This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).

STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0701

State of Minnesota,
Respondent,

vs.

Leon Travis Franklin,
Appellant.

Filed April 15, 2019
Reversed and remanded
Slieter, Judge

Dakota County District Court
File No. 19HA-CR-17-4831

Keith Ellison, Attorney General, St. Paul, Minnesota; and

James C. Backstrom, Dakota County Attorney, Jackie Warner, Assistant County Attorney, Hastings, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Gina D. Schulz, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Keith Ellison, Attorney General, Kelly S. Kemp, Assistant Attorney General, St. Paul, Minnesota (for amicus curiae Commissioner of Minnesota Department of Corrections)

Considered and decided by Worke, Presiding Judge; Cleary, Chief Judge; and Slieter, Judge.

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

SLIETER, Judge

Appellant challenges the 43-month sentence imposed following his guilty plea that denied him a supervised-release term. Appellant argues that this court should remand to the district court requiring specific performance of the negotiated plea agreement to include a supervised-release term. Because a supervised-release term is a mandatory condition of appellant's sentence, the sentence imposed is illegal. We reverse and remand for further proceedings.

FACTS

On December 11, 2017, the state charged appellant Leon Travis Franklin with one count of stalking (pattern of stalking conduct) in violation of Minn. Stat. § 609.749, subd. 5(a) (2016), one count of stalking (repeatedly making phone calls/texts with two or more prior domestic-violence related convictions within ten years) in violation of Minn. Stat. § 609.749, subd. 4(b) (2016), two counts of threats of violence (intent to terrorize) in violation of Minn. Stat. § 609.713, subd. 1 (2016), and three counts of violation of an order for protection (two or more prior convictions) in violation of Minn. Stat. § 518B.01, subd. 14(a) (2016).

On January 8, 2018, the state filed a notice of intent to seek an aggravated sentence pursuant to Minn. Stat. § 609.1095, subds. 2, 3 (2016). Relevant for this decision, the notice identified the state's intent to seek "a mandatory sentence under the Minnesota Sentencing Guidelines pursuant to Minn. Stat. § 609.1095, subd. 3." The state's notice specifically identified the portion of section 609.1095, subdivision 3, which purports to

deny appellant's eligibility for "probation, parole, work release, or discharge until he has served the full term of imprisonment."

A plea petition, completed prior to the February 2, 2018 plea hearing, explained that appellant understood the charges in the complaint. Appellant's plea petition stated, in part:

> 20. I have been told by my attorney and understand:
>
> a. That my attorney discussed this case with one of the prosecuting attorneys and that my attorney and the prosecuting attorney agreed that if I entered a plea of guilty, the prosecutor will do the following: . . .
>
> 43 months executed ct 1 cr 125
> 29 ct 4 cr 119
> 29 ct 5 cr 98[1]

The plea petition did not reference Minn. Stat. § 609.1095, subd. 3, or a supervised-release waiver.

Counsel summarized the negotiated plea-agreement terms to the district court prior to offering of the plea. Appellant's trial counsel explained the terms as follows.

> Your Honor, we have a negotiated plea agreement. My client is agreeing to plead guilty to Counts 1, 4 and 5. Count 1 is Felony Stalking, Count 4 is Threats of Violence Felony, and Count 5 is Felony Violation of Order for Protection. The agreement calls for executed sentences pursuant to the Minnesota Sentencing Guidelines. Count 1 is 43 months.[2] He has credit for 125 days, and I would—with respect to Count 1, we're pleading guilty to an amendment with respect to the offense dates. That's a time period ranging I think from

[1] Based upon the representations in the record, we construe the references to "ct" to mean "count" and "cr" to mean "jail credit."

[2] The record includes a sentencing worksheet that appears to show appellant's lower-range sentence for count 1 to be 44 months rather than 43 months as the presumptive commit to the commissioner of corrections.

> October 1 of 2017 to November 10 of 2017. The [s]tate has prepared a Notice of Motion, Motion to Amend Complaint.
>
> With respect to Count 4, the agreement is for 29 months executed, credit 119 days.
>
> With respect to Count 5, the agreement is 29 months executed with credit for 98 days. Those three counts will run concurrent with each other and with the sentence he's currently serving. The agreement is that this will be sentenced under Minnesota Statute 609.1095, subdivision 3, as a third crime of violence, which essentially forfeits the early release parole or supervised release, so he will not get the benefit of a one-third if he has good behavior in the correctional facility.

