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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-514**

State of Minnesota,
Appellant,

vs.

Leslie James Grinsteinner,
Respondent.

**Filed November 23, 2010
Affirmed
Halbrooks, Judge**

Dakota County District Court
File No. 19HA-CR-09-1585

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

James C. Backstrom, Dakota County Attorney, Amy A. Schaffer, Assistant County Attorney, Hastings, MN 55033 (for appellant)

David W. Merchant, Chief Appellate Public Defender, Ngoc Nguyen, Assistant Public Defender, St. Paul, Minnesota (for respondent)

Considered and decided by Stauber, Presiding Judge; Halbrooks, Judge; and
Stoneburner, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant State of Minnesota challenges the district court's decision to grant respondent Leslie J. Grinsteinner's motion for a downward dispositional sentencing

departure following his conviction of first-degree driving while impaired (DWI). Because we conclude that the district court acted within its discretion in sentencing respondent, we affirm.

FACTS

On March 29, 2009, respondent was arrested for first-degree DWI, first-degree test refusal, and fleeing a police officer. On October 21, 2009, respondent entered a straight plea to one count of first-degree DWI, and the state dismissed the remaining charges. The district court ordered a presentencing investigation (PSI) and allowed the parties to submit sentencing briefs. Based on his plea, respondent was subject to a mandatory sentence of not less than three years, pursuant to Minn. Stat. § 169A.276, subd. 1(a), (b) (2008). The presumptive guidelines sentence was 66 months in prison.

Respondent moved for a downward dispositional departure on the grounds that he felt remorse, had completed extensive treatment programming while at the Dakota County jail, had the support of family and friends, and was amenable to further treatment. Respondent acknowledged that he made a mistake and stated that he had been sober for three years prior to committing this offense. Respondent's family members submitted letters to the district court in support of his motion, detailing their support of respondent's efforts to maintain his sobriety. Respondent also submitted letters from his sponsor at Alcoholics Anonymous, his employer, an organization through which respondent completed his community-service requirements, his supervisor for the Inmate Worker crew at the Dakota County jail, and the Inmate Outreach Coordinator for the Dakota County jail. All of these letters described respondent in positive terms and stated that

respondent had shown an interest in changing his behavior. The PSI recommended a 66-month presumptive sentence. The state requested the presumptive sentence of 66 months, noting that this was respondent's third felony DWI offense, and argued that the fact that respondent committed this offense while on conditional release from his prior offenses demonstrated his lack of amenability to probation.

The district court sentenced respondent to 79 months, but stayed execution of the sentence for seven years. The district court found that respondent is amenable to probation and treatment and that he has demonstrated remorse for his actions. This appeal follows.

D E C I S I O N

The district court has broad discretion to depart from the presumptive sentence provided by the sentencing guidelines. *State v. Gassler*, 505 N.W.2d 62, 69 (Minn. 1993); *State v. Anderson*, 463 N.W.2d 551, 555 (Minn. App. 1990) (applying the abuse-of-discretion standard in evaluating a district court's refusal to grant a motion for a downward departure), *review denied* (Minn. Jan. 14, 1991). If the district court states its reasons for a departure, a reviewing court examines the record to determine if the reasons given justify the departure. *Williams v. State*, 361 N.W.2d 840, 844 (Minn. 1985).

The state argues that the record does not support the district court's conclusion that respondent is amenable to probation and treatment. The district court should consider a number of factors when determining whether a defendant is amenable to probation, including the individual's age, prior record, remorse, cooperation, attitude while in court, and the support of friends and family. *State v. Trog*, 323 N.W.2d 28, 31

(Minn. 1982). Here, the record reflects that respondent expressed remorse for his actions, that he had participated in and completed treatment programs while he was in jail for this offense, and that he has a strong support network of friends and family. Furthermore, respondent was sober for three years before he committed this offense, and the record reflects that respondent has the motivation to remain active in recovery and abstain from alcohol use.

The state relies on *State v. Carter*, 424 N.W.2d 821 (Minn. App. 1988), to support its argument that the record does not support the district court's reasons for a departure. We find *Carter* to be factually distinguishable from respondent's case. In *Carter*, the district court's stated reasons for departing downward from the presumptive sentence did not justify the departure; thus, we independently examined the record to determine whether Carter's argument that he was amenable to probation supported a departure. 424 N.W.2d at 823-24. We concluded that the record did not support such a finding because Carter repeatedly failed treatment programs, remained sober for a period of a few months only, and the record did not indicate that he expressed any desire to become or remain sober. *Id.* at 823-25.

Here, respondent maintained three years of sobriety in the recent past, has expressed his desire to remain sober, and has an impressive network of support. These facts offer adequate record support for the district court's conclusion that respondent is amenable to probation and treatment. While a different district court may have acted within its discretion by denying respondent's motion for a downward dispositional departure, that alone is not grounds for us to conclude that this district court abused its

discretion by granting that motion. *See State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006) (stating that while another district court might have exercised its discretion differently on a downward-departure motion, that did not constitute a “rare case” warranting interference by the appellate court). The record adequately supports the district court’s reasons justifying a downward departure.

We therefore conclude that it was not an abuse of the district court’s broad discretion to grant respondent’s motion for a downward dispositional sentencing departure.

Affirmed.