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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0582**

State of Minnesota,
Appellant,

vs.

Anne De Perry,
Respondent.

**Filed December 3, 2018
Affirmed
Cleary, Chief Judge**

Hennepin County District Court
File No. 27-CR-16-29561

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

Michael O. Freeman, Hennepin County Attorney, Jonathan P. Schmidt, Assistant County Attorney, Minneapolis, Minnesota (for appellant)

Peter B. Wold, Aaron J. Morrison, Wold Morrison Law, Minneapolis, Minnesota (for respondent)

Considered and decided by Schellhas, Presiding Judge; Cleary, Chief Judge; and Reilly, Judge.

UNPUBLISHED OPINION

CLEARY, Chief Judge

Appellant State of Minnesota challenges the district court's decision to modify respondent Anne De Perry's stay of imposition of sentence by discharging her from

probation. On appeal, the state argues that the district court abused its discretion by relying on a clearly erroneous finding, by entering a sentence that amounted to a stay of adjudication, and by failing to allow De Perry the opportunity to withdraw her guilty plea. We affirm.

FACTS

In November 2017, respondent Anne De Perry entered straight guilty pleas to three counts of theft-by-swindle in violation of Minn. Stat. § 609.52, subd. 2(a)(4) (2014). The complaint alleged that, from December 2013 to September 2015, De Perry, as the principal of the Whittier International Baccalaureate School in the Minneapolis School District, made improper purchases with her school purchase card totaling over \$11,000. The district court found that De Perry gave a knowing, intelligent, and voluntary waiver of her rights and accepted her pleas.

On February 21, 2018, the district court entered a stay of imposition of sentence and placed De Perry on probation for three years. As conditions of probation, the district court ordered De Perry to serve four days in jail (with a one-day credit for time served), perform 240 hours of community service, pay restitution in the amount of \$10,000, provide a DNA sample to the Bureau of Criminal Apprehension, sign waivers of extradition, remain law-abiding, refrain from the use or possession of firearms, and refrain from employment with fiduciary responsibilities or capacities. On the day of her sentencing, De Perry paid restitution in full and began to serve her jail sentence. The

district court also approved a travel permit for De Perry to apply to transfer her probation in order for her to continue living out-of-state.

Less than one month later, De Perry moved to modify her sentence because Arizona had denied her application to transfer her probation. At the hearing on De Perry's motion, the district court stated, "[W]e found out that we were provided with a lot of misinformation that I believe [De Perry] relied on when she entered into her pleas." The district court further explained that it had reviewed the file, and communicated with the Interstate Commission for Adult Offender Supervision and the head of the Hennepin County Criminal Division. From this, the district court determined that the sentence it had imposed had not allowed De Perry to qualify for a probation transfer to another state.

The district court also considered other conditions of respondent's probation in its decision to discharge respondent from probation. The district court considered that respondent had been under supervision for 16 months without violation, paid restitution in full, and served the imposed jail time. Additionally, the district court acknowledged that respondent's convictions would be reduced to misdemeanors as a result of a successful discharge from probation. The district court further explained that respondent would continue to have licensing restraints formally through the Department of Human Services, for 7 years instead of 15 years, and informally by virtue of theft convictions on her criminal record. Consequently, the district court found De Perry's probation to be satisfactorily completed, discharged her from further obligations, and

deemed her felony convictions to be misdemeanor convictions pursuant to Minn. Stat. § 609.13, subd. 1(2) (2014). The state appealed.

D E C I S I O N

The state argues that the district court abused its discretion in modifying De Perry’s sentence to discharge her from probation earlier than the expiration of the three-year term. First, the state asserts that the district court abused its discretion because its finding that De Perry relied on “misinformation” in her guilty plea was clearly erroneous. Next, the state argues that the district court’s discharge of De Perry’s probation constituted an inappropriate downward departure and amounted to an improper stay of adjudication. Finally, the state claims that the appropriate remedy would have been for the district court to allow De Perry to withdraw her plea, rather than discharge her from probation.

“We ‘afford the [district] court great discretion in the imposition of sentences’ and reverse sentencing decisions only for an abuse of that discretion.” *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014) (quoting *State v. Spain*, 590 N.W.2d 85, 88 (Minn. 1999)). “A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record.” *State v. Guzman*, 892 N.W.2d 801, 810 (Minn. 2017). On appeal, we will not reevaluate the district court’s sentencing decision if the district court soundly exercised its discretion and imposed a sentence that is authorized by law. *State v. Stutelberg*, 435 N.W.2d 632, 633-34 (Minn. App. 1989).

The Minnesota Sentencing Guidelines provide presumptive sentences for criminal offenders. Minn. Sent. Guidelines 1A (2016). Here, De Perry pleaded guilty to three counts of felony theft-by-swindle, and she had a criminal-history score of zero for counts one and two and a score of one for count three. The guidelines provide that the presumptive commitment durations for counts one and two, with severity levels of two, are each one year and one day. Minn. Sent. Guidelines 4.A (2014). The presumptive commitment duration for count three, with a severity level of three, is thirteen months. *Id.* The sentences for all counts are presumptively stayed. *Id.* In the case of a presumptively stayed sentence, the district court, in its discretion, may order up to one year of confinement and impose other non-jail sanctions as conditions of probation. *Id.*

A district court may also stay the imposition of a sentence. Minn. Stat. § 609.135, subd. 1 (2014). In the case of a stay of imposition of sentence, the person stands convicted, but the district court does not actually pronounce a sentence. *State v. Martin*, 849 N.W.2d 99, 102 (Minn. App. 2014) (citing Minn. Sent. Guidelines cmt. 2.C.05 (2016)). Pursuant to Minn. Stat. § 609.135, subd. 1(a)(1) and (2) (2014), a district court, in staying imposition of sentence, “may order intermediate sanctions without placing the defendant on probation,” or “may place the defendant on probation with or without supervision and on the terms the [district] court prescribes.” This language allows, but does not mandate, a district court to impose a term of probation along with staying imposition of sentence. *See United States v. Johnson*, 43 F.3d 1211, 1215 (8th Cir.

