STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1017

State of Minnesota,
Respondent,

vs.

Michael Vincent Leith,
Appellant.

Filed June 12, 2017
Affirmed
Reyes, Judge

Sherburne County District Court
File No. 71-CR-14-1513

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

Kathleen A. Heaney, Sherburne County Attorney, Tim Sime, Assistant County Attorney, Elk River, Minnesota (for respondent)

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

Considered and decided by Reyes, Presiding Judge; Connolly, Judge; and Larkin, Judge.

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

REYES, Judge

Appellant challenges both his conviction of first-degree sale of a controlled substance and his 114-month sentence, arguing that he is entitled to be resentenced in

accordance with the ameliorative amendments to controlled-substance-offense levels and the modifications to the sentencing guidelines following the 2016 Drug Sentencing Reform Act (DSRA). We affirm.

FACTS

On April 29, 2014, appellant Michael Vincent Leith sold 13.589 grams of methamphetamine to a confidential informant. Shortly after the transaction, police stopped the vehicle appellant was driving for an equipment violation and identified appellant.

Respondent State of Minnesota later charged appellant with first-degree sale of a controlled substance in violation of Minn. Stat. § 152.021, subd. 1(1) (2012). After a trial, the jury found appellant guilty of the charged offense. Then, in March 2016, district court sentenced appellant to 114 months in prison. The presumptive sentencing range was 114 to 160 months based on the severity of the conviction offense and appellant's criminal-history score of four. At the sentencing hearing, appellant noted that the Sentencing Guidelines Commission (the commission) had proposed reducing the presumptive sentence for first-degree controlled-substance crimes.

On May 22, 2016, the governor signed into law the DSRA. 2016 Minn. Laws ch. 160, § 22, at 592. Among other things, the DSRA increased the threshold amount of drugs necessary for first- and second-degree controlled-substance crimes and reduced the presumptive guideline sentences for those crimes. After the DSRA's amendments went into effect, the presumptive sentence for first-degree sale of a controlled substance based on a criminal-history score of four is now 105 months with a discretionary range of 90 to

126 months. Minn. Sent. Guidelines 4.C (2016). In addition, the sale of 13.589 grams of methamphetamine is now a second-degree controlled-substance crime for which the presumptive sentence is 88 months with a range of 75 to 105 months. Minn. Stat. § 152.022, subd. 1(1) (2016). The DSRA provision that increased the threshold amount of drugs necessary for first- and second-degree controlled-substance crimes became "effective August 1, 2016, and applies to crimes committed on or after that date." 2016 Minn. Laws ch. 160, §§ 3-4, at 579, 581. The provision of the DSRA directing the commission to modify the new drug offender grid became "effective the day following final enactment." *Id.* § 18, at 591.

This appeal follows.

D E C I S I O N

Appellant argues that his conviction level is improper and that he is entitled to be resentenced in accordance with the ameliorative sentencing provisions of the DSRA because his case was not final when the act took effect. We disagree.

The interpretation of a sentencing statute is a question of law that this court reviews de novo. *State v. Noggle*, 881 N.W.2d 545, 547 (Minn. 2016); *State v. Leathers*, 799 N.W.2d 606, 608 (Minn. 2011). "The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature." Minn. Stat. § 645.16 (2016). When the legislature's intent is clear from the unambiguous statutory language, we apply the statute's plain meaning. *Id.*; *State v. Hayes*, 826 N.W.2d 799, 804 (Minn. 2013). 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). The parties agree that appellant's case is not final.

I. The DSRA's amendments to controlled-substance offense levels do not apply to offenses committed before the effective date to reduce appellant's conviction level.

Appellant first asserts that the DSRA provision that increased the threshold amount of controlled substance necessary for first- and second-degree controlled-substance offenses should apply to reduce his conviction from first degree to second degree. We are not persuaded.

"No law shall be construed to be retroactive unless clearly and manifestly so intended by the legislature." Minn. Stat. § 645.21 (2016); *see also State v. Traczyk*, 421 N.W.2d 299, 300 (Minn. 1988), *as amended* (Minn. Mar. 4, 1988). "When a section or part of 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, subd. 1 (2016). However, appellant relies on the common-law principle first announced in *State v. Coolidge* that "a statute mitigating punishment is applied to acts committed before its effective date, as long as no final judgment has been reached." 282 N.W.2d 511, 514 (Minn. 1979) (citing *People v. Rossi*, 555 P.2d 1313, 1314 (Cal. 1976)).

In *Coolidge*, the supreme court held that the 1977 repeal of the law under which the defendant was convicted applied to reduce the defendant's sentence. *Id.* at 514-15. Subsequently, the supreme court applied the *Coolidge* principle to resentence an appellant where the statute under which the appellant was sentenced was repealed and replaced with a new statute providing for a lower maximum punishment in *State v.*

Hamilton, 289 N.W.2d 470, 474-75 (Minn. 1979), and *Ani v. State*, 288 N.W.2d 719, 720 (Minn. 1980). However, in *State v. Edstrom*, the supreme court limited the application of the *Coolidge* principle and held that it did not apply because "[i]n this case the legislature ha[d] clearly indicated its intent that the criminal sexual conduct statutes have no effect on crimes committed before the effective date of the act, August 1, 1975," and the petitioner committed the underlying crime in March 1975. 326 N.W.2d 10, 10 (Minn. 1982). Together, *Coolidge* and *Edstrom* stand for the proposition that the legislature intends for newly enacted laws that mitigate punishment for a criminal offense to apply to all cases that are not final when the law takes effect, unless the legislature clearly indicates otherwise. *See id.*; *see also Coolidge*, 282 N.W.2d at 514-15.

