STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0233

Terry Reynolds, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed September 24, 2018
Affirmed
Halbrooks, Judge

Hennepin County District Court
File No. 27-CR-13-15271

Cathryn Middlebrook, Chief Appellate Public Defender, Chelsie M. Willett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Michael O. Freeman, Hennepin County Attorney, Michael Richardson, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Halbrooks, Presiding Judge; Hooten, Judge; and Smith, John, Judge.*

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

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

HALBROOKS, Judge

On appeal from a denial of his petition for postconviction relief, appellant argues that the postconviction court abused its discretion because it did not review or analyze whether, in light of the enactment of the Minnesota Drug Sentencing Reform Act (DSRA), he is entitled to a reduced sentence. We affirm.

FACTS

Appellant Terry Reynolds was arrested twice for possessing cocaine during a two-week period in May 2013. The first time, Reynolds possessed more than 25 grams; the second time, he possessed more than 10 grams. The state charged him with first-degree controlled-substance sale under Minn. Stat. § 152.021, subd. 1(1) (2012), and first-degree controlled-substance possession under Minn. Stat. § 152.021, subd. 2(a)(1) (2012).

On September 18, 2014, Reynolds pleaded guilty to the charges, admitting that he possessed, with the intent to sell, the amounts of cocaine alleged in the complaint. On October 15, 2014, the district court sentenced Reynolds, who had a criminal-history score of five, on the first-degree controlled-substance-sale conviction to 94 months' imprisonment—a downward durational departure from the 146-month presumptive sentence under the then-existing sentencing guidelines. Reynolds did not appeal his sentence.

On September 8, 2017, nearly three years after he was sentenced, Reynolds petitioned for postconviction relief, arguing that he is entitled to a sentence that is less than 94 months because (1) under the DSRA, the conduct for which he was convicted constitutes

a second-degree controlled-substance crime and (2) under *State v. Vazquez*, 330 N.W.2d 110, 112 (Minn. 1983), the interests of fairness and uniformity in sentencing requires it.

The postconviction court denied Reynolds's petition, reasoning that, under *State v. Kirby*, 899 N.W.2d 485, 488 (Minn. 2017), and *State v. Otto*, 899 N.W.2d 501, 502 (Minn. 2017), the DSRA does not apply to Reynolds's sentence because judgment in his case became final before May 23, 2016, the date the DSRA became effective. The postconviction court stated that "because the legislature specifically provided for an effective date, and did not intend for the 2016 DSRA to apply to conduct that occurred before that date, the Act does not apply to the conduct for which [Reynolds] was convicted." The postconviction court did not address whether Reynolds is entitled to a reduced sentence in the interests of fairness and uniformity in sentencing under *Vazquez*. This appeal follows.

D E C I S I O N

On appeal, Reynolds does not dispute the postconviction court's conclusion that the DSRA does not apply to his conviction and sentence. Instead, Reynolds argues that the postconviction court abused its discretion because it did not analyze whether he is entitled to a reduced sentence based on the interests of fairness and uniformity under *Vazquez*, 330 N.W.2d at 112. We review the denial of a postconviction petition for an abuse of discretion. *Matakis v. State*, 862 N.W.2d 33, 36 (Minn. 2015).

In *Vazquez*, the defendant argued that his sentence should be reduced because he unjustifiably received a harsher sentence than that of his accomplice. 330 N.W.2d at 112. The supreme court acknowledged that it "has discretion in individual cases to modify [a] sentence . . . if that appears to be in the interests of fairness and uniformity." *Id.* The supreme court explained that equality and fairness in sentencing involves (1) "comparing the sentence the appealing defendant received with the sentence his accomplices received" and (2) "comparing the sentence of the defendant with those of other offenders." *Id.* The supreme court ultimately rejected Vazquez's argument on the grounds that (1) his accomplice entered into a plea agreement under which the accomplice received a reduced sentence, and because the supreme court believed the accomplice's sentence was "too lenient," reducing Vazquez's sentence "would be to compound the error rather than to limit it" and (2) compared to other offenders, he "was not treated relatively harshly." *Id.* at 112-13.

Reynolds's reliance on *Vazquez* is misplaced. The postconviction court could not compare Reynolds's sentence "with the sentence his accomplice[] received" because Reynolds did not have an accomplice. *Cf. id.* Further, Reynolds's 94-month sentence was a downward durational departure from the 146-month presumptive sentence under the pre-DSRA guidelines. Minn. Sent. Guidelines 4.A. (2012). Therefore, Reynolds received a sentence that was *lower*, not *higher*, than "other offenders similarly situated"—that is, offenders who committed the same conduct under the pre-DSRA version of the guidelines and whose judgments became final before the DSRA became effective.

On this record, there was no basis for the postconviction court to determine that Reynolds deserved a reduced sentence in the interests of fairness and uniformity in sentencing under *Vazquez*, 330 N.W.2d at 112. We conclude that the postconviction court properly exercised its discretion.

Affirmed.