STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1463

State of Minnesota,
Respondent,

vs.

Jason Michael Larson,
Appellant.

Filed June 26, 2017
Affirmed
Connolly, Judge

Renville County District Court
File No. 65-CR-15-292

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

David Torgelson, Renville County Attorney, Olivia, Minnesota, Scott A. Hersey, Special Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Steven P. Russett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Peterson, Presiding Judge; Connolly, Judge; and Smith, Tracy M., Judge.

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

CONNOLLY, Judge

On appeal from his conviction of second-degree controlled-substance crime, appellant argues (1) the district court abused its discretion by denying appellant's presentencing plea withdrawal motion solely because the record showed that appellant's guilty plea was entered into knowingly, intelligently, and voluntarily; and (2) appellant is entitled to be resentenced in accordance with the provisions of the 2016 Drug Sentencing Reform Act (DSRA) that took effect before his conviction became final and has the effect of reducing his conviction from a second-degree to a third-degree controlled-substance crime. Because the district court did not abuse its discretion in denying the plea withdrawal under the fair-and-just standard and because appellant is not entitled to be resentenced, we affirm.

FACTS

Appellant Jason Michael Larson was arrested on August 8, 2015 and charged with: one count second-degree controlled-substance crime involving possession of six or more grams of a controlled substance; one count fifth-degree controlled-substance crime of possession; one count gross misdemeanor driving while impaired by a controlled substance; one count gross misdemeanor providing false name and date of birth to law enforcement; and one count gross misdemeanor driving after cancellation of his license as inimical to public safety.

Appellant was injured as a result of an automobile accident. Police officers arrived at the scene after receiving reports that a truck had overturned in a ditch. When officers

arrived, they observed the vehicle on its roof with the passenger side of the vehicle smashed in. Appellant, the only occupant of the vehicle at the scene, identified himself as *Joshua Richard* Larson and gave a date of birth but did not produce any identification. He initially claimed that he was only a passenger and that there were two other individuals with him in the vehicle. Neither individual was found or identified when witnesses arrived at the scene five minutes after hearing the crash. When the officer returned to his car, he ran a search under the name that he had been given and discovered that the picture of Joshua Richard Larson did not match appellant. At that point, the officer would have arrested appellant for providing a false name and date of birth to an officer, but appellant had a pressing need for medical attention. Based on the severity of damage to the vehicle and the lack of any other severely injured individuals, the officer concluded that appellant was the only occupant of the vehicle.

Law enforcement officers went through the vehicle after responding to the crash and found a blue backpack. Inside was appellant's wallet, driver's license, and 13.975 grams of a mixture that contained methamphetamine. Appellant had a prior controlled-substance conviction for possession of methamphetamine precursors with intent to manufacture. While the police were trying to read appellant the implied-consent advisory, the doctors informed them that appellant "might have a brain bleed so they wanted to fly him out to Hennepin County Medical Center."

Eight months later, on April 21, 2016, appellant entered into a guilty-plea agreement wherein he would be charged with one count second-degree possession of more than six grams of a controlled substance, and the other four charges would be dropped. After

describing the circumstances of the crime and the potential sentence for the crime, the district court asked "is that your understanding of what will happen here today?" Appellant said, "Yes, [y]our Honor." He was then asked "is that how you wish to proceed?" to which he replied, "Yes, sir."

During the plea colloquy the district court asked appellant if he: (1) had enough time to discuss the case with his attorney; (2) believed his attorney was aware of all the facts necessary to give good legal advice; (3) was pleading guilty of his own will; (4) understood that there was no agreement to depart from the sentencing guidelines, meaning that whatever the PSI says his criminal-history score is will be the presumptive prison sentence; and (5) understood that respondent would consider giving appellant an opportunity to go into treatment, but would not be required to do so. Appellant answered in the affirmative to all questions, noting that he understood the specific consequences of his decision to plead guilty.

