STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1902

State of Minnesota,
Respondent,

vs.

Quanteze Damar Morgan,
Appellant.

Filed December 21, 2020
Affirmed
Smith, Tracy M., Judge

Hennepin County District Court
File No. 27-CR-18-7246

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Mark V. Griffin, Senior Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Christopher L. Mishek, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Smith, Tracy M., Judge; and Frisch, Judge.

S Y L L A B U S

For purposes of calculating a defendant's criminal-history score, a fifth-degree controlled-substance possession offense is not classified as a gross misdemeanor under Minnesota Statutes section 152.025, subdivision 4(a) (2016), when the defendant was previously convicted of a petty-misdemeanor violation of chapter 152.

O P I N I O N

SMITH, TRACY M., Judge

In this direct appeal from final judgment of conviction for felony domestic assault, appellant Quanteze Damar Morgan challenges his sentence, arguing that the district court erred in two ways when it determined his criminal-history score. First, Morgan argues that the district court erred by assigning one-half of a felony point for his prior conviction for fifth-degree possession of cocaine because, under Minn. Stat. § 152.025, subd. 4(a), that offense was a first-time possession offense that should be classified as a gross misdemeanor. It was a first-time offense, Morgan asserts, because his earlier petty misdemeanor for marijuana possession did not constitute a previous "conviction" under that statute.

Second, Morgan argues that the district court erred by assigning one-half of a felony point for each of his two prior convictions for fifth-degree sale of marijuana because respondent State of Minnesota failed to prove the weight amounts of the drugs involved or that the offenses involved sales for remuneration.

We conclude that Morgan's earlier petty misdemeanor for marijuana possession is a previous conviction under section 152.025, subdivision 4(a), that makes his fifth-degree cocaine-possession conviction not qualified for classification as a gross misdemeanor. We further conclude that the district court did not err when it found that the state proved that his two prior convictions for sale of marijuana were for felony-level offenses. We therefore conclude that the district court did not err by assigning one-half of a felony point for each of the three previous convictions. We affirm.

FACTS

In 2019, Morgan entered a *Norgaard* guilty plea[1] to one count of felony domestic assault in violation of Minn. Stat. § 609.2242, subd. 4 (2016). There was no agreement as to sentencing.

A presentence investigation and criminal-history worksheet assigned Morgan four and one-half felony points for purposes of sentencing. The criminal-history score included one-half of a felony point for each of Morgan's three prior drug convictions—specifically, a 2007 conviction for fifth-degree possession of cocaine and two 2008 convictions for fifth-degree sale of marijuana.

Morgan challenged the points assigned for these convictions at a sentencing hearing. The state entered into evidence certified court records of the three prior convictions. Morgan argued that his 2007 fifth-degree cocaine-possession offense should be reclassified as a gross misdemeanor under amendments to Minn. Stat. § 152.025 by the 2016 Drug Sentencing Reform Act (DSRA) because it was a first-time fifth-degree possession offense. Morgan also argued that the state failed to prove that his prior convictions were for felony-level offenses.

The district court rejected Morgan's arguments. It determined that Morgan had a criminal-history score of four and one half points (including points not at issue here),

[1] In a *Norgaard* plea, a defendant "asserts an absence of memory on the essential elements of the offense but pleads guilty because the record establishes, and the defendant reasonably believes, that the state has sufficient evidence to obtain a conviction." *Williams v. State*, 760 N.W.2d 8, 12 (Minn. App. 2009) (citing *State ex rel. Norgaard v. Tahash*, 110 N.W.2d 867, 871 (1961)), *review denied* (Minn. Apr. 21, 2009).

denied Morgan's motion for a downward durational and dispositional departure, and sentenced him to an executed prison term of 24 months.

This appeal follows.

ISSUES

I. Did the district court err by concluding that Morgan's petty-misdemeanor marijuana offense constitutes a conviction for violating Minn. Stat. §§ 152.01-.37, making his subsequent fifth-degree drug-possession conviction not qualified for classification as a gross misdemeanor under Minn. Stat. § 152.025, subd. 4(a) (2016)?

II. Did the district court err by assigning felony points for Morgan's two prior convictions for fifth-degree sale of marijuana?

ANALYSIS

A sentence based on an incorrect criminal-history score is correctable at any time. *State v. Maurstad*, 733 N.W.2d 141, 146-47 (Minn. 2007); *see* Minn. R. Crim. P. 27.03, subd. 9 ("The court may at any time correct a sentence not authorized by law."). At sentencing, the state bears the burden of proving the defendant's criminal-history score by a preponderance of the evidence. *State v. Griffin*, 336 N.W.2d 519, 525 (Minn. 1983). We review a district court's rulings with respect to a defendant's criminal-history score for an abuse of discretion. *State v. Edwards*, 900 N.W.2d 722, 727 (Minn. App. 2017), *aff'd mem.*, 909 N.W.2d 594 (Minn. 2018). But, if the issue of the correct criminal-history score turns on an interpretation of the sentencing guidelines or of a statute, we apply a de novo standard of review. *State v. Campbell*, 814 N.W.2d 1, 4 (Minn. 2012) (citation omitted).

