STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1312

State of Minnesota,
Respondent,

vs.

Jacob Lee Kivela-Sandnas,
Appellant.

Filed June 19, 2017
Affirmed
Randall, Judge[*]

St. Louis County District Court
File No. 69VI-CR-15-500

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

Mark S. Rubin, St. Louis County Attorney, Sharon N. Chadwick, Assistant County Attorney, Virginia, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Michael McLaughlin, Assistant Public Defender, St. Paul, Minnesota; and

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

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

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

RANDALL, Judge

Appellant challenges his conviction of second-degree possession of a controlled substance, arguing that the 2016 Drug Sentencing Reform Act (DSRA) applies retroactively to reduce his conviction to fifth-degree possession of a controlled substance. We affirm.

FACTS

On March 12, 2015, appellant Jacob Lee Kivela-Sandnas sold 7.68 grams of methamphetamine to a confidential informant (CI) of the police. Then, on March 24, 2015, appellant sold 3.7 grams of methamphetamine to another CI.

The state charged appellant with first-degree sale of a controlled substance in violation of Minn. Stat. § 152.021, subd. 1(1) (2014), and second-degree possession of a controlled substance in violation of Minn. Stat. § 152.022, subd. 2(a)(1) (2014). Appellant entered a guilty plea to second-degree possession of a controlled substance and acknowledged that he was in possession of at least six grams of methamphetamine. Appellant made the plea pursuant to an agreement that the charge for first-degree sale of a controlled substance would be dismissed and that sentencing would be concurrent with his sentence in a separate court file.

The district court entered judgment of conviction when appellant failed to appear at the originally-scheduled sentencing hearing. At the second sentencing hearing, the district court sentenced appellant to 75 months in prison, the presumptive sentence with his criminal history. Near the conclusion of the hearing, appellant asked the district court if

he would be entitled to relief if the new drug-offender sentencing grid became effective. The district court told appellant that it would have to wait to see what the legislature does in order to answer his question.

On May 22, 2016, the governor signed into law the DSRA. 2016 Minn. Laws ch. 160, § 22, at 592. One effect of the DSRA is that the possession of six grams of methamphetamine, which appellant acknowledged, is now classified as a fifth-degree controlled substance crime. 2016 Minn. Laws ch. 160, § 7, at 584; *see also* Minn. Stat. § 152.025, subd. 2(1) (2016). Under the new drug-offender sentencing grid, the presumptive sentence for a fifth-degree controlled substance crime based on a criminal history score of four is a seventeen-month presumptive stayed sentence, and the district court has the discretion to sentence an offender to "up to one year of confinement and other non-jail sanctions . . . as conditions of probation." Minn. Sent. Guidelines 4.C (2016). The DSRA provision amending fifth-degree controlled substance crimes became "effective August 1, 2016, and applies to crimes committed on or after that date." 2016 Minn. Laws ch. 160, § 7, at 585. The provision of the DSRA directing the Sentencing Guidelines Commission (the commission) to modify the new drug-offender sentencing grid became "effective the day following final enactment." 2016 Minn. Laws ch. 160, § 18, at 591.

This appeal follows.

D E C I S I O N

Appellant argues that he should be resentenced in accordance with the DSRA because his case was pending when the act took effect. A case is pending until the time that direct appeals are exhausted or the time for filing a direct appeal has elapsed. *State v.*

Losh, 721 N.W.2d 886, 893-94 (Minn. 2006). The interpretation of a sentencing statute is a question of law, which this court reviews de novo. *State v. Noggle*, 881 N.W.2d 545, 547 (Minn. 2016). "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. *State v. Hayes*, 826 N.W.2d 799, 804 (Minn. 2013).

"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 first asserts that he is entitled to have his offense reduced from second-degree possession of a controlled substance to fifth-degree possession of a controlled substance because "mitigating laws should apply to pending cases" and the DSRA does not contain clear language that prevents application of the law's mitigating effects to pending cases. 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 Minnesota 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 515. 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. *See State v. Hamilton*, 289 N.W.2d 470, 474-75 (Minn. 1979); *Ani v. State*, 288 N.W.2d 719, 720 (Minn. 1980). However, in *State v. Edstrom*, the supreme court limited the *Coolidge* principle and held that it did not apply where "the legislature ha[d] clearly indicated its intent that the statutes have no effect on crimes committed before the effective date of the act, August 1, 1975," and the petitioner committed the underlying crime before the effective date. 326 N.W.2d 10, 10 (Minn. 1982). Together, *Coolidge* and *Edstrom* indicate that newly-enacted laws reducing punishment for a criminal offense apply to all cases that are not final when the law takes effect, except when the legislature states otherwise. *Id.*

Here, like in *Edstrom*, the legislature stated the effective date of the DSRA's amendments to the controlled-substance-crime statutes and that the amendments would apply prospectively to crimes committed on or after August 1, 2016. In *Edstrom*, however, the 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. Appellant relies on this language in an attempt to distinguish *Edstrom* by asserting that *Edstrom* expressly excluded retroactive application of its mitigating provisions, while the DSRA does not contain language stating that the ameliorative amendments apply *only* to crimes committed on or after the effective date. Appellant also asserts that *Edstrom* is distinguishable because that decision occurred in the postconviction context, while this case is on direct appeal.

Neither *Edstrom* nor subsequent caselaw require a specific provision excluding retroactive application for the effective-date language to apply only prospectively. After *Edstrom*, this court has held that the *Coolidge* principle does not apply in two published decisions. In *State v. McDonnell*, this court held that the *Coolidge* principle did not apply where the 2003 amendment to the statute under which the appellants were charged 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). Similarly, in *State v. Basal*, this court declined to retroactively 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). Further, both *McDonnell* and *Basal* involved direct appeals and applied *Edstrom* without mention of its postconviction context. Thus, appellant is not entitled to a reduced sentence because the effective-date language of the DSRA indicates that the legislature did not intend for the DSRA's mitigating provisions to apply retroactively.

Next, appellant contends that he is entitled to a reduction in his offense level because construing the DSRA to apply only to crimes committed on or after August 1, 2016, "would undermine that statute's broader goals" of mitigating punishment for low-level drug offenders and decreasing incarceration costs to redirect funds toward treatment and rehabilitation. The DSRA included provisions that both mitigate and aggravate punishment for offenders of various controlled-substance crimes. For example, in addition to reducing appellant's crime of possessing at least six grams of methamphetamine to a

fifth-degree controlled substance offense, the DSRA added a subdivision containing factors that may be used to aggravate an offense. 2016 Minn. Laws ch. 160, §§ 2, 7, at 576-77, 584. Accordingly, the goals of the DSRA are not only to mitigate punishment for certain offenses, but to increase punishment for other offenses. As analyzed above, the DSRA does not apply retroactively to crimes committed before August 1, 2016. Thus, the goals of DSRA also do not apply retroactively to appellant's crimes.

The legislature indicated that it did not intend for the amendments contained in the DSRA to apply retroactively 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. Appellant is not entitled to an offense-level reduction. He committed his offense prior to the effective date of the relevant DSRA provision.

Affirmed.