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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1849**

State of Minnesota,
Respondent,

vs.

Rage NMN Ibrahim,
Appellant.

**Filed November 10, 2009
Affirmed
Stoneburner, Judge**

Ramsey County District Court
File No. 62K907003034

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

Susan Gaertner, Ramsey County Attorney, Mark Nathan Lystig, Assistant County Attorney, Ramsey County Government Center West, 50 West Kellogg Boulevard, Suite 315, St. Paul, MN 55102 (for respondent)

Marie Wolf, Interim Chief Public Defender, Suzanne M. Senecal-Hill, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Lansing, Presiding Judge; Stoneburner, Judge; and Johnson, Judge.

UNPUBLISHED OPINION

STONEBURNER, Judge

Appellant challenges the district court's denial of his motion for a downward dispositional departure in sentencing for his conviction of first-degree criminal sexual conduct. Because the record demonstrates that the district court deliberately considered the reasons for and against a departure and supports the district court's denial of the departure motion, we affirm.

FACTS

Appellant Rage Ibrahim was convicted by a jury of first-degree criminal sexual conduct, in violation of Minn. Stat. § 609.342, subd. 1(e)(i) (2006). Ibrahim's conviction is based on evidence that he chased I.K. into the common hallway of an apartment building, threw her to the ground, punched her, removed her underwear, digitally penetrated her, and attempted to have sexual intercourse with her.

At sentencing, Ibrahim moved for a downward dispositional departure from the presumptive sentence, arguing that he is amenable to probation and deserves a downward dispositional departure. Ibrahim emphasized the tragic events of his childhood in Somalia and his subsequent ongoing issues with depression and alcohol abuse that he is now willing to address. The district court acknowledged Ibrahim's tragic past, but concluded that "concerns for public safety" outweigh Ibrahim's interests, denied Ibrahim's motion, and sentenced him to a presumptive sentence of 144 months (12 years) in prison.

Ibrahim appeals his sentence, arguing that the district court abused its discretion when it denied his motion for a downward dispositional departure.

D E C I S I O N

The decision to depart from the sentencing guidelines rests within the district court's discretion and will not be reversed absent a clear abuse of that discretion. *State v. Givens*, 544 N.W.2d 774, 776 (Minn. 1996). Appellate courts rarely interfere with a decision to impose a presumptive sentence. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

Ibrahim asks this court to reverse his sentence and remand to the district court to impose a downward dispositional departure, citing his lack of criminal history, his ability to be a productive member of society, the support of his community, his remorse for his crime, and his current willingness to address and seek treatment for his "issues." Ibrahim argues that these factors make him amenable to probation and support a downward departure. Ibrahim details horrific events that he claims to have experienced as a child in Somalia. Ibrahim asserts that these experiences have caused him to turn to alcohol and make poor decisions when he drinks.

The district court has the discretion to depart from the presumptive sentence set forth in the Minnesota Sentencing Guidelines when substantial and compelling circumstances exist. Minn. Sent. Guidelines II.D (2006); *State v. Garcia*, 302 N.W.2d 643, 647 (Minn. 1981). Substantial and compelling circumstances are circumstances that make the defendant's conduct more or less serious than in a typical case. *State v. Misquadace*, 644 N.W.2d 65, 69 (Minn. 2002). A defendant's particular amenability to

probationary treatment may also justify a downward dispositional departure. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). Amenability to treatment focuses on the defendant's individual characteristics and the interests of society. *Id.* In assessing a defendant's amenability to treatment, the district court may consider a host of factors, including age, remorse, cooperation, attitude in court, and family support. *Id.* The district court must exercise its discretion, weighing the reasons for and against departure, when determining whether a departure is appropriate. *State v. Curtiss*, 353 N.W.2d 262, 263–64 (Minn. App. 1984).

In this case, the district court heard and considered Ibrahim's arguments in favor of a departure and the state's arguments in favor of a presumptive sentence. The district court stated that it recognized that Ibrahim's "past is full of tragedy" and that it "seriously considered" Ibrahim's request for a departure. The record reflects that the district court made its decision to deny Ibrahim's motion after deliberately considering the reasons for and against a downward dispositional departure.

The record shows that Ibrahim was a productive member of society before his incarceration, that he has the support of his family and imam, and that he is remorseful for his criminal sexual conduct and willing to seek treatment for his "issues." But Ibrahim's lack of criminal history has already been taken into account in the determination of his presumptive sentence, which was calculated with a zero criminal-history score, and his voluntary use of alcohol is not a mitigating factor supporting downward departure. Minn. Sent. Guidelines II.D.2.a(3).

Whether a person is a danger to the community bears on the appropriateness of a dispositional departure. *State v. Wall*, 343 N.W.2d 22, 25 (Minn. 1984) (citing *State v. Heywood*, 338 N.W.2d 243, 244 (Minn. 1983)). And Ibrahim himself admits that he is a “danger to the public” when he drinks. We conclude that the district court did not abuse its discretion by denying Ibrahim’s motion for a downward dispositional departure based on concerns for public safety.

Affirmed.