Appellant also acknowledged that he read the plea agreement and discussed it with his attorney and that he understood his constitutional rights, including the right to a trial, the presumption of innocence, the right to call and question witnesses, the right to a unanimous jury verdict of guilty beyond a reasonable doubt, and the right to remain silent. Appellant also admitted to all the factual circumstances of the plea.

Prior to sentencing, appellant filed a motion to withdraw his guilty plea. Appellant testified that he had a possible brain bleed resulting from the accident, that he had been experiencing blurred vision, and that a potential traumatic brain injury (TBI) "affected [his] thinking." Appellant argued that because of the TBI, his doctor's recommendation that he

see a neurologist and a psychiatrist, and his mental health, he should be allowed to withdraw his plea under the fair-and-just standard. The district court concluded that appellant made a knowing, intelligent, and voluntary waiver of his legal rights when the plea was entered and that it would not be fair and just to allow for a withdrawal.

The crime is a level-eight offense and appellant has six criminal-history points. Based on this score, the presumptive sentence is between 92 and 129 months in prison. Prior to sentencing, appellant absconded from his treatment facility and the district court revoked his bail. Because appellant absconded from treatment and did not cooperate with officers when he was apprehended, the district court sentenced him to 120 months in prison, the higher end of the presumptive sentencing range.

D E C I S I O N

I. Did the district court abuse its discretion in denying appellant's plea-withdrawal motion under the fair-and-just standard?

"A defendant has no absolute right to withdraw a guilty plea after entering it." *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010). A motion to withdraw a guilty plea that is made prior to sentencing is analyzed under the fair-and-just standard. *Id*. "[T]he ultimate decision of whether to allow withdrawal under the [fair-and-just] standard is left to the sound discretion of the [district] court, and it will be reversed only in the rare case in which the appellate court can fairly conclude that the [district] court abused its discretion." *State v. Kaiser*, 469 N.W.2d 316, 320 (Minn. 1991) (quotations omitted). Under the fair-and-just standard, a court must give due consideration to two factors: "(1) the reasons a

defendant advances to support withdrawal and (2) prejudice granting the motion would cause the State given reliance on the plea." *Raleigh*, 778 N.W.2d at 97.

Appellant argues that the district court abused its discretion by misapplying the fair-and-just standard and requiring appellant to show that he did not enter the plea knowingly, voluntarily, or intelligently. A determination that a defendant entered an accurate, voluntary, and intelligent guilty plea does not preclude a finding that it is "fair and just" to allow a plea withdrawal. *State v. Farnsworth*, 738 N.W.2d 364, 372 (Minn. 2007). In *Farnsworth*, this court concluded that the appellant made an accurate, voluntary, and intelligent guilty plea, and thus he was precluded from withdrawing his guilty plea. *Id.* at 371. On review, despite affirming the ultimate conclusion, the supreme court stated that "in some instances, there may be a 'fair and just' reason to permit plea withdrawal prior to sentencing" despite the plea being valid and that "it was proper for the district court to hold a hearing to determine whether a fair and just reason existed to permit withdrawal of [the appellant's] plea." *Id*. at 372. However, the supreme court ultimately concluded that the appellant failed to establish a fair-and-just reason to withdraw his guilty plea because the appellant's confession was voluntary and not a product of coercion. *Id.* at 375.

Appellant argues that his untreated TBI was a fair-and-just reason for allowing him to withdraw his guilty plea. Appellant attempted to withdraw his plea on the date that the sentencing hearing was to occur. The district court allowed appellant to testify and the attorney for each party to argue on the motion to withdraw the plea. Following the arguments, the district court stated:

> [I]n the usual course what the court[] wanted to . . . look at in terms of the entry of the plea is the factual basis, clearly that was accurately responded to by [appellant] to meet the elements of the crime. . . . [T]hen again multiple times I [asked appellant if] he [had] any questions, did he understand, [and] he indicated he was not under the influence of any controlled substance or drug, he understood what he was doing, . . . he indicated that . . . he's not required to enter a plea of guilty. . . . And so from beginning to end it was fairly clear from his responses . . . there was nothing from the statements of [appellant] himself . . . at any time prior to that, though that was the most significant hearing, that would give rise to the Court to believe that even if he has a TBI, a TBI itself would not in and of itself mean that one cannot make a . . . knowing[,] intelligent[, and] voluntary waiver, but in any event . . . [appellant] clearly verbalized [an] understanding of what he was doing and understanding of what the plea agreement [was] and what it was not. . . .

