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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A06-2364**

State of Minnesota,  
Respondent,

vs.

Reginald Flowers,  
Appellant.

**Filed April 15, 2008  
Affirmed  
Minge, Judge**

Ramsey County District Court  
File No. KX-05-2664

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

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Lawrence Hammerling, Chief Appellate Public Defender, James R. Peterson, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Minge, Presiding Judge; Kalitowski, Judge; and Connolly, Judge.

## **UNPUBLISHED OPINION**

**MINGE**, Judge

Appellant argues that the district court abused its discretion by refusing to grant him a downward sentencing departure, and that it erred in failing to issue written findings regarding his motion for such a departure. Because the record indicates that the district court considered appellant's request and because there is no requirement that the district court issue written findings when imposing a presumptive sentence, we affirm.

### **FACTS**

On June 23, 2005, officers executed a search warrant at appellant Reginald Flowers's residence. Officers found a semiautomatic pistol in the kitchen on the top of a cupboard. When asked, appellant stated that he had gotten the gun from a friend, and that he had the gun for his own protection. Appellant subsequently pleaded guilty to unlawful possession of a handgun.

Appellant moved for a downward sentencing departure. The district court denied his request, and imposed the mandatory-minimum sentence of 60 months in prison. This appeal follows.

### **DECISION**

Appellant claims that the district court abused its discretion in denying his motion for a downward departure from the presumptive sentence. On appeal, a departure from the sentencing guidelines is reviewed for abuse of discretion. *State v. Geller*, 665 N.W.2d 514, 516 (Minn. 2003). A district court must order the presumptive sentence provided for in the sentencing guidelines unless the case involves substantial and

compelling circumstances that warrant a downward departure. Minn. Sent. Guidelines II.D; *see also State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). “[I]n exercising the discretion to depart from a presumptive sentence, the judge must disclose in writing or on the record the particular substantial and compelling circumstances that make the departure more appropriate than the presumptive sentence.” Minn. Sent. Guidelines II.D. This court reviews a sentencing departure to determine whether the district court has stated proper grounds for the departure, or whether such grounds appear in the record. *State v. Carter*, 424 N.W.2d 821, 823 (Minn. App. 1988).

The Minnesota Sentencing Guidelines provide a list of non-exclusive factors that a district court may use as reasons for granting a downward departure. Minn. Sent. Guidelines II.D.2. Although amenability to probation is not so listed, a district court may impose probation “in lieu of an executed sentence when the defendant is particularly amenable to probation.” *State v. Gebeck*, 635 N.W.2d 385, 389 (Minn. App. 2001). In determining a defendant’s amenability to probation, the district court may consider the defendant’s age, prior record, remorse, cooperation, attitude while in court, and the support of friends or family. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). The district court may focus on the defendant as an individual and determine whether the presumptive sentence would be best for the defendant and society. *State v. Heywood*, 338 N.W.2d 243, 244 (Minn. 1983).

Appellant was 28 at the time of the offense at issue. His record indicates that in 1997 he was convicted in Illinois of a controlled-substance crime and of possession of a stolen motor vehicle. In 2001, he was convicted of a DWI and placed on probation.

Shortly after the current unlawful-possession-of-a-firearm charge, appellant was also charged with drug possession. The drug-possession charges were dismissed pursuant to his plea agreement regarding this firearm offense. Appellant told the district court that he was remorseful for his unlawful possession of a firearm. He also stated that he had the support of his fiancé and that he wanted to be a good father to his two children, to own a house, and to have a successful business. He asserted that he needed treatment for his drug addiction.

Appellant moved for a sentencing departure and presented his arguments in writing and then orally to the district court. The district court acknowledged that it had the opportunity to review the motion and memoranda and that it had considered the oral arguments. The district court then stated,

Before I sentence you, sir, I want to tell you that I think your attorney's [sic] made some really great arguments on your behalf today. The fact that you committed two felonies when you were only maybe 20 speaks well that you managed to keep your record clean until 2006.

On the other hand, the state made some good points. You've made two mistakes this year, at least two that you were caught doing: One was having the firearm when you knew you shouldn't; and one was having drugs when you knew you shouldn't. And anyone who cares about their family or their children or their fiancé wouldn't have a loaded pistol or gun hidden in a house, in my opinion, and they certainly wouldn't be doing drugs. And whether or not you're an addict, it worries me that drugs and guns together don't mix, and that's probably why the FORCE unit was at your house looking for those things because they are usually found together. You are a young man, and I hope that you can get some help for yourself. But I do not see that you are the type of person that would qualify for a departure.

So, as a result, I am going to sentence you to 60 months pursuant to the Sentencing Guidelines Commission. . . .

Although several factors appear to have weighed in appellant's favor, the district court has broad discretion when refusing to depart. *See Kindem*, 313 N.W.2d at 7; *see also Geller*, 665 N.W.2d at 516 (stating that we review for abuse of discretion). The district court was influenced by appellant's recent drug-related charges in declining to find grounds for a downward sentencing departure.

We conclude that the district court's determination that appellant was not a candidate for a downward sentencing departure was not an abuse of discretion.

## II.

Appellant also claims that the district court erred when it failed to issue written findings of fact regarding his motion for a downward dispositional sentencing departure. Minn. Stat. § 244.10, subd. 1 (2006) provides that “[a]t the conclusion of the sentencing hearing or within 20 days thereafter, the court shall issue written findings of fact and conclusions of law regarding the issues submitted by the parties, and shall enter an appropriate order.” The Minnesota Rules of Criminal Procedure provide:

At the conclusion of the sentencing hearing, the court may state into the record findings of fact, conclusions of law, and appropriate order on the issues submitted by the parties. Otherwise, the court shall issue written findings of fact, conclusions of law, and appropriate order within twenty days of the conclusion of the sentencing hearing.

Minn. R. Crim. P. 27.03, subd. 1(F). Arguably, the statute requires written findings regarding any “issues submitted by the parties,” including motions for sentencing

departures. *See* Minn. Stat. § 244.10, subd. 1. By contrast, the rule clearly allows a “state[ment] into the record” regarding such a motion.<sup>1</sup> *See* Minn. R. Crim. P. 27.03, subd. 1(F). There are no reported cases that interpret the statutory language.

Minnesota courts have long held that after a sentencing hearing, the district court need only make written findings if it determines that there is a justification for departure from the guidelines. *State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985) (“Although 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.”); *State v. Curtiss*, 353 N.W.2d 262, 263 (Minn. App. 1984) (“The trial court must explain in writing a decision to depart, but a written explanation is not required when the court considers reasons for departure but elects to impose the presumptive sentence.”).<sup>2</sup>

Here, the district court stated, on the record, the points that weighed in favor of and against granting a downward departure. Appellant was present at the hearing, and the district court told him the rationale behind the decision on the motion. In addition, a transcript of the record has been prepared. We conclude that separate written findings were not required.

**Affirmed.**

Dated:

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<sup>1</sup> The Minnesota Sentencing Guidelines do not address what, if any, findings or explanation the district court need give when denying a motion to depart. They only require findings for a departure. Minn. Sent. Guidelines II.D.

<sup>2</sup> We note that Minn. Stat. § 244.10, subd. 1, in its present form, predates both *Van Ruler* and *Curtiss*.