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STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0978

State of Minnesota,
Respondent,

vs.

Titus Triston Miguel Mangun,
Appellant.

Filed November 5, 2018
Affirmed
Smith, Tracy M., Judge

St. Louis County District Court
File No. 69DU-CR-15-1423

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

Mark S. Rubin, St. Louis County Attorney, Kristen E. Swanson, Assistant County Attorney, Duluth, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sara J. Euteneuer, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Schellhas, Judge; and Smith, Tracy M., Judge.

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

SMITH, TRACY M., Judge

Appellant Titus Triston Miguel Mangun challenges the district court's denial of his motion to correct sentence, arguing that the 2016 Drug Sentencing Reform Act (DSRA)

required the court to reduce the mitigated sentence he had received under a pre-DSRA plea agreement. Because the district court, applying the DSRA, had discretion not to disturb the mitigated sentence that Mangun had specifically negotiated with the state, we affirm.

FACTS

In May 2015, Mangun was charged with one count each of first- and third-degree controlled-substance crime. He reached a plea agreement with the state under which he pleaded guilty to the amended charge of aiding and abetting first-degree controlled-substance crime in exchange for dismissal of the third-degree controlled-substance crime. The plea agreement noted that Mangun would "argue for a departure to 80 months." Under the sentencing guidelines in effect at the time, the presumptive sentencing range, given Mangun's criminal history score, was 104-146 months. *See* Minn. Sent. Guidelines 4.A (2014).

Before sentencing, Mangun moved to withdraw his guilty plea, which the district court denied. At sentencing, Mangun moved for a downward durational departure to 80 months according to the plea agreement and the state did not object. The district court granted the departure and sentenced Mangun to 80 months' imprisonment on the basis that the crime was less onerous than usual and his role in it was minor or passive. Mangun appealed his conviction, and we affirmed. The supreme court denied further review.

While Mangun's direct appeal was pending, the DSRA was passed. *See* 2016 Minn. Laws ch. 160, at 576, 592. Section 18 of "the DSRA reduced the presumptive sentencing ranges for first-degree controlled-substance crimes." *State v. Kirby*, 899 N.W.2d 485, 488 (Minn. 2017). That section became effective on May 23, 2016, s*ee* 2016 Minn. Laws ch.

160, § 18, at 591, and reduced the presumptive sentencing range for Mangun's offense from 104-146 months to 81-114 months, s*ee id.*; Minn. Sent. Guidelines 4.C (2016).

Mangun moved to correct his sentence under Minn. R. Crim. P. 27.03, subd. 9, asking the district court to reduce his sentence from 80 months to 62 months. Mangun argued that, because his 80-month sentence was a 23% departure from the bottom of the pre-DSRA sentencing range, *see* Minn. Sent. Guidelines 4.A (2014), he was entitled to be resentenced to a term (62 months) that would be a 23% departure from the bottom of the DSRA-amended sentencing range, *see* Minn. Sent. Guidelines 4.C (2016). The district court denied the motion.

This appeal follows.

D E C I S I O N

I. The state forfeited its procedural argument.

As a preliminary matter, the state argues that a motion to correct sentence was not the proper procedural vehicle for Mangun's challenge because Mangun's motion implicates his plea agreement. *See State v. Coles*, 862 N.W.2d 477, 477 (Minn. 2015) (holding that, when a defendant's "motion to correct his sentence implicates his plea agreement, [the defendant's] exclusive remedy is a petition for postconviction relief"). We need not decide whether Mangun's challenge implicates the plea agreement in this case. Because the state failed to raise the issue in the district court, it forfeited its procedural challenge to Mangun's motion. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996) ("[Appellate courts] generally will not decide issues which were not raised before the district court.").

II. The district court did not abuse its discretion in denying Mangun's motion to correct sentence.

Mangun argues that the district court erred in denying his motion to reduce the 80-month sentence to 62 months, in proportion to the reduction in the sentencing range under the DSRA. Appellate courts "afford the [district] court great discretion in the imposition of sentences," *State v. Spain*, 590 N.W.2d 85, 88 (Minn. 1999), and review "the district court's denial of a motion to correct a sentence for an abuse of discretion," *Townsend v. State*, 834 N.W.2d 736, 738 (Minn. 2013). "A court abuses its discretion when it reaches a clearly erroneous conclusion that is against logic and the facts on record." *State v. Vasquez*, 912 N.W.2d 642, 648 (Minn. 2018) (quotations omitted).

