STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1024

State of Minnesota,
Respondent,

vs.

Corey Isaiah Bradley,
Appellant.

Filed December 18, 2017
Affirmed
Florey, Judge

Hennepin County District Court
File No. 27-CR-11-35641

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

Michael O. Freeman, Hennepin County Attorney, Linda K. Jenny, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Connolly, Presiding Judge; Jesson, Judge; and Florey, Judge.

S Y L L A B U S

Where a district court stays imposition of a presumptively stayed sentence under the Minnesota Sentencing Guidelines, if that stay of imposition is later vacated at a probation-revocation hearing and the sentence is imposed and executed without jury findings or a waiver, there is no Sixth Amendment violation under *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004).

O P I N I O N

FLOREY, Judge

Appellant challenges the district court's vacation of his stay of imposition and execution of a presumptively stayed sentence under the Minnesota Sentencing Guidelines based on a probation violation. Appellant argues that the district court imposed an upward dispositional departure in violation of his Sixth Amendment right to a jury trial as recognized in *Blakely*, 542 U.S. 296, 124 S. Ct. 2531. We disagree and affirm the district court.

FACTS

In July 2012, appellant Corey Isaiah Bradley pleaded guilty to felony possession of pornographic work involving a minor. *See* Minn. Stat. § 617.247, subd. 4(a) (2010). At his plea hearing, Bradley admitted to the underlying facts of the crime pursuant to the plea agreement, but he did not admit to any aggravating factor for a sentencing departure. The district court accepted his plea and sentenced Bradley to a stay of imposition with a five-year probationary period. Under the Minnesota Sentencing Guidelines, Bradley's presumptive sentence was a 15-month stayed sentence.[1]

Bradley was eventually accused of violating his probation by failing to complete treatment and appeared before the district court for a probation-revocation hearing in April

[1] At the time, Bradley's criminal-history score was zero, and his crime was a severity-level G offense. Under the 2011 sex-offender guidelines, Bradley's presumptive sentence was 15 months stayed. *See* Minn. Sent. Guidelines 4 (Supp. 2011).

2017.[2] After hearing the evidence, the district court found Bradley in violation of his probation, vacated his stay of imposition, and then executed the presumptive 15-month stayed sentence. Near the hearing's conclusion, the district court remarked that to the extent that executing Bradley's sentence was an upward dispositional departure from the sentencing guidelines, the court found that Bradley was not amenable to probation. This appeal follows.

ISSUE

Did the district court violate Bradley's Sixth Amendment right to a jury trial under *Blakely v. Washington* by vacating his stay of imposition based on a probation violation and then imposing and executing his presumptively stayed sentence?

ANALYSIS

Bradley argues that when the district court vacated his stay of imposition at his probation-revocation hearing, it should have imposed the presumptive sentence, 15 months stayed. Instead, the district court imposed a 15-month *executed* sentence which, Bradley claims, was an upward dispositional departure from the Minnesota Sentencing Guidelines requiring jury findings or a waiver under *Blakely*, 542 U.S. 296, 124 S. Ct. 2531 (2004).

The purpose of the Minnesota Sentencing Guidelines is to "assure uniformity, proportionality, rationality, and predictability in sentencing." *State v. Jones*, 745 N.W.2d 845, 848 (Minn. 2008) (quotation omitted). Imposition of the presumptive sentence under

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[2] Bradley was found in violation of his probation in June 2014. At that time, the district court continued Bradley's stay of imposition with an intermediate sanction of additional jail time.

the guidelines "is mandatory absent additional findings." *Id.* (quoting *State v. Shattuck*, 704 N.W.2d 131, 141 (Minn. 2005)). These "additional findings" refer to the *Blakely* requirement, which states that any facts supporting a departure above the maximum guidelines sentence requires either a jury to find those facts beyond a reasonable doubt or the defendant to admit to those facts. *Id.* (quoting *Apprendi v. New Jersey*, 530 U.S. 466, 490, 120 S. Ct. 2348, 2362-63 (2000); *see also Blakely*, 542 U.S. at 303, 124 S. Ct. at 2537). In Minnesota, *Blakely* applies to both upward durational departures (sentences longer than the presumptive guidelines) and dispositional departures (executing presumptively stayed sentences). *State v. Allen*, 706 N.W.2d 40, 44-45 (Minn. 2005).

