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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0144**

State of Minnesota,
Respondent,

vs.

Shawn Troy Carlson,
Appellant.

**Filed September 17, 2018
Reversed
Reyes, Judge**

Hennepin County District Court
File No. 27-CR-08-31921

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

Michael O. Freeman, Hennepin County Attorney, Brittany D. Lawonn, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Ross, Presiding Judge; Reyes, Judge; and Florey, Judge.

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

REYES, Judge

In this appeal from an amended resentencing order, appellant argues that the district court lacked jurisdiction in 2017 to reinstate a ten-year conditional-release term to his

sentence for failing to register as a predatory offender after the district court had previously vacated the same ten-year conditional-release term in 2016. We reverse.

DECISION

In 1994, the district court convicted appellant Shawn Troy Carlson of second-degree criminal sexual conduct, requiring him to register as a predatory offender. On August 5, 2008, appellant pleaded guilty to and was convicted of failing to register as a predatory offender under Minn. Stat. § 243.166, subd. 5a (2006). The district court sentenced appellant to 14 months' imprisonment, stayed for a term of three years.

Over the next year, appellant twice violated the terms of his probation during the stay of imposition. At the hearing for his second probation violation in May 2009, the district court executed appellant's sentence, with credit for 151 days served, and imposed a ten-year conditional-release term pursuant to Minn. Stat. § 243.166, subd. 5a (2006), which requires that the district court impose a ten-year conditional-release term in addition to any prison time for a predatory offender who is convicted of failing to register while assigned a risk-level-III designation. The district court did so without an admission by appellant or a jury finding that appellant was a risk-level-III predatory offender at the time of the offense.

Aside from a previous conviction, "any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." *Blakely v. Washington*, 542 U.S. 296, 301, 124 S. Ct. 2531, 2536 (2004) (quotation omitted). In *State v. Her*, 862 N.W.2d 692, 695-96 (Minn. 2015), the supreme court held that a district court may not impose a ten-year conditional-release term

unless the defendant admits to the elements constituting a risk-level-III designation under Minn. Stat. § 244.052 (2008), or a jury makes that finding beyond a reasonable doubt at a *Blakely* hearing. Following the *Her* decision, appellant moved the district court to amend his sentence and vacate the ten-year conditional-release term pursuant to Minn. R. Crim. P. 27.03, subd. 9, because he had not admitted to the elements required for a risk-level-III designation and a jury had not made that factual determination in 2009 when the district court imposed that term.

In a November 2016 order, the district court vacated appellant's conditional-release term and ordered appellant to return to the district court for a *Blakely* sentencing trial. But before appellant did so, the supreme court released *State v. Meger*, 901 N.W.2d 418 (Minn. 2017), which held that the rule announced in *Her* was not retroactive in application. *Id.* at 425. In light of *Meger*, the state then moved to reinstate the conditional-release term that the district court had previously vacated. The district court vacated its previous order and reinstated appellant's conditional-release term in a November 2017 order.

Appellant challenges the district court's reinstatement of his conditional-release term, arguing that the district court lacked jurisdiction to reinstate his term of conditional release in November 2017 after vacating it in November 2016. The state argues Minn. R. Crim. P. 27.03, subd. 9, provided the district court with the authority to reinstate appellant's statutorily required conditional-release term. "Questions concerning the authority and jurisdiction of the lower courts are legal issues subject to de novo review." *State v. Pflepsen*, 590 N.W.2d 759, 763 (Minn. 1999).

Minn. R. Crim. P. 27.03, subd. 9, states that “[t]he court may at any time correct a sentence not authorized by law.” The district court generally may correct a sentence without violating a defendant’s due-process rights so long as he or she has been given notice and has not developed a crystallized expectation as to the finality of his or her sentence. *See State v. Calmes*, 632 N.W.2d 641, 648 (Minn. 2001) (upholding reinstatement of statutorily required conditional-release term after appellant’s prison sentence had expired but while appellant remained on supervised release). However, a defendant’s sentence may not be modified *after* a sentence has expired. *State v. Hannam*, 792 N.W.2d 862, 865 (Minn. App. 2011). This “operates as a discharge that bars further sanctions for a criminal conviction.” *State v. Purdy*, 589 N.W.2d 496, 498 (Minn. App. 1999). Thereafter, “the court no longer has jurisdiction to modify even what may be an unauthorized sentence.” *Martinek v. State*, 678 N.W.2d 714, 718 (Minn. App. 2004).

Here, after appellant had completed his prison sentence, including the applicable period of supervised release¹, the district court vacated appellant’s conditional-release term, which was the last remaining condition of his sentence. *See Her*, 862 N.W.2d at 695 (conditional-release term is condition of sentence). Therefore, appellant’s sentence expired. This resulted in the district court divesting itself of jurisdiction over this matter and losing its ability to reimpose the conditional-release term despite the supreme court’s holding in *Meger*. A court lacks subject-matter jurisdiction when it does not have the

¹ Under Minnesota law, appellant’s total “executed sentence” consists of two parts: “(1) a specified minimum term of imprisonment that is equal to two-thirds of the executed sentence; and (2) a specified maximum supervised release term that is equal to one-third of the executed sentence.” Minn. Stat. §244.101, subd. 1 (2017).

authority to decide a particular action or question but decides it nonetheless. *Vang v. State*, 788 N.W.2d 111, 117 (Minn. 2010). “When the court lacks subject-matter jurisdiction over a proceeding at the time it imposes a sentence, the sentence is void.” *Id.* As a result, the district court erred in reimposing the term of conditional release because it did not have the jurisdictional authority to do so.

Reversed.