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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-965**

State of Minnesota,
Respondent,

vs.

Elfego Palma-Carrillo,
Appellant.

**Filed May 4, 2010
Affirmed
Randall, Judge***

Ramsey County District Court
File No. 62-CR-08-12959

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

Susan Gaertner, Ramsey County Attorney, Mitchell L. Rothman, Assistant County Attorney, St. Paul, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Sharon E. Jacks, Assistant State Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Toussaint, Chief Judge; Larkin, Judge; and Randall,
Judge.

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

UNPUBLISHED OPINION

RANDALL, Judge

Appellant challenges the district court's denial of his motion for a dispositional departure, to impose a probationary sentence rather than a prison term, for his first-degree controlled substance offense conviction. We conclude that the district court did not abuse its discretion in denying appellant's request for a dispositional departure. Affirmed.

FACTS

Appellant Elfego Palma-Carrillo was charged in an amended complaint with first-degree controlled substance offense (possession of 25 or more grams of methamphetamine), after he was arrested for possession of a bag containing 225 grams of methamphetamine during a controlled buy. Appellant pleaded guilty to the charge and moved for a dispositional departure, or in the alternative, for a durational departure from the presumptive 74-month prison sentence.

At the sentencing hearing, appellant's counsel claimed that appellant was amenable to probation and that his role in the offense was minimal because he was merely a "mule" delivering the drugs to the confidential informant who was working with police. Counsel also emphasized that the probation agent preparing the presentence investigation report (PSI) found appellant amenable to probation, and noted that appellant had accepted responsibility for his conduct, did not have a serious criminal record, had a strong employment history, and assisted correctional officers while he was detained after his arrest.

The district court denied the motion for a dispositional departure but granted a slight downward durational departure from the presumptive sentence, imposing a 62-month prison sentence. This appeal followed.

D E C I S I O N

A district court may depart from the sentencing guidelines if substantial and compelling circumstances are present. Minn. Sent. Guidelines II.D. A court has broad discretion to depart if aggravating or mitigating circumstances are present. *State v. Best*, 449 N.W.2d 426, 427 (Minn. 1989). Generally, only a rare case merits reversal of the refusal to depart. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

Appellant claimed that he is amenable to probation and that he was merely a “mule” who had been hired to deliver the drugs to the confidential informant who was working with police. A district court may impose a dispositional departure and place a defendant on probation “if the defendant is particularly amenable to probation or if offense-related mitigating circumstances are present.” *State v. Donnay*, 600 N.W.2d 471, 473-74 (Minn. App. 1999) (quotation omitted), *review denied* (Minn. Nov. 17, 1999).

There are several facts that would support a finding that appellant is amenable to probation: he was 36 years old, his criminal record consisted of one traffic violation, he had a consistent employment history in the construction field, and he was extremely helpful to jail staff during his detention. *See State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982) (listing factors to consider when determining amenability to probation). The agent preparing the PSI stated that appellant was “very cooperative during the pre-sentence

investigation interview,” that he “maintains that he was unaware that the package he was delivering contained 225 grams of methamphetamine,” and that he “was to be paid \$200 for his involvement.” The agent nevertheless stated that “[w]hile it does appear that [appellant] would be amenable to probation, the amount of drugs involved in the offense warrants a Guideline Sentence.”

The district court did not focus solely on the amount of drugs involved when rejecting appellant’s request for a dispositional departure. Rather, the district court indicated that for several reasons it did not fully believe appellant’s claim that he played a passive role in the commission of this crime. *See* Minn. Sent. Guidelines II.D.2.a.(2) (listing fact that “offender played a minor or passive role in the crime” as a mitigating factor potentially justifying departure). The court noted that there was no indication that anyone else was involved in the transaction; the confidential informant dealt solely with appellant and knew him by name; and because the amount of drugs was so substantial, appellant’s claim that he was merely “delivering” the drugs and did not really know what was in the bag was not believable to the court.

The district court was entitled to disbelieve appellant’s claim that he was a passive participant. *See State v. Sejnoha*, 512 N.W.2d 597, 600 (Minn. App. 1994) (stating reviewing court must defer to district court’s assessment of sincerity and depth of remorse and weight it should receive in sentencing decision), *review denied* (Minn. Apr. 21, 1994). Even if appellant only played a minor role in this crime, the existence of a mitigating factor does not *obligate* a court to depart from the presumptive sentence. *See*

State v. Oberg, 627 N.W.2d 721, 724 (Minn. App. 2001), *review denied* (Minn. Aug. 22, 2001).

Affirmed.