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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-293**

State of Minnesota,  
Respondent,

vs.

Kevin Jay Banks, Jr.,  
Appellant.

**Filed January 30, 2012  
Affirmed  
Schellhas, Judge**

Stearns County District Court  
File No. 73-CR-09-9781

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

Janelle P. Kendall, Stearns County Attorney, Michael J. Lieberg, Assistant County  
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Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Schellhas, Judge; and  
Crippen, Judge.\*

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

## UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges his sentence for his conviction of simple robbery, arguing that the district court erred by concluding that he has two prior sequential convictions and imposing a double upward durational departure from the presumptive sentence. We affirm.

### FACTS

On September 3, 2009, respondent State of Minnesota charged appellant Kevin Banks Jr. with simple robbery in violation of Minn. Stat. § 609.24 (2008). The state moved for an aggravated durational departure from the sentencing guidelines based on an August 13, 2001 adjudication as an extended jurisdiction juvenile (EJJ) for second-degree assault and a June 10, 2004 conviction of second-degree assault. Banks opposed the motion, arguing that (1) an adjudication of delinquency is not a prior conviction for sentencing purposes and (2) an aggravated durational departure under Minn. Stat. § 609.1095, subd. 2 (2008), was inappropriate because his stayed EJJ sentence was not executed until June 10, 2004, when he was sentenced on his conviction of second-degree assault. Relying on Minn. Stat. § 260B.245, subd. 1(a) (2008), the district court concluded that Banks had two prior sequential convictions for violent crimes for sentencing purposes and granted the state's motion. Section 260B.245, subdivision 1(a), provides that “[a]n [EJJ] conviction shall be treated in the same manner as an adult felony criminal conviction for purposes of the Sentencing Guidelines.”

Banks waived his right to a jury trial, and the parties submitted the case to the court on stipulated facts to preserve evidentiary issues for appeal in accordance with Minn. R. Crim. P. 26.01, subd. 4, and *State v. Lothenbach*, 296 N.W.2d 854 (Minn. 1980). The district court convicted Banks of simple robbery. Based on the district court’s findings that Banks had two prior sequential convictions for violent offenses and that he is a danger to public safety, the court sentenced Banks to 96 months’ imprisonment—a double upward durational departure from the presumptive sentence.

This appeal follows.

## **D E C I S I O N**

Banks argues that the district court erred by concluding that he had two prior sequential convictions under section 609.1095 because “an EJJ adjudication without the execution of the adult sentence is not a ‘conviction’ for a felony crime.”

Statutory interpretation is a question of law, which this court reviews de novo. *State v. Stevenson*, 656 N.W.2d 235, 238 (Minn. 2003). The primary objective of statutory interpretation is to ascertain and give effect to the intention of the legislature. Minn. Stat. § 645.16 (2010); *State v. Zeimet*, 696 N.W.2d 791, 793 (Minn. 2005). Section 609.1095, subdivision 2, provides,

Whenever a person is convicted of a violent crime that is a felony, and the judge is imposing an executed sentence based on a Sentencing Guidelines presumptive imprisonment sentence, the judge may impose an aggravated durational departure from the presumptive imprisonment sentence up to the statutory maximum sentence if the offender was at least 18 years old at the time the felony was committed, and:

(1) the court determines on the record at the time of sentencing that the offender has two or more prior convictions for violent crimes; and

(2) the fact finder determines that the offender is a danger to public safety.

“‘Conviction’ means any of the following accepted and recorded by the court: a plea of guilty, a verdict of guilty by a jury, or a finding of guilty by the court.” Minn. Stat. § 609.1095, subd. 1(b) (2008). “‘Prior conviction’ means a conviction that occurred before the offender committed the next felony resulting in a conviction and before the offense for which the offender is being sentenced under this section.” *Id.*, subd. 1(c) (2008). Section 260B.245, subdivision 1(a), provides,

No adjudication upon the status of any child in the jurisdiction of the juvenile court shall operate to impose any of the civil disabilities imposed by conviction, nor shall any child be deemed a criminal by reason of this adjudication, nor shall this adjudication be deemed a conviction of crime, except as otherwise provided in this section or section 260B.255. An extended jurisdiction juvenile conviction shall be treated in the same manner as an adult felony criminal conviction for purposes of the Sentencing Guidelines.

Section 260B.255, subdivision 1 (2008), provides that “[a] violation of a state or local law or ordinance by a child before becoming 18 years of age is not a crime unless the juvenile court,” among other things, “convicts the child as an extended jurisdiction juvenile and subsequently executes the adult sentence.”