The district court inquired: "So the 43 months is 43 months?" Appellant's trial counsel responded: "Correct."

Appellant entered his guilty pleas to the relevant offenses identified in the negotiated plea agreement. Appellant's trial counsel reviewed the plea petition with appellant on the record. Appellant acknowledged, taking into account 125 days credit, that he would be serving 39 actual months under the terms of the plea agreement. Appellant agreed, upon examination by state's counsel, that he had the requisite qualifying convictions for Minn. Stat. § 609.1095, subd. 3, to be applicable.

The district court accepted appellant's guilty pleas and adjudicated appellant guilty of the three charges. The district court imposed the sentence in accordance with the plea agreement. The district court remanded appellant to the commissioner of corrections on count 1 for 43 months with 125 days credit, count 4 for 29 months with credit for 129 days, and count 5 for 29 months with 98 days credit. The district court sentenced appellant concurrently on the three counts. The district court recognized appellant's criminal record supported application of Minn. Stat. § 609.1095, subd. 3(a), to counts 1 and 4 due to

appellant's admissions to two prior violent crimes[3] and that counts 1 and 4 qualify as crimes of violence.[4]

The district court filed its sentencing order on February 2, 2018. The sentencing order included the following language for counts 1 and 4: "*This sentence consists of a minimum term of imprisonment equal to two-thirds of the total executed sentence, and a maximum supervised release term equal to one-third of the total executed sentence, unless the sentence is life or life without the possibility of release.*"[5] The district court issued a second sentencing order on February 7, 2018.[6] The second sentencing order removed the

---

[3] Appellant acknowledged two prior convictions at the plea hearing. Specifically, appellant admitted convictions for: (1) felony stalking in violation of Minn. Stat. § 609.749 (2010), and (2) burglary in the first degree in violation of Minn. Stat. § 609.582, subd. 1 (2012). These convictions constitute a sufficient criminal history to implicate Minn. Stat. § 609.1095, subd. 3.

[4] The district court used the term "crime of violence" in its pronouncement. "Crime of violence" is a term utilized in section 609.713, subdivision 1, borrowing the same meaning as section 609.1095, subdivision 1(d), for "violent crime."

Count 4 of the complaint charged appellant with a violation of Minn. Stat. § 609.713 (2016), which requires a threat to commit a crime of violence. However, count 4 is not an enumerated offense to qualify as a "violent crime" for sentencing under section 609.1095, subdivision 3. The parties did not address count 4 on appeal but, because this matter is being reversed and remanded, the district court will have the opportunity to correct the sentence related to count 4.

[5] We presume this language to be pre-loaded language in the MNCIS generated sentencing order form. *See* Minn. R. Crim. P. 27.03, subd. 7 ("When the court pronounces sentence for any counts for which the offense level before sentencing was a felony or gross misdemeanor, the court must record the sentence using an order generated from the court's case management system.").

[6] Though the record does not specifically so identify, we presume the district court issued this amended sentencing order *sua sponte*.

language identified above for counts 1 and 4, and it added: "PER AGREEMENT NO GOOD TIME ON THIS COUNT" for count 1 and "PER AGREEMENT NO GOOD TIME [ON] THIS COUNT" for count 4.

On March 8, 2018, the state filed a motion with the district court seeking to correct the sentence or, in the alternative, vacate the plea and sentence. The motion provided:

> The [d]epartment of [c]orrections has indicated it will not enforce this [c]ourt's [o]rder that states in relevant part "PER AGREEMENT NO GOOD TIME ON THIS COUNT". They cite to *State v. Leathers*, 799 N.W.2d 606 (Minn. 2011), in support of their position. Given the [d]epartment of [c]orrection's refusal to enforce this [c]ourt's [o]rder, the [s]tate is requesting a hearing to address how best to proceed.

The district court held a hearing on April 20, 2018. The state requested to submit a proposed order for the district court's consideration explaining the procedural history of the case to clarify that "this was an agreement entered into by the parties, what was contemplated as part of the agreement, and hopefully that would clarify for the [d]epartment of [c]orrections what [the parties'] intent was." Appellant's trial counsel did not object to this procedure.