The critical question in this case is when, exactly, Bradley was sentenced. Bradley argues that his actual sentencing occurred after his stay of imposition was vacated at his 2017 probation-revocation hearing, when the district court executed his presumptive sentence. In Bradley's framing of the issue, because the 2017 revocation hearing was his first sentencing hearing, the district court was obligated to either impose the presumptive stayed sentence or abide by *Blakely* requirements. The state argues that Bradley's actual sentencing occurred back at his 2012 hearing, when the district court gave Bradley the stay of imposition, and by the time Bradley appeared for the probation-revocation hearing, any *Blakely* concerns had long passed.

Resolving this dispute means deciding when a defendant is sentenced on a stay of imposition: either when the stay of imposition is given, or when it is taken away. We ultimately conclude that a defendant is sentenced within the Minnesota Sentencing Guidelines when a stay of imposition is given, not when it is later vacated.

Under the sentencing guidelines, sentencing occurs in two steps: (1) the imposition of sentence and (2) the execution of the imposed sentence. Minn. Sent. Guidelines definition of terms (Supp. 2011). The imposition of the sentence consists of pronouncing the sentence to be served in prison. *Id.* The execution of an imposed sentence consists of transferring the felon to the custody of the commissioner of corrections to serve the prison term. *Id.*

The guidelines provide that a "stayed sentence" may be accomplished in one of two ways, either by a stay of imposition or a stay of execution. *Id.* If the court grants a stay of imposition, the court does not impose (or pronounce) a prison sentence. *Id.* The comments to the guidelines note that when a stay of imposition is given, "no sentence *length* is pronounced, and the imposition of the sentence is stayed to some future date." *Id.* at cmt. 2.C.05 (emphasis added). The word "length" is key, illustrating that while a stay of imposition lacks a defined length of imprisonment, it is still a sentence as understood by the guidelines.

Our conclusion that a stay of imposition is an actual sentence that merely lacks a pronounced duration is supported in three ways. First, the comments to the sentencing guidelines state that if the sentence on a stay of imposition "is ever imposed, the presumptive sentence length shown in the appropriate [guidelines grid] cell should be pronounced, and a decision should be made whether to execute the presumptive sentence length given." *Id.* This contemplates that a sentencing judge revoking a stay of imposition may choose whether or not to execute the presumptive sentence. And while we acknowledge that the sentencing guidelines comments are not precedential, their insights

help inform our analysis. *See Asfaha v. State*, 665 N.W.2d 523, 526 (Minn. 2003) (stating that comments to the Minnesota Sentencing Guidelines are "only advisory and not binding on the courts").

Second, our conclusion is supported by comparing a stay of imposition with a stay of adjudication, specifically, analyzing when each attaches a conviction upon a defendant. With a stay of adjudication, there is no conviction or sentence imposed. *See* Minn. Sent. Guidelines cmt. 2.D.106 (2016); *see also Dupey v. State*, 868 N.W.2d 36, 41 (Minn. 2015) (concluding that a stay of adjudication under Minn. Stat. § 152.18, subd. 1, does not result in a judgment of conviction or sentence). Only when a stay of adjudication is vacated is that defendant convicted and sentenced. *See* Minn. Stat. § 609.10, subd. 1(a) (2016) (outlining the available sentences "[u]pon conviction"). In that scenario, *Blakely* would apply and the district court would be mandated to impose the presumptive sentence absent additional findings. *See Jones*, 745 N.W.2d at 848 (stating that *Blakely* applies to any imposed sentence beyond the statutory maximum).

In contrast, when a defendant receives a stay of imposition, the defendant still has a conviction under the guidelines. *State v. Ohrt*, 619 N.W.2d 790, 792 (Minn. App. 2000) (stating that a stay of imposition is treated as a conviction, not merely a plea or a finding of guilt on which adjudication has been stayed). Upon conviction, if the presumptive sentence is a stayed sentence, the guidelines give courts the option of choosing either a stay of imposition or a stay of execution as the appropriate sentence. Minn. Sent. Guidelines definition of terms (Supp. 2011). In Bradley's case, the district court chose a stay of

imposition. Granted, this choice did not carry a prison length, but it was still a "stayed sentence" under the guidelines, and therefore, an actual sentence.