In *State v. Jiles*, the defendant pleaded guilty to one count of possession of a firearm by an ineligible person. 767 N.W.2d 27, 28 (Minn. App. 2009), *review denied* (Minn. Aug. 26, 2009). The defendant was ineligible to possess a firearm because of an

EJJ adjudication of second-degree assault involving a firearm and a conviction of theft of a motor vehicle. *Id.* The defendant was subject to a five-year mandatory minimum sentence, but the district court found a substantial and compelling basis for a downward durational departure. *Id.* The state appealed, arguing that although section 609.11 (2006) allowed the court to depart from the mandatory minimum sentence in certain circumstances, the court erred because the statute further provided that the court may not depart from the mandatory minimum sentences if the defendant previously had been convicted of second-degree assault while using or possessing a firearm. *Id.* at 29.

This court reversed, concluding that “EJJ adjudications are considered convictions for purposes of sentencing.” *Id.* We relied on the portion of section 260B.245, subdivision 1, which states, “An extended jurisdiction juvenile conviction shall be treated in the same manner as an adult felony criminal conviction for purposes of the Sentencing Guidelines.”<sup>1</sup> *Id.* We stated, “Although the mandatory minimum sentence at issue in this case is found in a statute and not in the sentencing guidelines, there is no compelling reason for treating the statute differently from the guidelines.” *Id.*

The decision in this case is controlled by *Jiles*. As in *Jiles*, this case involves a statute that provides for increased sentences based on prior convictions. Like the defendant in *Jiles*, Banks has a prior EJJ adjudication, and the state is arguing that it qualifies as a prior conviction under the relevant statute. Section 260B.245, subdivision 1, provides that an EJJ conviction “shall be treated in the same manner as an adult felony

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<sup>1</sup> We relied on a prior version of the statute, but the relevant language is identical to the applicable version of the statute in this case.

criminal conviction for purposes of the Sentencing Guidelines.” Here, as in *Jiles*, “there is no compelling reason for treating the statute differently from the guidelines.” *Id.* The district court therefore did not err by concluding that Banks has two prior sequential convictions under Minn. Stat. § 609.1095, subd. 2.

Appellant cites *State v. Boehl*, 697 N.W.2d 215 (Minn. App. 2005), *review denied* (Minn. Aug. 16, 2005), as “a useful example of how to read Minnesota’s criminal-enhancement sentencing statutes.” In *Boehl*, the defendant was convicted of one count of first-degree criminal sexual conduct and two counts of second-degree criminal sexual conduct. 697 N.W.2d at 217. “[T]he state moved for an upward durational departure arguing that [the defendant] qualified as a patterned-and-predatory offender” under Minn. Stat. § 609.108 (2004). *Id.* at 219. “[T]he district court granted the state’s motion and sentenced [the defendant] to 196 months, a double-upward durational departure.” *Id.* “The court also imposed a ten-year conditional release term after concluding that appellant’s prior juvenile adjudication for third-degree criminal sexual conduct was a qualifying offense” under Minn. Stat. § 609.109 (2004). *Id.* The defendant appealed, arguing that his prior juvenile adjudication was not a previous sex offense conviction that mandated a ten-year conditional release term under section 609.109. *Id.* at 222.

This court reversed *Boehl*’s sentence, concluding that “juvenile adjudications are not qualifying criminal-sexual-conduct convictions requiring the imposition of a mandatory ten-year conditional release term” under section 609.109. *Id.* We relied on the portion of section 260B.245, subdivision 1, which states, “No adjudication upon the status of any child in the jurisdiction of the juvenile court shall . . . be deemed a

conviction of crime . . . .”<sup>2</sup> *Id.* We stated that “the legislature has specifically included both convictions and juvenile adjudications when drafting other provisions of the Minnesota Statutes, suggesting that the legislature did not intend to include juvenile adjudications in the context of mandatory conditional release.” *Id.* (citing Minn. Stat. §§ 243.166, 609.224, 624.713 (2004)).

But *Boehl* is not applicable to the case now before us. *Boehl* involved a juvenile delinquency adjudication, not an EJJ adjudication. *Id.* *Boehl* did not involve an application of the portion of section 260B.245 applied in *Jiles* that states that EJJ convictions are treated like adult felony criminal convictions for the purposes of the sentencing guidelines. *Boehl* addressed only the first sentence in section 260B.245, subdivision 1, which pertains to juvenile adjudications generally. Because the defendant had a juvenile adjudication and not an EJJ adjudication, we did not reach the second part of section 260B.245, subdivision 1, which addresses EJJ convictions specifically. *Jiles* therefore controls.

Based on the authority of section 260B.245, subdivision 1, and *Jiles*, an EJJ adjudication is a conviction for the purposes of section 609.1095. We conclude that the district court correctly determined that Banks had two prior sequential convictions for violent crimes: the EJJ adjudication for second-degree assault in 2001, and the second-degree assault committed in 2003 resulting in a 2004 conviction. The district court

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<sup>2</sup> We relied on a prior version of the statute, but the relevant language is identical to the applicable version of the statute in this case.

therefore did not err by granting the state's motion for an aggravated durational departure under Minn. Stat. § 609.1095, subd. 2.

**Affirmed.**