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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1728**

State of Minnesota,
Respondent,

vs.

Ron Francis Schreiber,
Appellant.

**Filed March 3, 2014
Affirmed
Kirk, Judge**

Ramsey County District Court
File No. 62-K0-05-000955

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

John J. Choi, Ramsey County Attorney, Laura Rosenthal, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate State Public Defender, Benjamin J. Butler, Kathryn J. Lockwood, Assistant Public Defenders, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Larkin, Judge; and Kirk,
Judge.

UNPUBLISHED OPINION

KIRK, Judge

On appeal from the district court's denial of his motion to correct his sentence, appellant argues that the district court did not properly notify him of the statutorily required conditional-release period when it executed his stayed sentence. We affirm.

FACTS

In April 2005, appellant Ronald Francis Schreiber pleaded guilty to first-degree driving while impaired. In July, the district court sentenced appellant to prison for 42 months, but stayed execution of the sentence. The district court notified appellant: "If the sentence is executed following your release from the correctional facility, you will remain on a five-year conditional-release period and if during that period you violate the terms of your conditional release you are subject to serving an additional five years." On the probation-referral form, the district court checked the box indicating that a five-year conditional-release period applied.

In August 2008, the district court found that appellant violated the terms of his probation. The district court revoked appellant's probation and executed the previously imposed sentence. The district court did not mention a conditional-release period, and it left the conditional-release-period box on the probation-referral form blank.

In February 2013, an official for the Minnesota Department of Corrections (DOC) sent a letter to the district court stating that it had reviewed appellant's case and found that the district court had not specifically imposed a conditional-release period when it revoked appellant's probation. The DOC official informed the district court that

appellant's sentence had expired in November 2010, and requested that the district court issue an amended sentencing order if it had ordered or intended to order a conditional-release period. Appellant's counsel objected to the request. In response, the district court sent a letter to the DOC official stating that because the conditional-release period was imposed at the sentencing hearing in July 2005, it applied when it executed appellant's sentence in 2008. The district court enclosed a copy of the 2005 sentencing order.

Appellant moved the district court to correct his sentence under Minn. R. Crim. P. 27.03, subds. 9, 10. The district court denied the motion. This appeal follows.

D E C I S I O N

The district court treated appellant's motion to correct his sentence as a motion for postconviction relief. *See Powers v. State*, 731 N.W.2d 499, 501 (Minn. 2007). This court reviews a postconviction court's decision for an abuse of discretion. *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007). We will only reverse the postconviction court's factual findings if they are clearly erroneous, but we review its legal determinations de novo. *Bonga v. State*, 797 N.W.2d 712, 718 (Minn. 2011).

Appellant acknowledges that the district court told him in July 2005 that he could be subject to a conditional-release period if his stayed sentence were ever executed, but he argues that it did not impose the conditional-release period when it executed his prison sentence in August 2008. As a result, appellant contends that the district court did not actually impose the conditional-release period until it responded to the DOC official's letter in 2013, and it did not have the authority to modify his sentence at that time because it expired in 2010. *See State v. Hannam*, 792 N.W.2d 862, 865 (Minn. App.

2011) (stating that “because respondent’s sentence has expired, this court . . . has no authority to amend or modify the sentence to impose further sanctions”).

We disagree. The district court sentenced appellant in July 2005, but then stayed execution of that sentence. As part of the sentence, the district court told appellant on the record that he was subject to a five-year conditional-release period if his sentence was later executed, and included that information on the probation-referral form. The district court was required to make that statement under Minn. Stat. § 169A.276, subd. 1(d) (2012), which provides that “when the court commits a person to the custody of the commissioner of corrections under this subdivision, it shall provide that after the person has been released from prison the commissioner shall place the person on conditional release for five years.” In August 2008, the district court revoked appellant’s probation and executed the sentence that it had previously imposed in 2005. Although the district court did not reiterate in 2008 that a five-year conditional-release period applied to appellant, the notification it provided at appellant’s July 2005 sentencing was sufficient. *See State v. Staloch*, 643 N.W.2d 329, 331 (Minn. App. 2002) (stating that “an orally pronounced sentence controls over a judgment and commitment order when the two conflict”).

We are not persuaded by appellant’s argument that this case is governed by *Martinek v. State*, 678 N.W.2d 714 (Minn. App. 2004). Here, the district court imposed a sentence, stayed that sentence, notified appellant that a five-year conditional-release period applied, and included the five-year conditional-release period on the probation-referral form. In contrast, the district court in *Martinek* mentioned at the sentencing

hearing that a supervisory period could apply to Martinek but did not provide any specific information about that period and did not issue an order imposing a specific conditional-release period until after the DOC informed it that it had not previously done so. 678 N.W.2d at 716-17.

Affirmed.