Appellant, through counsel, informed the district court that he agreed with the department of corrections that, despite the plea agreement, he is eligible for supervised release following service of two-thirds of the term. The district court noted the procedural posture of the proceedings and that the request for this hearing was not to "change or modify anything" but, instead, was to clarify the record for the department of corrections.

The district court inquired if appellant intended to withdraw his plea. Appellant explained that he understood he would serve two-thirds of the 43-month sentence and he did not wish to withdraw the guilty plea. The district court clarified:

> And I'll just be clear, [appellant], the record is the record. So you remember when we were here, you were sworn under oath, [your attorney] asked you questions and everything was taken down. So I'm not going to argue with you as to what you said or not said, but for the record; that is the record we're dealing with. They're going to issue an order that is going to be consistent with that record. [Your attorney] is going to review that order and then it's going to be submitted for the [c]ourt's review, and then that order will be issued. You'll get a copy of that and deal with any issues. And certainly then you can contact [your attorney] in regard to that.

On April 27, 2018, the district court issued its order finding the plea agreement reached between the parties contemplated appellant would serve the entire 43-month imprisonment term without parole or supervised release. The district court, however, recognized the Minnesota Supreme Court in *Leathers* defined "full term of imprisonment" as two-thirds of an inmate's executed sentence, but relied upon the parties' agreement and in ordering appellant to serve the entire 43 months in the custody of the commissioner of corrections.

D E C I S I O N

Appellant argues that, despite the provisions of section 609.1095, subdivision 3(a), he is entitled to a term of supervised release following the completion of two-thirds of his executed prison sentence. Minn. Stat. § 244.101, subd. 1 (2016) (recognizing an executed felony sentence consists of (1) a two-thirds minimum term of imprisonment, and (2) a one-third supervised-release term). Appellant relies on *Leathers* in which the Minnesota

Supreme Court examined almost identical language in Minn. Stat. § 609.221, subd. 2(b) (2010).[7] *Leathers*, 799 N.W.2d at 605. The state acknowledges *Leathers* as "binding precedent upon this [c]ourt" but argues this court "need not reach the statutory interpretation as this case rests on a plea agreement reached between the parties." We disagree with the state's assertion that this matter can be resolved based on the negotiated plea-agreement language because, as explained below, the plea agreement results in an illegal sentence which this court cannot enforce.[8]

I.

Whether Minn. Stat. § 609.1095, subd. 3, forecloses an offender from a supervised-release term provided under Minn. Stat. § 244.05, subd. 1 (2016), is a question of statutory interpretation, which we review *de novo*. *State v. Riggs*, 865 N.W.2d 679, 682 (Minn. 2015). "The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature." Minn. Stat. § 645.16 (2018). If the statute is plain and unambiguous, we look at the plain meaning of the statutory language. *State v. Wukawitz*, 662 N.W.2d 517, 525 (Minn. 2003). If the statute's language is ambiguous, the courts "may consider the canons of statutory construction to ascertain its meaning." *State v. Struzyk*, 869 N.W.2d 280, 285 (Minn. 2015).

---

[7] The one difference in the language reviewed in *Leathers* and section 609.1095, subdivision 3(a), is that section 609.1095, subdivision 3(a), does not include the term "supervised release." This difference is, we believe, insignificant to our analysis.

[8] The Minnesota Department of Corrections filed an *amicus curiae* seeking clarification regarding administration of appellant's sentence. This court's opinion is intended to clarify administration of the sentence.

The statute at issue here imposes a mandatory sentence for dangerous offenders who commit a third violent felony. The statute provides a specific definition of a "violent crime" listing applicable statutes. Minn. Stat. § 609.1095, subd. 1(d) (2016). Section 609.1095, subdivision 3(a) provides: "Any person convicted and sentenced as required by this subdivision is not eligible for probation, parole, discharge, or work release, until that person has served the *full term of imprisonment* imposed by the court, notwithstanding sections 241.26, 242.19, 243.05, 244.04, 609.12, and 609.135." *Id.* (emphasis added).

