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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1524**

State of Minnesota,
Respondent,

vs.

Mai Vang,
Appellant.

**Filed September 5, 2017
Reversed and remanded
Klaphake, Judge***

Anoka County District Court
File No. 02-CR-15-4968

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

Anthony C. Palumbo, Anoka County Attorney, Kelsey R. Kelley, Assistant County
Attorney, Anoka, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, John Donovan, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Reilly, Judge; and
Klaphake, Judge.

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

UNPUBLISHED OPINION

KLAPHAKE, Judge

Appellant Mai Vang challenges her conviction and sentence, arguing that her second-degree controlled-substance conviction should be reduced to a third-degree offense and that her case should be remanded to district court for resentencing in accordance with the 2016 Minnesota Drug Sentencing Reform Act (DSRA) because the DSRA took effect before her conviction became final. We affirm the conviction for the second-degree controlled-substance crime but remand for resentencing in accordance with the DSRA.

DECISION

“Statutory construction and interpretation of the sentencing guidelines are subject to de novo review.” *State v. Campbell*, 814 N.W.2d 1, 4 (Minn. 2012).

Vang relies on *State v. Coolidge*, which states 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).¹ But *Coolidge* does not apply if there is a contrary statement of intent from the legislature. *Edstrom v. State*, 326 N.W.2d 10, 10 (Minn. 1982). The rule from *Coolidge* and *Edstrom* is:

An amended statute applies to crimes committed before its effective date if: (1) there is no statement by the Legislature that clearly establishes the Legislature’s intent to abrogate the amelioration doctrine; (2) the amendment mitigates punishment; and (3) final judgment has not been entered as of the date the amendment takes effect.

¹ A conviction is 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 (Minn. 2006), *cert. denied*, 550 U.S. 961 (2007).

State v. Kirby, ___ N.W.2d ___, ___, 2017 WL 3161079, at *4 (Minn. July 26, 2017).

The DSRA increased the weight threshold necessary for second-degree sale of methamphetamine from three to ten grams. 2016 Minn. Laws ch. 160, § 4, at 579-80. That section of the DSRA is “effective August 1, 2016, and applies to crimes committed on or after that date.” 2016 Minn. Laws ch. 160, § 4, at 581. This language abrogates the amelioration doctrine. *State v. Otto*, ___ N.W.2d ___, ___, 2017 WL 3161109, at *2 (Minn. July 26, 2017). Thus, Vang’s conviction for second-degree sale of a controlled substance stands. *See id.*

The DSRA also reduced the presumptive sentence for Vang’s offense from a presumptively executed 48 months to a presumptively stayed 48 months. 2016 Minn. Laws ch. 160, § 18(b)(3)(i), at 591. *Compare* Minn. Sent. Guidelines 4.A (2015), *with* Minn. Sent. Guidelines 4.C (2016). That section of the DSRA is “effective the day following final enactment.” 2016 Minn. Laws ch. 160, § 18, at 591; *see Kirby*, 2017 WL 3161079, at *4-8. This language does not abrogate the amelioration doctrine. *Id.*

Next, we must determine whether the DSRA mitigates Vang’s punishment. *Kirby*, 2017 WL 3161079, at *8-9. Vang was sentenced to 41 months in prison. The presumptive sentence for Vang’s second-degree controlled-substance conviction under the DSRA is a 48-month stayed sentence. 2016 Minn. Laws ch. 160, § 18(b)(3)(i), at 591. Because the DSRA-amended presumptive sentence is a presumptively stayed 48 months, we conclude that the DSRA mitigates Vang’s punishment.

The state does not contend that a final judgment had been entered against Vang when the DSRA took effect. Thus, we reverse Vang’s sentence and remand for the district

court to impose a sentence under the appropriate cell on the DSRA-amended sentencing guidelines grid.

Because we remand for resentencing on other grounds, we do not address Vang's policy argument. *See State v. Vang*, 847 N.W.2d 248, 265 n.9 (Minn. 2014) (“[J]udicial restraint bids us to refrain from deciding any issue not essential to the disposition of the particular controversy before us.”).

Reversed and remanded.