I. Morgan's cocaine-possession conviction was not qualified for classification as a gross misdemeanor because of his previous petty-misdemeanor marijuana violation.

Morgan argues that the district court erred by assigning one-half of a felony point for his fifth-degree cocaine-possession conviction because it was a first-time possession offense that should be classified as a gross misdemeanor.

Under the Minnesota Sentencing Guidelines, a defendant's criminal-history score depends on the classification of prior offenses. Minn. Sent. Guidelines § 2.B.7.a (2018). "The classification of a prior offense as a petty misdemeanor, misdemeanor, gross misdemeanor, or felony is determined by current Minnesota offense definitions . . . and sentencing policies." *Id.* Current Minnesota offense definitions are found in the statutes "setting forth the elements of the crime." *State v. Strobel*, 932 N.W.2d 303, 304 (Minn. 2019). Morgan argues that, under current offense definitions for controlled-substance crimes, his 2007 fifth-degree cocaine-possession offense should be classified as a gross misdemeanor because he did not have a previous drug conviction.

When Morgan was convicted of cocaine possession in 2007, the offense was a fifth-degree felony under Minn. Stat. § 152.025 (2006). In 2016, the Legislature enacted the DSRA. *See* 2016 Minn. Laws ch. 160 at 576. The DSRA amended the law governing fifth-degree controlled-substance crimes to provide that "fifth-degree *sale* of a controlled substance remains a felony, but some first-time fifth-degree *possession* offenses are now classified as gross misdemeanors." *State v. Scovel*, 916 N.W.2d 550, 552 (Minn. 2018). Specifically, while the penalty provision of Minn. Stat. § 152.025 (2016) generally makes fifth-degree drug crime a felony, *see* Minn. Stat. § 152.025, subd. 4(b), it also provides

that, for some possession offenses, "[a] person convicted [of a fifth-degree controlled-substance crime], who has not been previously *convicted of a violation of this chapter* or a similar offense in another jurisdiction, is guilty of a gross misdemeanor." Minn. Stat. § 152.025, subd. 4(a) (emphasis added).

Morgan's cocaine-possession conviction is the type of possession offense that might qualify for classification as a gross misdemeanor under section 152.025, subdivision 4(a). Whether it does qualify turns on whether his previous petty misdemeanor for possessing a small amount of marijuana in violation of chapter 152 is a "convict[ion] of a violation" of chapter 152.

Because Minnesota appellate courts have not ruled on the issue, we are presented with a question of statutory interpretation. We review issues of statutory interpretation de novo. *See State v. Thonesavanh*, 904 N.W.2d 432, 435 (Minn. 2017). The object of statutory interpretation is to "ascertain and effectuate the intention of the [L]egislature." *Linn v. BCBSM, Inc.*, 905 N.W.2d 497, 501 (Minn. 2018) (quoting Minn. Stat. § 645.16 (2018)). "If the Legislature's intent is clear from the statute's plain and unambiguous language, then we interpret the statute according to its plain meaning without resorting to the canons of statutory construction." *Id.* (quotation omitted). "A statute is ambiguous only if it is susceptible to more than one reasonable interpretation." *500, LLC v. City of Minneapolis*, 837 N.W.2d 287, 290 (Minn. 2013).

In determining whether a statute is unambiguous, appellate courts construe nontechnical words and phrases "according to their plain and ordinary meanings." *Larson v. Nw. Mut. Life Ins. Co.*, 855 N.W.2d 293, 301 (Minn. 2014). Where appropriate, we may

look to dictionary definitions to determine the plain meanings of words, but we will rely on statutory definitions of terms where relevant. *See, e.g.*, *State v. Nodes*, 863 N.W.2d 77, 80-82 (Minn. 2015) (relying on statutory definition of "conviction" and dictionary definitions of other, nonstatutorily defined terms).

Morgan argues that section 152.025, subdivision 4(a), is unambiguous and does not include petty misdemeanors when it refers to "convicted of a violation of this chapter." He cites to a statutory definition of "petty misdemeanor" as "a petty offense which is prohibited by statute, which does not constitute a crime." Minn. Stat. § 609.02, subd. 4(a) (2006). He then turns to a dictionary definition of "conviction" as "[t]he judgment of a jury or judge that a person is guilty of a crime as charged." Applying this dictionary definition, he concludes that "convicted of a violation of this chapter" can only reasonably refer to a violation of chapter 152 that is a "crime"—i.e., a misdemeanor, gross misdemeanor, or felony—and not a petty misdemeanor. Morgan argues that this interpretation is the most sensible in light of other considerations, such as the absence of the right to counsel in petty-misdemeanor proceedings and the treatment of petty-misdemeanor offenses in computing a criminal-history score.