A "court may at any time correct a sentence not authorized by law." Minn. R. Crim. P. 27.03, subd. 9. Because Mangun filed "a motion . . . to correct a sentence after the time for direct appeal has passed," he "bears the burden of proving that the sentence was not authorized by law." *Williams v. State*, 910 N.W.2d 736, 737 (Minn. 2018).

There is no dispute that the DSRA applies to Mangun's case. Although the DSRA amendments came into effect after Mangun committed his crime, the supreme court in *Kirby* held that the amelioration doctrine requires application of the DSRA to pre-DSRA crimes provided certain requirements are met. *See Kirby*, 899 N.W.2d at 490 (identifying three-part test). Those requirements are met here. The district court held that the DSRA applies to Mangun's case, and the state does not challenge that ruling.

The question, however, is whether the district court—applying the DSRA—was required to reduce Mangun's sentence. Mangun makes two arguments.

First, Mangun relies on the Minnesota Sentencing Guidelines for a reduction in his sentence proportional to the DSRA's ameliorative effect. He points to different sections of the sentencing guidelines to show how the guidelines, in general, aim to ensure proportionality. For instance, Mangun quotes Minn. Sent. Guidelines 1.A. (2016), which states that "[t]he purpose of the Sentencing Guidelines is to . . . ensure that the sanctions imposed for felony convictions are proportional to the severity of the conviction offense and the offender's criminal history."

Mangun's reliance on the guidelines' proportionality principle is misplaced. As the district court explained, Mangun's plea agreement noted specifically that he could argue for a departure to 80 months—the 80-month sentence was not computed through a proportional calculation in reference to the presumptive sentencing range. In addition, Mangun's sentence is a downward departure from both the pre-DSRA and DSRA-amended sentencing ranges. Mangun cannot challenge his sentence based on the general principle of proportionality under the sentencing guidelines when his sentence is, by definition, an exception to the guidelines. *See* Minn. Sent. Guidelines 2.D.1.d. (2016).

Second, Mangun contends that our decision in *State v. Provost* mandates that his sentence be reduced. 901 N.W.2d 199 (Minn. App. 2017). In *Provost*, the defendant moved to correct his sentence on the ground that his sentence was based on an incorrect criminal history score. *Id.* at 201. The district court denied the motion because Provost's sentence was still within the presumptive sentencing range when calculated with the correct criminal history score. *Id.* Reviewing the district court's decision, we held that "a sentence based on an incorrect criminal history score is an unauthorized sentence subject to correction under

Minn. R. Crim. P. 27.03, subd. 9, even if the sentence would still be within the presumptive sentencing guidelines range when calculated with the correct criminal history score." *Id.* at 202. We concluded that Provost had to be resentenced. *Id.*

We are not persuaded that *Provost* requires the outcome Mangun seeks. In *Provost*, the district court dismissed the motion to correct sentence without considering the merits. *Id.* at 201. The court believed it "did not have authority to modify [his] sentence." *Id.* We held that such a conclusion was an abuse of discretion because the Minnesota Supreme Court had held that a sentence based on an incorrect criminal history score is not authorized by law. *Id.* at 202 (citing *State v. Maurstad*, 733 N.W.2d 141, 147 (Minn. 2007)).

Unlike in *Provost*, here, the district court actually considered Mangun's argument for a reduced sentence based on a lower range. The district court denied Mangun's motion, not because it believed it could not alter his sentence, but because it chose not to do so. The court chose not to reduce Mangun's sentence to 62 months because the 80-month sentence was specifically agreed to by the parties and is still a downward departure from the DSRA-amended range of 81-114 months.

Mangun points out that, in *Provost*, we recognized that "when a guidelines range moves up or down, offenders' sentences tend to move with it." *Id.* at 202 (quoting *Molina-Martinez v. United States*, 136 S. Ct. 1338, 1346 (2016)). He argues that, consistent with that principle, his sentence must be reduced because the sentencing range went down. But in *Provost* we did not direct that the defendant's sentence be reduced. On the contrary, we recognized that, based on the district court's broad discretion in sentencing, "not every defendant who receives a sentence at the top or bottom end of the presumptive range when

sentenced with an incorrect criminal history score need necessarily receive a similarly situated sentence within the presumptive range when resentenced with a correct criminal history score." *Id.*

The district court here acknowledged that the DSRA applies to Mangun, reconsidered Mangun's sentence in light of the DSRA, and reached the conclusion that the 80-month sentence should not be disturbed. We do not discern in the district court's decision a "clearly erroneous conclusion that is against logic and the facts on record." *Vasquez*, 912 N.W.2d at 648. The district court did not abuse its discretion in denying Mangun's motion to correct sentence.

Affirmed.