Here, like in *Edstrom*, the legislature clearly indicated that the amended controlled-substance-crime statute "is effective August 1, 2016," and "applies to crimes committed on or after that date." Appellant asserts that *Edstrom* should be read to require more to effectuate the legislature's intent that the DSRA does not apply to non-final cases. Appellant contends that *Edstrom* requires, for example, "a specific provision stating that the new law does not apply to 'past and present' prosecutions for crimes committed before the changes took effect." But, *Edstrom* contains no requirement for such specific language.

Further, appellant's argument ignores this court's decisions in *State v. McDonnell*, 686 N.W.2d 841 (Minn. App. 2004), *review denied* (Minn. Nov. 16, 2004), and *State v. Basal*, 763 N.W.2d 328 (Minn. App. 2009). In *McDonnell*, this court held that the *Coolidge* principle did not apply because the 2003 amendment to the statute under which

the appellants were charged included an effective-date provision that stated that the amendment "is effective August 1, 2003, and applies to violations committed on or after that date." 686 N.W.2d at 846 (quoting 2003 Minn. Laws 1st Spec. Sess. ch. 2, art. 9, § 1, at 1446).[1] Similarly, in *Basal*, this court declined to apply a 2007 amendment to crimes committed before the effective date where "the legislature expressly provided that the [amendment] would become effective January 1, 2008." 763 N.W.2d at 336 (citing 2007 Minn. Laws ch. 147, art. 2, § 64, at 1901).

Here, the legislature clearly indicated that it did not intend for the amendments contained in the DSRA to apply to crimes committed before the effective date when it included language stating that the amendments would become effective August 1, 2016, and would apply to crimes committed on or after that date. Accordingly, appellant is not entitled to have his conviction level reduced because he committed his offense prior to the effective date of the relevant DSRA provisions.

II. The DSRA's modifications to the sentencing guidelines do not apply to offenses committed before the effective date to reduce appellant's sentence.

Appellant next contends that even if the amendments to the offense levels do not apply to him, the DSRA's modifications to the sentencing guidelines do apply because the DSRA provision that reduced the grid sentences for first-degree controlled-substance crimes did not contain the same effective-date language as the amendments to the offense levels. We disagree.

[1] The *McDonnell* court also cited to section 645.21 in concluding that the legislature did not clearly and manifestly intend for the 2003 amendment to apply to violations committed before the amendment's effective date. 686 N.W.2d 845-46.

Section 18 of the DSRA rejected certain proposed changes to the guidelines and directed the commission to make modifications to the new drug-offender sentencing grid. 2016 Minn. Laws ch. 160, § 18, at 591. This section became "effective the day following final enactment" of the DSRA, which occurred on May 22, 2016, when the governor signed the act. *Id.* § 18, 22, at 591-92. Contrary to appellant's argument, this provision does not provide the effective date for the changes that the commission subsequently made to the guidelines.

The guidelines explicitly dictate that "the presumptive sentence for any offender convicted of a felony . . . is determined by the Sentencing Guidelines in effect on the date of the conviction offense." Minn. Sent. Guidelines 2 (2016). The first page of the guidelines also states that "[t]he Sentencing Guidelines are effective August 1, 2016, and determine the presumptive sentence for felony offenses committed on or after the effective date." Minn. Sent. Guidelines (2016). In addition, when the commission amended the guidelines after the DSRA, it stated that the amendments were effective August 1, 2016. Minn. Sent. Guidelines Comm., *Adopted Modifications to the Sentencing Guidelines and Commentary* (Aug. 1, 2016), http://mn.gov/msgc-stat/documents/2016%20Guidelines/August%202016%20Adopted%20Modifications.pdf. And, given that the commission clearly stated the effective-date language, appellant's reliance on *Coolidge* for application of the DSRA's modifications to the sentencing guidelines is misguided.

Appellant acknowledges that Minn. Sent. Guidelines 3.G.1 (2016) includes effective-date language that applies the modifications prospectively, but he asserts that

this provision applies only to "policy" changes. Appellant's contention conflicts with the plain language of guideline 3.G.1, which states that "[m]odifications to the Minnesota Sentencing Guidelines and associated commentary apply to offenders whose date of offense is on or after the specified modification effective date." Therefore, the modifications to the sentencing guidelines made after the DSRA do not apply to crimes committed before August 1, 2016. The presumptive sentence that applies to appellant is determined by the guidelines in effect in April 2014. Thus, appellant is not entitled to be resentenced under the new drug-offender sentencing grid.

Affirmed.