We agree that the statute is unambiguous, but we disagree with Morgan's interpretation. Section 152.025, subd. 4(a), precludes classification of a fifth-degree possession offense as a gross misdemeanor if the defendant has "been previously convicted of a violation of" chapter 152. The statute speaks of a violation of chapter 152—it does not use the term "crime." Morgan seeks to import the term "crime" into the statute by referring

to a statutory definition of "petty misdemeanor" and a dictionary definition of "conviction" that, he asserts, excludes petty misdemeanors.

But we need not rely on a dictionary definition of "conviction" when the legislature has supplied a definition of the term. In the same statute in which the legislature defined "petty misdemeanor," it also defined "conviction." Minn. Stat. § 609.02, subd. 5 (2006), defines "conviction" as "any of the following accepted and recorded by the court: (1) A plea of guilty; or (2) A verdict of guilty by a jury or a finding of guilty by the court." This statutory definition of "conviction" does not include the word "crime." Appellate courts will not supply words that the legislature omitted. *State v. Caldwell*, 803 N.W.2d 373, 382 (Minn. 2011). And, under the plain language of the statutory definition, a conviction results from the district court's acceptance and recording of a guilty plea. Thus, when a district court accepts and records a guilty plea to a petty-misdemeanor violation of chapter 152, the person is "convicted of a violation" of that chapter under Minn. Stat. § 152.025, subd. 4(a). While Morgan makes policy arguments against such an interpretation, "[w]hen the language of a statute is clear, [appellate courts] apply the plain language of the statute and decline to explore its spirit or purpose." *Cocchiarella v. Driggs*, 884 N.W.2d 621, 624 (Minn. 2016).

Morgan pleaded guilty to a petty-misdemeanor violation of chapter 152 for possessing a small amount of marijuana. *See* Minn. Stat. § 152.027, subd. 4(a) (2006). Morgan was therefore "previously convicted of a violation" of chapter 152 when he was convicted of fifth-degree cocaine possession. Because of the previous petty-misdemeanor conviction, Morgan's conviction for fifth-degree cocaine-possession is not a first-time

possession offense qualified for classification as a gross misdemeanor. The district court did not err by assigning one-half of a felony point for Morgan's cocaine-possession offense.

II. The district court did not abuse its discretion by assigning one-half of a felony point for each of his previous convictions for fifth-degree drug sale.

Morgan also contends that the district court erred by assigning one-half of a felony point for each of his two previous controlled-substance convictions for sale of marijuana.[2] The district court's determination of a defendant's criminal-history score will not be reversed absent an abuse of discretion. *State v. Stillday*, 646 N.W.2d 557, 561 (Minn. App. 2002), *review denied* (Minn. Aug. 20, 2002).

Morgan contends that the state failed to prove that the two marijuana-sale convictions were for felony-level offenses. Specifically, he asserts that possession of, or sale for no remuneration of, a "small amount" of marijuana was never a felony and that the state did not prove that his marijuana convictions did not fall within that category. *See* Minn. Stat. § 152.01, subd. 16 (defining a "small amount" of marijuana as 42.5 grams or less), .027, subd. 4(a) (making possession or sale for no remuneration of a small amount of marijuana a petty misdemeanor) (2006). Morgan points to statements in the narrative portion of the criminal complaints (both of which charged fifth-degree sale) and in the plea petition underlying the two convictions that suggest that the offenses may not have been felony-level offenses.

[2] Morgan also asserts that the state failed to prove that his cocaine-possession offense was a felony-level offense, but his argument depends on that offense being a first-time offense that may be classified as a gross misdemeanor—an argument that we reject above.

But the state submitted certified copies not only of the criminal complaints and the plea petition resolving both complaints but also of court records showing that, in each case, Morgan ultimately was convicted of and sentenced, with a felony-level sentence, for "Drugs - 5th Degree - Sale - Marijuana Mixture Except Small A(Felony)." These records reflect that Morgan was ultimately convicted of fifth-degree sale notwithstanding possible inconsistencies in documents from earlier in the two cases. These certified court records are "competent and reliable evidence" of Morgan's convictions under Minn. Stat. § 609.041 (2006), and the district court did not abuse its discretion by concluding that, based on the records, the state satisfied its burden of proving Morgan's criminal-history score by a preponderance of the evidence. *See Griffin*, 336 N.W.2d at 525.

D E C I S I O N

We conclude that Morgan's conviction for fifth-degree possession of cocaine does not qualify for classification as a gross misdemeanor under Minn. Stat. § 152.025, subd. 4(a) (2016), because his previous petty-misdemeanor drug offense constitutes a conviction for violation of Minnesota Statutes chapter 152. We also conclude that the district court did not abuse its discretion by finding that Morgan's two prior marijuana-sale convictions were felony-level offenses. The district court therefore did not err by assigning one-half of a felony point for each of Morgan's three prior fifth-degree controlled-substance convictions when it calculated his criminal-history score.

Affirmed.