In *Leathers*, the Minnesota Supreme Court interpreted the statutory phrase "full term of imprisonment" in Minn. Stat. § 609.221, subd. 2(b). *Leathers*, 799 N.W.2d at 608 (quotation omitted). The provision of section 609.221, subdivision 2(b), provides:

> A defendant convicted and sentenced as required by this paragraph is not eligible for probation, parole, discharge, work release, or supervised release, until that person has served the *full term of imprisonment* as provided by law, notwithstanding the provisions of sections 241.26, 242.19, 243.05, 244.04, 609.12, and 609.135. Notwithstanding section 609.135, the court may not stay the imposition or execution of this sentence.

Id. (emphasis added) (quotation omitted).

The supreme court noted that the phrase "full term of imprisonment" was not defined in Minn. Stat. § 609.221 nor under chapter 609. *Id.* at 609. The supreme court held the term "full term of imprisonment" was susceptible to different reasonable interpretations. *Id.* at 609-10. Therefore, after applying two canons of statutory

construction—the doctrine of *in pari materia*[9] and the rule of lenity[10]—the supreme court concluded:

> [T]he phrase "full term of imprisonment" in Minn. Stat. § 609.221, subd. 2(b), means two-thirds of a defendant's executed prison sentence. Thus, Leathers is ineligible for work release or supervised release until he has served a full two-thirds of his sentence, after which point he may be eligible for supervised release subject to the completion of any disciplinary confinement period and other requirements for supervised release.

Id. at 611.

Although *Leathers* involved section 609.221, subdivision 2(b), the supreme court's analysis controls this court's interpretation of the same phrase in section 609.1095 subdivision 3(a).[11] "Full term of imprisonment," as described in Minn. Stat. § 609.1095, subd. 3(a), means an offender sentenced under this provision is eligible for probation,

---

[9] "'The doctrine of *in pari materia* is a tool of statutory interpretation that allows two statutes with common purposes and subject matter to be construed together to determine the meaning of ambiguous statutory language.'" *Leathers*, 799 N.W.2d at 611 (quoting *State v. Lucas*, 589 N.W.2d 91, 94 (Minn. 1999)).

[10] "'[W]hen the language of a criminal law is ambiguous, we construe it narrowly according to the rule of lenity.'" *Leathers*, 799 N.W.2d at 611 (quoting *State v. Maurstad*, 733 N.W.2d 141, 148 (Minn. 2007)). "In keeping with that principle, we also 'strictly construe minimum term statutes against the [s]tate.'" *Id.* (quoting *State v. Lubitz*, 472 N.W.2d 131, 133 (Minn. 1991)).

[11] The Minnesota Supreme Court provided a distinction to applying *Leathers* in the context of mandatory life sentences under Minn. Stat. § 609.3455 (2016). *Rushton v. State*, 889 N.W.2d 561 (Minn. 2017). In *Rushton*, the supreme court identified an exception for cases related to the "minimum term of imprisonment" for application of Minn. Stat. § 609.3455, subd. 5. *Id.* at 563, 567. But, the supreme court indicated in most cases the minimum term of imprisonment would be a period equal to two-thirds of the inmate's executed sentence. *Id.* at 567.

parole, discharge, or work release when that person has served a full two-thirds of their sentence imposed by the district court. Therefore, appellant's sentence, which precludes a supervised-release term, is an illegal sentence.

II.

Having resolved the statutory ambiguity of Minn. Stat. § 609.1095, subd. 3(a), we turn next to the effect this resolution has upon the parties' plea agreement and the resulting sentencing order. Determining what the parties agreed to in a plea bargain is a factual inquiry, but the interpretation and enforcement of negotiated plea agreements presents issues of law subject to *de novo* review. *State v. Rhodes*, 675 N.W.2d 323, 326 (Minn. 2004). "In Minnesota[,] plea agreements have been analogized to contracts and principles of contract law are applied to determine their terms." *In re Ashman*, 608 N.W.2d 853, 858 (Minn. 2000). When courts address whether the terms of a plea agreement were violated, "courts look to 'what the parties to [the] plea bargain reasonably understood to be the terms of the agreement.'" *State v. Brown*, 606 N.W.2d 670, 674 (Minn. 2000) (alternation in original) (quoting *United States v. Read*, 778 F.2d 1437, 1441 (9th Cir. 1985)).

The district court found the negotiated plea agreement "contemplated that [appellant] would not be paroled or placed on supervised release after serving two-thirds of his sentence. Rather [appellant] agreed to serve the entire 43 months." These findings are supported by the record of appellant's plea hearing. Appellant acknowledged he would remain in custody for 39 months, after considering his jail credit.