Ultimately, the district court concluded that it could not "find a basis that . . . [appellant] did not understand what he was doing."

Even if we assume that the district court did not apply the fair-and-just standard correctly in denying appellant's request for a plea withdrawal because the plea was made knowingly, voluntarily, and intelligently, we conclude that there is insufficient evidence that the TBI affected the plea. The district court considered the potential for a TBI and concluded that the injury did not disrupt appellant's ability to understand what he was doing or the consequences of his guilty plea, and that there was nothing about his mental health that warranted the withdrawal of his guilty plea. Based on the evidence in the record, we agree.

II. Is appellant entitled to be resentenced in accordance with the provisions of the 2016 DSRA that took effect before his conviction became final?

As a general rule, "[n]o law shall be construed to be retroactive unless clearly and manifestly so intended by the legislature." Minn. Stat. § 645.21 (2016). When a law is amended, "the new provisions shall be construed as effective only from the date when the amendment became effective." Minn. Stat. § 645.31 (2016). Accordingly, for a statute to be applied retroactively, the legislature must provide clear evidence that it intended retroactive application, "such as mention of the word 'retroactive.'" *State v. Traczyk*, 421 N.W.2d 299, 300 (Minn. 1988) (quotation omitted). "The retroactivity of a statute is a matter of statutory interpretation, which [this court] review[s] de novo." *State v. Basal*, 763 N.W.2d 328, 335 (Minn. App. 2009).

When appellant committed his offense, possession of 13.975 grams of a mixture containing methamphetamine was a second-degree controlled-substance crime carrying a statutory maximum sentence of 40 years and, for a person with appellant's criminal-history score, a presumptive sentencing range of 92 to 129 months. Minn. Stat. § 152.022, subds. 2(a)(1), 3(b) (2014); Minn. Sent. Guidelines 4.A (2014).

In May of 2016, the legislature enacted the DSRA. 2016 Minn. Laws ch. 160, at 576-92. Among other things, the act raised threshold weights for first-, second-, and third-degree controlled-substance crimes. Minn. Laws ch. 160, §§ 3-5, at 577-82. As a result, if appellant committed his crime today, he would presumably be convicted of third-degree possession of a controlled substance with a statutory maximum sentence of 20 years and a presumptive guidelines prison term between 49 and 68 months. Minn. Stat. § 152.025,

subds. 2(1), 3(a) (2016); Minn. Sent. Guidelines 4.A (2014), 4.C (2016). Appellant argues that his conviction must be remanded for resentencing under current law.

Appellant's argument for application of the amelioration doctrine centers on *State v. Coolidge*, which outlines an exception to the general rule stated above. 282 N.W.2d 511, 514-15 (Minn. 1979). *Coolidge* states that "where [a] criminal law in effect is repealed, absent a savings clause, all prosecutions are barred where not reduced to a final judgment."[1] *Id.* at 514. It also states that "a statute mitigating punishment is applied to acts committed before its effective date, as long as no final judgment has been reached." *Id.* The rationale for this rule is that "the legislature has manifested its belief that the prior punishment is too severe and a lighter sentence is sufficient." *Id.*

