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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-2027**

State of Minnesota,
Respondent,

vs.

Amy Lyn Heitman,
Appellant.

**Filed August 14, 2017
Reversed and remanded
Cleary, Chief Judge**

Renville County District Court
File No. 65-CR-16-106

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

David Torgelson, Renville County Attorney, Laurence Stratton, Assistant County
Attorney, Olivia, Minnesota (for respondent)

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

Considered and decided by Cleary, Chief Judge; Schellhas, Judge; and Randall,

Judge.*

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

UNPUBLISHED OPINION

CLEARY, Chief Judge

In this sentencing appeal, appellant Amy Lyn Heitman contends that the district court abused its discretion in denying her motion for a downward dispositional departure. Heitman additionally argues that she should receive the benefit of the 2016 Drug Sentencing Reform Act's (DSRA) reduction in the presumptive guidelines sentence for second-degree possession. Because Heitman is entitled to the benefit of the DSRA's reduction in the presumptive guidelines sentence, we reverse and remand.

FACTS

In April 2016, a Renville County deputy saw a vehicle drive past him in which neither the driver nor the passenger appeared to be wearing a seatbelt. He stopped the vehicle, identified the passenger as Heitman, and discovered that she had an active arrest warrant. Heitman refused to get out of the vehicle until police officers began to pull her out. Heitman asked that her bags be brought with her to the jail.

Upon Heitman's arrival at the jail, an officer searched her and discovered two bags in her underwear. The bags contained approximately 23 grams of cocaine and 22 grams of methamphetamine. A search of Heitman's property also revealed a hypodermic needle and a spoon with drug residue found near her driver's license, and two cans of beer. Respondent State of Minnesota charged Heitman by complaint with one count of felony first-degree possession of a controlled substance, two counts of felony second-degree possession of a controlled substance, one count of gross-misdemeanor contraband in a jail

facility, one count of misdemeanor resisting arrest, and one count of misdemeanor possession of a hypodermic needle.

Heitman pleaded guilty pursuant to a plea agreement, which called for a plea to one count of felony second-degree possession and for dismissal of the remaining counts. There was no agreement as to sentencing. Defense counsel moved for a downward dispositional departure. At the sentencing hearing, the district court heard testimony from Heitman, and from a housing-program representative and a jail treatment provider who had each met with Heitman. The district court also considered a presentence-investigation report (PSI) and asked questions of the authoring agent. The district court did not find Heitman particularly amenable to probation. After denying the motion for departure, the district court imposed a presumptive guidelines sentence of 48 months in prison. Heitman appeals.

Before Heitman's plea, the legislature passed and the governor signed the DSRA, which reduced the presumptive guidelines sentence for Heitman's offense from a presumptive commitment to prison for 41 to 57 months to a presumptive stayed sentence of 48 months. *See* 2016 Minn. Laws ch. 160 § 18, at 590-91; Minn. Sent. Guidelines 4.C (2016); Minn. Sent. Guidelines 4.A (Supp. 2015). While Heitman's appeal was pending, the supreme court issued *State v. Kirby*, which held that the amelioration doctrine required resentencing in certain similar cases. ___ N.W.2d ___, ___, 2017 WL 3161079, at *4, *9 (Minn. July 26, 2017).

D E C I S I O N

Heitman argues that after she was charged but before she pleaded guilty, "the governor signed legislation reducing the presumptive guidelines sentence to a stayed

probationary term. [Heitman], because her case was not final when these changes took effect, is entitled to be resentenced in accordance with the new Guidelines.” Heitman does not argue that the threshold changes of the DSRA would alter her offense of conviction. Rather, she argues only that she should benefit from the reduction in the presumptive guidelines sentence. We agree.

The supreme court in *Kirby* held:

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.

2017 WL 3161079, at *4. We apply this three-prong test to Heitman’s case.

The *Kirby* court then continued to consider the amendment at issue here—section 18 of the DSRA. *Id.* at *4-9. Section 18 of the DSRA contains provisions requiring the sentencing-guidelines commission to make certain modifications to the drug-offense sentencing guidelines. 2016 Minn. Laws. ch. 160, § 18, at 590-91. The section includes an effective-date provision indicating that it “is effective the day following final enactment,” and the governor signed the act on May 22, 2016. *Id.* at 591. The supreme court in *Kirby* held that this language did not constitute a statement of legislative intent to abrogate the amelioration doctrine. 2017 WL 3161079, at *8. The first prong of the test established in *Kirby* is therefore satisfied here.

The supreme court also considered the second prong in *Kirby* with respect to section 18 of the DSRA. *Id.* at *8-9. It concluded that “the DSRA as a whole generally mitigates

punishment,” and “it especially does so for offenders such as Kirby,” who, like Heitman, would be subject to a lower presumptive guidelines sentence as a result of the amendment. *Id.* at *9. The second prong of the *Kirby* test is also satisfied.

Finally, we must consider whether final judgment was entered before the amendment took effect. Because Heitman’s conviction was not yet final on the effective date of Section 18(b) of the DSRA, the amelioration doctrine requires her resentencing.

In sum, Heitman satisfies the three requirements for application of the amelioration doctrine and must be resentenced under the DSRA-amended sentencing grid. Because we reverse and remand on this issue, we do not reach the district court’s denial of Heitman’s request for a downward dispositional departure.

Reversed and remanded.