STATE OF MINNESOTA
IN COURT OF APPEALS
A10-199

State of Minnesota,
Respondent,

vs.

Damian Mata,
Appellant.

Filed December 21, 2010
Affirmed
Toussaint, Judge

Polk County District Court
File No. 60-CR-09-1703

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

Gregory A. Widseth, Polk County Attorney, Crookston, MN (for respondent)

David W. Merchant, Chief Appellate Public Defender, Andrea G. M. Barts, Assistant Public Defender, St. Paul, MN (for appellant)

Considered and decided by Toussaint, Presiding Judge; Ross, Judge; and Huspeni, Judge.*

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

U N P U B L I S H E D O P I N I O N

TOUSSAINT, Judge

Appellant Damian Mata challenges the district court's denial of his request for a dispositional departure and its decision to sentence him to the presumptive guidelines sentence of 54 months in prison on his conviction of first-degree test refusal. Because the district court properly considered public safety and did not abuse its discretion in imposing the presumptive sentence, despite appellant's claims of mitigating factors and amenability to probation, we affirm.

D E C I S I O N

A district court may depart from the sentencing guidelines only if substantial and compelling circumstances are present. Minn. Sent. Guidelines II.D (2008). A departure decision will not be reversed absent a clear abuse of discretion. *State v. Oberg*, 627 N.W.2d 721, 724 (Minn. App. 2001), *review denied* (Minn. Aug. 22, 2001). Only a "rare case" merits reversal of the refusal to depart and the imposition of a presumptive sentence. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). This court has indicated that a rare case may exist when the district court fails to exercise its discretion or relies on an improper factor. *See State v. Mendoza*, 638 N.W.2d 480, 484 (Minn. App. 2002) (remanding when exercise of discretion by district court "may not have occurred"), *review denied* (Minn. Apr. 16, 2002); *State v. Curtiss*, 353 N.W.2d 262, 264 (Minn. App. 1984) (remanding when record established that district court failed to even consider arguments for and against departure).

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), *review denied* (Minn. Nov. 17, 1999). Appellant's request for a dispositional departure is based on mitigating factors and on his claim that he was amenable to probation.

At the plea and sentencing hearings, appellant stated that he had been working the sugar-beet pilers for almost ten years and was a union member, that his wife and three children needed him at home for support and to pay the bills, that he completed phase one of a substance-abuse program and was eligible to continue in the program, and that he completed an anger-management program. He submitted several documents in support of his motion, including a letter from his pastor, a letter from the substance-abuse program, a certificate of completion for the anger-management program, and a certificate of completion for the substance-abuse program.

Appellant's attorney urged the district court to consider several mitigating offense-related factors, including his claims that he was not given the implied consent advisory until after he refused to take the test, would not object to being sentenced at the high end of the guidelines if his prison sentence were stayed, did not know the consequences he would face for refusal, would accept intensive probation and daily alcohol testing, and expressed remorse for his mistakes.

The prosecutor asserted that there were no substantial or compelling reasons to depart, given appellant's extensive criminal history and the fact that he was on probation

for other offenses at the time he committed the current offense. The presentence-investigation report indicated that appellant's prior record included three recent felony convictions and numerous less-serious convictions. The presentence-investigation report recommended incarceration and imposition of the presumptive guidelines sentence of 54 months in prison, noting that "[c]ommunity safety may best be resolved by [appellant] being committed to the Commissioner of Corrections," that appellant "would be held accountable by serving an executed sentence," and that appellant "should receive chemical dependency treatment while in prison in order to make a positive adjustment in the community when he is released from incarceration."

In denying appellant's request for a dispositional departure, the district court stated:

> After a review of the Court's file—after a review of the presentence investigation in the Court's file, the Court does not find any compelling reasons to depart from the sentencing guidelines. And the Court will note, Mr. Mata, that I do believe you have—you are a person of ability as evidenced by your four-year degree from the University of Texas at Austin, but the Court does feel compelled to comply with the sentencing guidelines simply for public safety concerns.

Appellant insists that the information before the court was not deliberately considered and that the court erred when it found that reasons to depart did not exist, citing *Curtiss*, 353 N.W.2d at 263-64. Unlike *Curtiss*, however, in this case the district court carefully considered the parties' arguments and reviewed the record before it.

Appellant contends that he put forth substantial and compelling reasons to justify a dispositional departure because he was amenable to probation and to continued chemical-dependency treatment, he took full responsibility for his actions, and he expressed

remorse for his actions by pleading guilty with no agreement as to sentencing. But, even if appellant has presented mitigating circumstances, the mere existence of mitigating factors does not obligate the district court to depart from the presumptive sentence. *See Oberg*, 627 N.W.2d at 724.

Several facts could support a finding that appellant is amenable to probation: his young age, his consistent employment history in the sugar-beet fields, his stable family situation, and his concerted efforts at treatment after he was placed in jail following this offense. *See State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982) (when determining amenability to probation, factors to consider include age, prior record, remorse, cooperation, attitude in court, and support of family and friends). But other factors weigh heavily against appellant's claim that he is amenable to probation and his request for a dispositional departure, including the facts that he has an extensive criminal history and he was on probation for other offenses at the time of the current offense. Under the guidelines, stayed sentences and probation are generally reserved for less-serious offenses and for defendants with little or no prior criminal history. *See* Minn. Sent. Guidelines IV (2008).

The district court here reviewed the record and considered the parties' arguments before it made its decision. The court specifically concluded that imposition of the presumptive guidelines sentence would best meet public safety concerns. *See State v. Heywood*, 338 N.W.2d 243, 244 (Minn. 1983) (noting district court's finding that defendant was not a threat to public safety). The court did not abuse its discretion in

denying appellant's request for a dispositional departure.[1]

Affirmed.

[1] Appellant has filed a pro se supplemental brief that contains three documents and nothing else. The brief includes no arguments and no citations to any legal authority. As such, the pro se supplemental brief fails to show any basis for reversal. *See State v. Meldrum*, 724 N.W.2d 15, 22 (Minn. App. 2006), *review denied* (Minn. Jan. 24, 2007).