Coolidge, however, was clarified by *State v. Edstrom*. 326 N.W.2d 10, 10 (Minn. 1982). The conduct underlying Edstrom's conviction occurred in March of 1975, and the effective date of the act was August 1, 1975. *Id.* The new statute provided, "Except for section 8 of this act, crimes committed prior to the effective date of this act are not affected by its provisions." 1975 Minn. Laws ch. 374, § 12, at 1251. The supreme court explained that the retroactive application rule only applies "absent a contrary statement of intent by the legislature." *Edstrom*, 326 N.W.2d at 10. Because "the legislature ha[d] clearly indicated its intent" that the new statute "have no effect on crimes committed before the effective date of the act," the supreme court refused to apply a statute enacted after Edstrom's crime that would have reduced his sentence. *Id.*

[1] A conviction becomes final when direct appeals are exhausted or the time for filing a direct appeal has expired. *State v. Losh*, 721 N.W.2d 886, 893-94 (Minn. 2006).

In *State v. McDonnell*, the legislature provided that the amendment under review "is effective August 1, 2003, and applies to violations committed on or after that date." 686 N.W.2d 841, 846 (Minn. App. 2004) (quoting 2003 Minn. Laws 1st Spec. Sess. Ch. 2, art. 9, § 1), *review denied* (Minn. Nov. 16, 2004). This court determined that *Coolidge*'s amelioration doctrine did not apply because the legislature clearly indicated its intent that a statutory amendment not apply to crimes committed before the amendment's effective date. *Id*.

In *Basal*, this court again determined that *Coolidge* did not apply. *Basal*, 763 N.W.2d at 336. The legislature expressly provided that the relevant amendment "would become effective January 1, 2008." *Id.* (citing 2007 Minn. Laws ch. 147, art. 2, § 64, at 1901). This court concluded that "[b]ecause the legislature provided for a specific effective date for the 2007 amendment, the legislature did not intend for the amendment to apply to conduct occurring before the effective date." *Id.*

Appellant claims that he is entitled to have his conviction reduced and to be resentenced for third-degree possession of a controlled substance under *Coolidge* because his conviction was not final at the time the DSRA took effect. We disagree. In amending the threshold weights in the second- and third-degree controlled-substance statutes to exceed the amount of methamphetamine appellant possessed, the legislature clearly indicated that it did not intend to apply the amendments to cases pending on direct review but not final. *See Edstrom*, 326 N.W.2d at 10. As to both statutes, the act provides, "This section is effective August 1, 2016, and applies to crimes committed on or after that date." 2016 Minn. Laws ch. 160, §§ 4-5, at 581-82. The legislature used identical effective-date

language in amending the first-, fourth-, and fifth-degree controlled-substance statutes. *Id.*, §§ 3, 6-7, at 579, 583, 585. Because appellant committed his offense in August 2015, he is not entitled to the application of the amendments, even though his conviction was not final.

Appellant argues that to prevent the amendments from being applied to non-final cases, the legislature needed to use more specific language, like that used in the statute at issue in *Edstrom*. In the *Edstrom* statute, the legislature provided that "crimes committed prior to the effective date of this act are not affected by its provisions." 1975 Minn. Laws ch. 374, § 12, at 1251. We conclude that the effective date provisions at issue use different language to accomplish the same result. Moreover, the language of the effective date provisions here is virtually identical to the effective date provision in *McDonnell*. *Compare* 2016 Minn. Laws ch. 160, §§ 4-5, at 581-82 *with* 686 N.W.2d at 846 (quoting 2003 Minn. Laws 1st Spec. Sess. Ch. 2, art. 9, § 1). The language is also more specific and clearer than the effective date provision in *Basal*, which said only that the act would be effective on a specific date. *See* 763 N.W.2d at 336 (citing 2007 Minn. Laws ch. 147, art. 2, § 64, at 1901). In both *McDonnell* and *Basal*, this court determined that the amendments applied only to crimes committed on or after the effective date. *Id.*; *McDonnell*, 686 N.W.2d at 846.

Because the legislature indicated its intent to apply the amendments to the controlled-substance-crime statutes to crimes committed on or after August 1, 2016, and

because appellant committed his crime before that date, he is not entitled to have his conviction reduced from second- to third-degree possession of a controlled substance.

Affirmed.