Although the factual record supports appellant knowingly entering into the negotiated plea agreement with the understanding he would not receive a supervised-

release term, that term cannot be enforced. As discussed previously and pursuant to *Leathers* and section 609.1095, subdivision 3, appellant is entitled to a supervised-release term upon completion of two-thirds of his sentence. Therefore, this court cannot order specific performance of the plea agreement.

"'The essence of plea agreements . . . is that they represent a bargained-for understanding between the government and criminal defendants in which each side foregoes certain rights and assumes certain risks in exchange for a degree of certainty as to the outcome of criminal matters.'" *State v. Meredyk*, 754 N.W.2d 596, 603 (Minn. App. 2008) (quoting *United States v. Porter*, 405 F.3d 1136, 1145 (10th Cir. 2005)). An unqualified promise contained in a plea agreement must be honored. *Id.*

"Plea agreements involving multiple crimes are often 'intricate' and require a delicate balancing of competing considerations." *State v. Montermini*, 819 N.W.2d 447, 455 (Minn. App. 2012) (citing *State v. Misquadace*, 629 N.W.2d 487, 491 (Minn. App. 2001), *aff'd*, 644 N.W.2d 65 (Minn. 2002)). When non-ancillary conditions of a negotiated plea agreement are modified, the effect of those changes may impact the entire plea agreement. *Id.*; *see also Meredyk*, 754 N.W.2d at 603-04 (recognizing the district court erred by modifying a restitution obligation that "drastically altered" the parties' agreement by materially changing the expectations of the bargain).

The parties' plea agreement in this case included the dismissal of charges and enhanced sentencing options in exchange for appellant to receive a defined in-custody period. The state dismissed four charges and withdrew its motion for an aggravated sentence pursuant to Minn. Stat. § 609.1095, subd. 2. Appellant agreed to a 43-month

sentence without a supervised-release term. Functionally, the guilty plea relied on a promise that could not be fulfilled—by removing the mandatory supervised-release term—resulting in an illegal sentence. *See Dikken v. State*, 896 N.W.2d 873, 877 (Minn. 2017) ("But the [s]tate also cannot induce a guilty plea based on a promise by the prosecutor that goes unfulfilled or was unfulfillable from the start, such as a plea agreement involving the promise of an illegal sentence.").

The typical remedies in this context are plea withdrawal, specific performance, or altering of the sentence, if appropriate. *James v. State*, 699 N.W.2d 723, 728-29 (Minn. 2005). Specific performance is no longer an available remedy in this case because it would mean imposition of an illegal sentence. *Id.* at 729. Accordingly, the district court, as the appropriate forum to resolve these issues, shall address the affect this decision has on the parties' overall plea agreement. That is, the district court will have to consider whether to allow a plea withdrawal or to alter and re-impose the 43-month sentence to include the usual supervised release language. *See id.*, 699 N.W.2d at 728-29 (holding a defendant is entitled to plea withdrawal or modification of the plea); *State v. Lewis*, 656 N.W.2d 525, 538 (Minn. 2003) (permitting the district court to consider plea agreement on remand to allow for a motion to withdraw); *Montermini*, 819 N.W.2d at 455 (allowing the district court to vacate pleas and convictions to permit the state to proceed anew).[12]

---

[12] Appellant also argues, *pro se*, that the state: (1) improperly discussed the career-offender statute at the time of his plea; (2) did not allow him to be present at proceedings after February 1, 2018; (3) violated Minn. R. Crim. P. 5.01 by appointing counsel after the public defender's office negotiated matters; and (4) failed to impanel a jury to permit an upward departure. Appellant failed to provide appropriate legal support or analysis for these arguments, and, therefore, we do not address them. *Campbell v. State*, 916 N.W.2d 502,

Appellant's guilty plea resulted in an illegal sentence by purporting to exclude a supervised-release term. We therefore reverse and the district court on remand shall have the opportunity to address the impact this decision has on the parties' previous plea agreement and rule accordingly.

Reversed and remanded.

---

510 n.5 (Minn. 2018) (recognizing a claim of error resting on mere assertions without an argument or authority is forfeited and not considered unless prejudicial error is obvious on mere inspection).