STATE OF MINNESOTA
IN COURT OF APPEALS
A16-2059

State of Minnesota,
Appellant,

vs.

Michael John Miller,
Respondent.

Filed June 26, 2017
Reversed and remanded
Bratvold, Judge

Anoka County District Court
File No. 02-CR-15-3913

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

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

Paul P. Sarratori, Mesenbourg & Sarratori Law Offices, P.A., Coon Rapids, Minnesota (for respondent)

Considered and decided by Bratvold, Presiding Judge; Schellhas, Judge; and Kirk, Judge.

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

BRATVOLD, Judge

Appellant State of Minnesota challenges the district court's sentence, which stayed imposition of sentence for respondent's conviction of felony driving while impaired

(DWI). Because we conclude that Minn. Stat. § 169A.276, subd. 1(b) (2014), prohibits a district court from staying imposition of sentence for this conviction, we reverse and remand.

FACTS

Respondent Michael John Miller pleaded guilty to one count of first-degree DWI with three or more prior offenses in violation of Minn. Stat. § 169A.20, subd. 1(1) (2014) and Minn. Stat. § 169A.24, subd. 1(1) (2014). The presumptive sentence for this offense was a stay of execution of 42 months in prison, which was reflected in Miller's presentence investigation report and not challenged for accuracy by either party. *See* Minn. Sent. Guidelines 4.A (2014).

Before the sentencing hearing, Miller filed an informal letter brief, moving the district court to stay imposition of the presumptive sentence. The state opposed Miller's request, arguing that Minn. Stat. § 169A.276, subd. 1(b), prohibited a stay of imposition of a sentence for first-degree DWI offenses.

At the sentencing hearing, the district court stayed imposition of Miller's sentence, ordered him to serve a staggered jail sentence of 300 days, and placed him on probation for seven years. In its order, the district court acknowledged that this sentence was prohibited by Minn. Stat. § 169.276, but stated, "It is not the role of the legislature to mandate sentences to the courts." The district court commented that statistics from the Sentencing Guidelines Commission indicate that some convictions for first-degree DWI result in a stay of imposition of sentence; moreover, the district court observed that the

recent development and success of treatment courts supported its sentencing decision. The state's appeal follows.

D E C I S I O N

District courts have broad discretion in imposing sentences, and appellate courts will not reverse a sentencing decision absent an abuse of discretion. *State v. Soto*, 855 N.W.2d 303, 307–08 (Minn. 2014). A district court "abuses its discretion when its decision is based on an erroneous view of the law." *State v. Williams*, 862 N.W.2d 701, 703 (Minn. 2015) (quotation omitted).

The legislature is vested with the power to define criminal conduct and to determine the punishment for such conduct, including providing for mandatory sentences. *State v. Olson*, 325 N.W.2d 13, 17–18 (Minn. 1982); *see also State v. Meyer*, 228 Minn. 286, 293–94, 37 N.W.2d 3, 9 (1949). This power includes setting "the limits of discretion vested in the courts in the imposition of the sentence." *Meyer*, 228 Minn. at 293, 37 N.W.2d at 9. The legislature may "grant the court power to suspend a sentence and may limit such power to certain cases and deny it as to others." *Id*. at 293–94, 37 N.W.2d at 9. The judiciary is vested with the power to impose the final sentence for a criminal violation "*within the limits prescribed by the legislature*." *Olson*, 325 N.W.2d at 18 (emphasis added).

Miller was convicted of an offense set out in chapter 169A. "It is a crime for any person to drive, operate, or be in physical control of any motor vehicle . . . when: (1) the person is under the influence of alcohol." Minn. Stat. § 169A.20, subd. 1(1). "A person who violates section 169A.20 (driving while impaired) is guilty of [felony] first-degree driving while impaired if the person: (1) commits the violation within ten years of the first

of three or more qualified prior impaired driving incidents." Minn. Stat. § 169A.24, subds. 1(1), 2 (2014). A person convicted of first-degree DWI "is subject to the mandatory penalties described in section 169A.276." Minn. Stat. § 169A.24, subd. 2.