Third, our conclusion that a stay of imposition is a sentence is supported by Minn. Stat. § 609.14, subd. 3(1) (2016). That statute states that if a court finds that a defendant violated probation, and if imposition of sentence was previously stayed, the court may "again stay sentence or impose sentence and stay the execution thereof, and in either event place the defendant on probation or order intermediate sanctions pursuant to section 609.135, *or impose sentence and order execution thereof*." Minn. Stat. § 609.14, subd. 3(1) (emphasis added). The plain meaning of this statute allows a court to rescind the stay of imposition and then "impose sentence and order execution thereof," exactly what occurred in Bradley's case. *Id*.

Bradley draws our attention to two cases in support of his argument that after vacating a stay of imposition, executing a presumptively stayed sentence requires *Blakely* findings. First, he cites *State v. Allen* for the proposition that upward dispositional departures are treated the same for *Blakely* purposes as upward durational departures. *Allen*, 706 N.W.2d at 44-45. We do not disagree; in fact, *Allen* is quite clear on this point. *Id*. at 46 ("The additional loss of liberty that results from execution of a presumptively stayed sentence, it is plain, exceeds the maximum sentence authorized by a plea of guilty or jury verdict, and violates the constitutional rule."). However, *Allen* involved a sentencing hearing and not a probation-revocation hearing, making it inapplicable to the issues now before the court. *See id*. at 43.

Next, Bradley argues that *State v. Beaty* is analogous. 696 N.W.2d 406 (Minn. App. 2005). *Beaty* involved a vacated stay of imposition at a probation-revocation hearing where the district court imposed an upward durational departure above the presumptive sentence. *Id*. at 412. However, Bradley's case involves executing a presumptively stayed sentence after Bradley violated the terms of his stay. The guidelines provide courts the option of either a stay of imposition or a stay of execution on a presumptively stayed sentence; no such option is available to courts in the context of a durational departure. Therefore, *Beaty* is inapposite to this case.

After Bradley pleaded guilty in 2012, the sentencing guidelines presumed a 15-month stayed sentence. Minn. Sent. Guidelines 4 (Supp. 2011). This gave the district court a sentencing choice: a stay of imposition or a stay of execution. Regardless of the choice, this was Bradley's sentencing hearing, and when the court gave him a stay of imposition, Bradley was sentenced under the meaning of Minnesota law. After Bradley violated probation, he passed through a traditional probation-revocation proceeding, was found in violation of his probation, and his presumptively stayed sentence was executed.[3] There was no *Blakely* issue because any such issue had long since expired after Bradley was sentenced in 2012, and neither the federal courts nor the courts of this state recognize a Sixth Amendment right to a jury for probation-revocation hearings. *See Minnesota v.*

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[3] The parties do not dispute that Bradley was afforded a probation-revocation hearing and that the district court complied with all required findings and procedures in that regard. *See State v. Modtland*, 695 N.W.2d 602 (Minn. 2005); *State v. Austin*, 295 N.W.2d 246 (Minn. 1980).

Murphy, 465 U.S. 420, 435-36 n.7, 104 S. Ct. 1136, 1146-47 n.7 (1984) (stating that there is no right to a jury trial before revoking probation).

Lastly, we briefly note the policy implications of Bradley's position. Stays of imposition are useful tools in the administration of justice. They offer a means of converting felony convictions into misdemeanors. Minn. Stat. § 609.13, subd. 1(2) (2016). This encourages defendants to cooperate with probation and puts them on a path toward the ultimate goal of rehabilitation.

Accepting Bradley's argument would jeopardize this beneficial tool. It would mean that a defendant on a stay of imposition would need to violate probation twice before the sentence could be executed. For district courts, the prospect of giving a defendant two bites at the apple may be unpalatable. This would discourage the use of stays of imposition at the original sentencing hearing and encourage quicker revocation of those stays, resulting in a potential increase in conviction rates which carry the burden of collateral consequences through many facets of daily life. Aside from the fact that there is no legal basis to accept with Bradley's argument, we see no policy reason to do so either.

D E C I S I O N

Bradley was sentenced when the district court stayed imposition of his sentence in 2012. The revocation of that stay based on a probation violation did not result in a new sentence requiring compliance with *Blakely*.

Affirmed.