1995) (citing *State v. Dyer*, 438 N.W.2d 716, 720 (Minn. App. 1989) (sentencing court “may” order term of probation as condition for staying imposition of sentence), *abrogated on other grounds by Richards v. Wisconsin*, 520 U.S. 385, 393-94, 117 S. Ct. 1416, 1421-22 (1997)). Within its statutory authority to establish the conditions of probation, the district court may order conditions as detailed in Minn. Stat. § 609.135, subd. 1(b). Upon successful completion of probation, a felony conviction may be deemed a misdemeanor. Minn. Stat. § 609.13, subd. 1(2).

In the instant case, the district court complied with the guidelines in sentencing De Perry. According to the guidelines, De Perry’s sentence was presumptively stayed. Given the language of Minn. Stat. § 609.135, subd. 1(a)(1) and (2), the district court was allowed, but not required, to place De Perry on probation while ordering conditions of probation along with respondent’s stayed sentence. The district court imposed a probationary period of three years. Further, the district court ordered conditions of probation, requiring De Perry to serve four days in jail, perform 240 hours of community service, pay restitution in the amount of \$10,000, provide a DNA sample to the Bureau of Criminal Apprehension, sign waivers of extradition, remain law-abiding, refrain from the use or possession of firearms, and refrain from employment that includes fiduciary responsibilities or capacities. Consequently, the district court’s sentence was within guidelines, and there was no downward departure.

The district court may “modify a sentence during a stay of execution or imposition of sentence if the [district] court does not increase the period of

confinement.” Minn. R. Crim. P. 27.03, subd. 9. “A district court has discretion to discharge a defendant from probation at an earlier time” than the expiration of a stayed sentence. *State v. Sagataw*, 892 N.W.2d 47, 51 (Minn. App. 2017) (citing Minn. Stat. § 609.135, subd. 2(f) (2016) (“The defendant shall be discharged six months after the term of the stay expires, unless the stay has been revoked or extended . . . or the defendant has already been discharged.”)).

Here, the district court granted De Perry’s motion to modify her sentence, found her probation performance to be satisfactory, and discharged De Perry from probation 22 days after sentencing. In her motion, De Perry asked for the district court to eliminate all uncompleted conditions of probation so that she would be able to live in Arizona without having to transfer her probation. At the time of the motion, respondent had completed some of the conditions of her probation—she paid the entire amount of restitution due, served the imposed jail time, submitted her DNA sample, and had remained law-abiding. The district court’s discharge of respondent’s probation eliminated De Perry’s conditions to refrain from employment involving fiduciary responsibilities or capacities, perform community service, and refrain from the use or possession of firearms. Although the state argues that the district court based its decision on a finding that De Perry relied on misinformation in entering her guilty pleas, it appears from our reading of the transcript that the district court was also referring to its own reliance on information provided by a probation officer in initially crafting De Perry’s sentence. Indeed, the district court at the modification hearing stated that it

meant to allow De Perry “to plead guilty, be sentenced, and put herself in a position that anyone else would have applying for Interstate Compact” in order to qualify to transfer her probation.

The state further contends that the district court’s modification of De Perry’s sentence amounted to an improper stay of adjudication. “A stay of adjudication . . . is a procedure whereby the district court, upon a defendant’s guilty plea or a fact-finder’s determination of guilt, does not adjudicate the defendant guilty but imposes conditions of probation.” *State v. C.P.H.*, 707 N.W.2d 699, 702 (Minn. App. 2006). If a district court orders a stay of adjudication, and if the defendant successfully completes probation, “the defendant avoids a criminal conviction.” *Id.* at 703. In the instant case, the district court’s modification of De Perry’s sentence operated to reduce her felony convictions to misdemeanors, but De Perry did not avoid criminal convictions. *See* Minn. Stat. § 609.13, subd. 1(2). The district court’s modification did not amount to a stay of adjudication.

Finally, the state argues that the appropriate remedy in this case would have been for the district court to allow De Perry to withdraw her guilty plea. The state alleges that De Perry’s reliance on the “misinformation” referenced by the district court renders her guilty plea invalid. Withdrawal of a guilty plea is allowed when the request is timely made and “withdrawal is necessary to correct a manifest injustice.” *State v. Rhodes*, 675 N.W.2d 323, 326 (Minn. 2004) (citing Minn. R. Crim. P. 15.05, subd. 1). A manifest injustice occurs when a court accepts an invalid guilty plea. *State v. Raleigh*,

778 N.W.2d 90, 94 (Minn. 2010). To be constitutionally valid, guilty pleas must be accurate, voluntary, and intelligent. *Id.* De Perry has not asked to withdraw her plea, and maintains that she was informed of the possibility that her application to transfer her probation to another state could be denied. The state has not provided any authority for its assertion that plea withdrawal is an appropriate remedy when De Perry has not made a motion to withdraw her plea and where her plea was not based on a negotiated plea agreement with the state. De Perry's guilty plea is valid. Accordingly, the district court did not abuse its discretion in modifying De Perry's stay of imposition of sentence.

Affirmed.