At the sentencing hearing, the district court acknowledged that Minn. Stat. § 169A.276, subd. 1(b), prohibits a court from staying imposition of sentence for first-degree DWI offenses. Nevertheless, the district court stayed imposition of Miller's sentence.[1]

The state argues that the district court erred. Miller argues that Minn Stat. §§ 609.135 (2014) and 609.11, subd. 8(a) (2014), authorize a district court to stay imposition of a sentence in this case. Section 609.135 provides that except "when a mandatory minimum sentence is required by section 609.11, any court may stay imposition or execution of sentence." Minn. Stat. § 609.135, subd. 1(a). Because a mandatory minimum sentence under section 609.11 is not required here, Miller contends that the statute authorized the district court to stay imposition of his sentence.

But chapter 169A contains specific provisions regarding mandatory sentencing for DWI offenses. Indeed, a person convicted of first-degree DWI is "subject to the mandatory penalties described in section 169A.276." Minn. Stat. § 169A.24, subd. 2. Section 169A.276 provides that the mandatory minimum sentence for first-degree DWI is

[1] We note that it appears the district court believed Minn. Stat. § 169A.276 violates the separation-of-powers doctrine. However, the district court did not conduct a constitutional analysis of the statute, nor did the parties raise this issue in the district court, or brief or argue it before this court. Thus, we do not decide the issue here.

imprisonment for not less than three years. Minn. Stat. § 169A.276, subd. 1(a). "The court may stay execution of this mandatory sentence . . ., but may not stay imposition or adjudication of the sentence or impose a sentence that has a duration of less than three years." *Id.*, subd. 1(b); *see also* Minn. Sent. Guidelines 2.E.2.e (2014) (stating mandatory minimum sentence applicable for felony DWI is at least 36 months).

The issue before us is which statute governs Miller's sentence. "[W]hen two criminal statutes, one general and one specific, conflict . . . the more specific statute governs over the more general statute, unless the legislature manifestly intends for the general statute to control." *State v. Craven*, 628 N.W.2d 632, 635 (Minn. App. 2001), *review denied* (Minn. Aug. 15, 2001); *see generally* Minn. Stat. § 645.26, subd. 1 (2014).

Here, the more specific statute is section 169A.276, subdivision 1(b), because it expressly addresses felony-level DWI sentences. In contrast, section 609.135, subdivision 1(a), which authorizes a stay of imposition of sentence, applies when a mandatory minimum sentence is not required by section 609.11. But section 609.11, subdivision 8(a), states that it applies only to "mandatory minimum sentences established by this section," which are specific to dangerous weapon, firearm, and drug offenses. Minn. Stat. § 609.11, subds. 4–5a (2014). We conclude that section 609.135 does not apply to sentencing for convictions of felony DWI offenses and chapter 169A exclusively governs sentencing of DWI offenses.

The language of section 169A.276, subd. 1(b) is unambiguous. The statute provides that a court may stay execution of sentence for felony-level DWI offenses, but "*may not stay imposition . . . of the sentence*." Minn. Stat. § 169A.276, subd. 1(b) (emphasis added).

The plain language of section 169A.276 limits a district court's discretion and prohibits a district court from staying imposition of sentence for this offense. Thus, we reject Miller's argument that the district court had discretion to stay imposition of sentence.

On appeal, Miller argues public policy reasons for changing minimum sentencing for DWI convictions. The district court's comments at sentencing suggest that it was persuaded by these concerns. Caselaw firmly establishes, however, that district courts do not have authority to stay imposition or adjudication of sentences when the legislature mandates otherwise. For example, the supreme court reversed a district court's decision that stayed imposition of sentence instead of imposing the mandatory six-month incarceration period for a controlled-substance conviction. *State v. Bluhm*, 676 N.W.2d 649, 653 (Minn. 2004). The supreme court held that when the legislature "clearly state[s] its intent to create a mandatory sentence" the district court does not have discretion to deviate from the mandatory sentence. *Id.* at 652; *see also State v. Osterloh*, 275 N.W.2d 578, 581 (Minn. 1978) (holding that a district court's "sentencing power is statutory rather than inherent").

Because the legislature established a mandatory-minimum sentence for felony DWI offenses under section 169A.276, subdivision 1(b), and expressly prohibited a stay of imposition of sentence, the district court abused its discretion when it stayed imposition of Miller's sentence. Thus, we reverse and remand to the district court to vacate its order staying imposition of sentence and direct the district court to impose a sentence consistent with this opinion.

Reversed and remanded.