responded in detail to many of Elioff's arguments and concerns, even though it was not required to explain its decision. *See State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985) (holding that the district court is required to give reasons for a departure but not for imposition of a

presumptive sentence). And with respect to Elioﬀ's need and desire for treatment, the district court responded:

I don't dispute anything that is in the psychological evaluation . . . . I've read through it all . . . . You have been in long-term treatment at Teen Challenge, you have been at a couple other treatment programs since 2010 . . . . None of that has worked . . . .

Contrary to Elioﬀ's assertion, the record reveals in no uncertain terms that the district court directly considered Elioﬀ's need for treatment and, importantly, whether Elioﬀ demonstrated the capability to comply with out-of-custody treatment.

Because the district court weighed the circumstances both for and against a departure and based on the information and evidence presented, we have no difficulty concluding that the district court acted well within its discretion by sentencing Elioﬀ to the presumptive term of imprisonment.

**Aﬃrmed.**