STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1414

State of Minnesota,
Respondent,

vs.

Chelsey Marie Conn,
Appellant.

Filed June 5, 2017
Affirmed
Schellhas, Judge

Martin County District Court
File No. 46-CR-15-435

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

Terry Viesselman, Martin County Attorney, Kathryn Karjala-Curtis, Assistant County Attorney, Fairmont, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jessica Merz Godes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Schellhas, Judge; and Klaphake, 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

SCHELLHAS, Judge

Appellant challenges her sentence for second-degree possession of a controlled substance, arguing that she is entitled to be resentenced under the 2016 Minnesota drug sentencing reform act because the act became effective before her conviction became final. We affirm.

FACTS

On May 7, 2015, respondent State of Minnesota charged appellant Chelsey Conn with one count of second-degree possession of a controlled substance for possessing about eight grams of methamphetamine in violation of Minn. Stat. § 152.022, subd. 2(a)(1) (2014); one count of failure to affix tax stamps; one count of driving without proof of insurance; one count of driving after license revocation; one count of possession of a small amount of marijuana; and one count of possession of drug paraphernalia. On May 12, 2016, Conn pleaded guilty to second-degree possession of a controlled substance in exchange for dismissal of the other charges and a 44-month executed sentence, a downward durational departure from the presumptive 58-month executed sentence. The district court convicted Conn of second-degree possession of a controlled substance and sentenced her in accordance with the plea agreement.

This appeal follows.

D E C I S I O N

When Conn committed the second-degree controlled-substance crime by possessing about eight grams of methamphetamine, the severity level of that crime was eight and the

presumptive sentence was 58 months' imprisonment for a defendant, like Conn, with a criminal-history score of one. *See* Minn. Stat. § 152.022, subd. 2(a)(1); Minn. Sent. Guidelines 4.A (2014). But after amendments made by the 2016 Minnesota drug sentencing reform act (DSRA), possession of eight grams of methamphetamine is classified as a fifth-degree controlled-substance crime, which carries a presumptive sentence of one year and one day stayed for a defendant with a criminal-history score of one. *See* Minn. Stat. §§ 152.023, subd. 2(a)(1), .025, subd. 2(1) (2016); Minn. Sent. Guidelines 4.C (2016). Conn argues that she is entitled to be resentenced under the DSRA amendments because the act became effective before her conviction became final. Although Conn did not raise this sentencing argument in district court, we address the issue in the interest of judicial economy. *See Edstrom v. State*, 326 N.W.2d 10, 10 (Minn. 1982) ("Normally, we would not consider this issue because it was not clearly raised in the trial court. However, in the interest of judicial economy, we address the issue . . . .").

"The retroactivity of a statute is a matter of statutory interpretation, which we review de novo." *State v. Basal*, 763 N.W.2d 328, 335 (Minn. App. 2009). As a general rule, "[n]o law shall be construed to be retroactive unless clearly and manifestly so intended by the legislature." Minn. Stat. § 645.21 (2016). When 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 (2016). "In Minnesota no statute shall be construed to be applied retroactively unless clearly and manifestly so intended by the legislature." *State v. Traczyk*, 421 N.W.2d 299, 300 (Minn. 1988) (quotation omitted). "[T]here must exist clear evidence

that the legislature intended retroactive application such as mention of the word 'retroactive.'" *Id.* (quotation omitted).

The relevant sections of the DSRA provide, "This section is effective August 1, 2016, and applies to crimes committed on or after that date." 2016 Minn. Laws ch. 160, §§ 4, 7, at 579–81, 583–85. Conn nevertheless argues the sentencing provisions in the DSRA should be applied to reduce her sentence because of the common-law rule that "the legislature intends for newly-enacted laws reducing the punishment for a criminal offense to apply to all cases that are not final when the law takes effect," citing *State v. Coolidge*, 282 N.W.2d 511, 514–15 (Minn. 1979). *Coolidge* holds 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 at 514.

But, as Conn concedes, the supreme court narrowed the holding of *Coolidge* in *Edstrom*, clarifying that *Coolidge*'s rule only applies "absent a contrary statement of intent by the legislature." 326 N.W.2d at 10. The act at issue in *Edstrom* provided that "crimes committed prior to the effective date of this act are not affected by its provisions." 1975 Minn. Laws ch. 374, § 12, at 1251. Edstrom committed his offense in March 1975, and the effective date of the act was August 1, 1975. *Edstrom*, 326 N.W.2d at 10. The supreme court therefore declined to apply the statute as amended by the act to offenses committed before the effective date, including Edstrom's offense. *Id.* at 10–11.

This court has addressed the relationship between *Coolidge* and *Edstrom* in two published opinions. In the act at issue in *State v. McDonnell*, the legislature stated that the subject amendment "'is effective August 1, 2003, and applies to violations committed on

or after that date.'" 686 N.W.2d 841, 846 (Minn. App. 2004) (quoting 2003 Minn. Laws 1st Spec. Sess. ch. 2, art. 9, § 1, at 1446), *review denied* (Minn. Nov. 16, 2004). This court characterized that language as an "explicit legislative statement that . . . demonstrates that the legislature did not clearly and manifestly intend the amendment to be retroactive." *Id.* We therefore concluded that the principle stated in *Coolidge* did not apply because the legislation included a statement of intent that the amendment would not apply to violations that preceded the effective date. *Id.* Citing *Edstrom*, we affirmed the appellants' convictions because "there [wa]s no basis for us to construe the amendment to be retroactive." *Id.*

In *Basal*, this court again declined to apply an amended statute to offenses committed before the effective date of the amending act where "the legislature provided for a specific effective date," thereby indicating that "the legislature did not intend for the amendment to apply to conduct occurring before the effective date." 763 N.W.2d at 336 (citing 2007 Minn. Laws ch. 147, art. 2, § 64, at 1901). Because the effective-date language of the subject legislative amendment was equivalent to the language that was at issue in *Edstrom*, we concluded that Coolidge did not require retroactivity. *Id.*

The DSRA similarly provides that its relevant sections are "effective August 1, 2016, and appl[y] to crimes committed on or after that date." Minn. Laws. ch. 160 §§ 4, 7 at 579–81, 583–85. Yet Conn insists that this language is insufficient "[t]o avoid application [of the DSRA] to non-final cases." According to Conn, "*Edstrom* requires something more," such as a specific statement that the amended law does not apply to '"past and present'" prosecutions for crimes committed before the effective date of the

amendment. She provides no authority for her argument other than *Edstrom*, which does not support her argument.

Conn also argues that "[b]ecause an affirmative statement of non-applicability to pending cases is absent from [certain sections of the DSRA] there is no basis for not applying the common-law rule." But this argument also fails because, as discussed above, the common-law rule articulated in *Edstrom* and reiterated by this court in *McDonnell* and *Basal* supports a conclusion that the effective-date language found in the relevant sections of the DSRA is sufficient to demonstrate that the legislature did not intend the amendment to apply to offenses committed before the effective date of those sections.

Finally, Conn argues that this court should apply "the DSRA's ameliorative provisions" here because doing so is consistent with the policy objectives of the act. We disagree. If the legislature had intended retroactive application of the DSRA to crimes committed before August 1, 2016, the legislature could have clearly indicated that intention, but it did not do so.

Affirmed.