STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1426

State of Minnesota,
Respondent,

vs.

Neil Douglas Selseth,
Appellant.

Filed September 3, 2019
Reversed and remanded
Slieter, Judge

Hubbard County District Court
File No. 29-CR-17-1422

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

Jonathan Frieden, Hubbard County Attorney, Adam J. Licari, Assistant County Attorney, Park Rapids, Minnesota (for respondent)

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

Considered and decided by Slieter, Presiding Judge; Halbrooks, Judge; and Connolly, Judge.

S Y L L A B U S

When a criminal defendant pays a fine for an offense listed on the Statewide Payables List established pursuant to Minn. R. Crim. P. 23.03, subd. 2, in an amount that results in a petty-misdemeanor conviction, that conviction may not be used to enhance a subsequent offense to a gross misdemeanor by operation of Minn. Stat. § 609.131, subd. 3 (2016).

O P I N I O N

SLIETER, Judge

The matter comes before this court following a stipulated-facts trial, which resulted in the district court adjudicating appellant Neil Douglas Selseth guilty of a gross-misdemeanor offense of operating a vehicle without insurance, in violation of Minn. Stat. § 169.797, subds. 3, 4(a) (2016). Selseth challenges the enhancement of his conviction to a gross misdemeanor based upon two prior petty-misdemeanor convictions, despite the penalty provision of Minn. Stat. § 169.797 (2016). Because Minn. Stat. § 609.131, subd. 3, precludes using an offense that was originally charged as a misdemeanor but was "treated as a petty misdemeanor" to enhance a subsequent offense to a gross misdemeanor, we reverse and remand.

FACTS

On December 12, 2017, the state charged Selseth with gross misdemeanor operating a vehicle without insurance, in violation of Minn. Stat. § 169.797, subds. 3, 4(a). The state relied on Selseth's two prior petty-misdemeanor convictions in 2014 and 2015 for no proof of insurance to enhance the charged offense to a gross misdemeanor.

Selseth moved to dismiss the complaint for lack of probable cause arguing that the state could not use his prior petty misdemeanors to enhance the offense to a gross misdemeanor. The state agreed that the prior convictions were deemed petty misdemeanors but argued that Minn. Stat. § 609.13, subd. 3 (2016), rather than Minn. Stat. § 609.131 (2016) was controlling and permitted enhancement. The district court agreed with the state and denied Selseth's motion in a written order, concluding that Selseth "had

two misdemeanor no insurance violations" and he paid the requisite fines "within petty misdemeanor limits, but for purposes of determining a subsequent offense they remained misdemeanors."

This appeal follows.

ISSUE

May the state rely on prior petty-misdemeanor convictions to enhance a subsequent offense to a gross misdemeanor?

ANALYSIS

The legal issue before this court involves the statutory interpretation of Minn. Stat. § 609.131, subd. 3, which unambiguously disallows enhancement of a subsequent offense to a gross misdemeanor by using "a conviction for a violation that was originally charged as a misdemeanor and was treated as a petty misdemeanor." As a matter of statutory interpretation, we review this issue *de novo*. *State v. Riggs*, 865 N.W.2d 679, 682 (Minn. 2015).

The objective for a court when addressing statutory interpretation is to "ascertain and effectuate the intention of the legislature." Minn. Stat. § 645.16 (2018). "If 'the legislature's intent is clear from plain and unambiguous statutory language,' we look to the plain meaning of the statute without engaging in further statutory construction." *State v. Gundy*, 915 N.W.2d 757, 762 (Minn. App. 2018) (quoting *State v. Rick*, 821 N.W.2d 610, 614 (Minn. App. 2012), *aff'd*, 835 N.W.2d 478 (Minn. 2013)), *review denied* (Minn. Aug. 7, 2018).

Pursuant to Minn. Stat. § 609.131, subd. 3:

> *Notwithstanding any other law*, a conviction for a violation that was originally charged as a misdemeanor and was treated as a petty misdemeanor under subdivision 1 or the Rules of Criminal Procedure may not be used as the basis for charging a subsequent violation as a gross misdemeanor rather than a misdemeanor.

(Emphasis added.)

A misdemeanor may be treated as a petty misdemeanor by operation of any of the following three provisions: Minn. Stat. § 609.131, subd. 1; Minn. R. Crim. P. 23.02; and Minn. R. Crim. P. 23.04.[1] The relevant provision for our consideration is Minn. R. Crim. P. 23.02 because Selseth paid a fine within petty-misdemeanor limits based on the Statewide Payables List. Rule 23.02 states: "A conviction is deemed a petty misdemeanor if the sentence imposed is within petty misdemeanor limits." *See also* Minn. R. Crim. P. 23.01 (defining a petty misdemeanor as "an offense punishable by a fine of not more than $300 or other amount established by statute as the maximum fine for a petty misdemeanor").

The Minnesota Rules of Criminal Procedure require that "[t]he Judicial Council must adopt and, as necessary, revise a uniform fine schedule setting fines for petty misdemeanors and for misdemeanors as it selects. The uniform fine schedule is applicable

[1] A prosecutor may certify a violation as a petty misdemeanor under Minn. Stat. § 609.131, subd. 1, or rule 23.04 in some circumstances. *See* Minn. Stat. § 609.131, subd. 2 (2018) (exempting particular violations from being certified as petty misdemeanors).

statewide, and is known as the Statewide Payables List."[2] Minn. R. Crim. P. 23.03, subd. 2(1). Here, according to the 2014 and 2015 Statewide Payables Lists, Minn. Stat. § 169.791, subd. 2—the statute Selseth was charged with violating—is a presumed payable offense, if charged by citation.[3]

Selseth received citations for no proof of insurance; he paid the fine amounts listed and thereby entered guilty pleas, receiving petty-misdemeanor convictions. *See* Minn. R. Crim. P. 23.03, subd. 3 (identifying required written notice before a defendant pays a petty-misdemeanor fine to enter a guilty plea). Because Selseth paid the fine amount listed on his citations, which were within petty-misdemeanor limits, the resulting convictions were petty misdemeanors in accordance with Minn. R. Crim. P. 23.02. Consistent with the plain meaning of Minn. Stat. § 609.131, subd. 3, the state cannot use Selseth's two prior petty-misdemeanor convictions to enhance his subsequent offense to a gross misdemeanor.

The state contends the gross-misdemeanor sentence is permitted pursuant to either Minn. Stat. § 609.13, subd. 3, or the penalty provision of Minn. Stat. § 169.797, subd. 4(a).

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[2] The Statewide Payables Lists from 2013 onward are available on the Minnesota Judicial Branch website. *See* Minn. Judicial Branch, *Statewide Payables Lists*, http://mncourts.gov/JusticePartners/Statewide-Payables-Lists.aspx (last visited August 21, 2019).

[3] *See* Minn. Judicial Branch, *2015 State Payables List – Traffic/Criminal*, http://mncourts.gov/mncourtsgov/media/scao_library/Statewide%20Payables/2015_Traffic_Criminal_Payables_List.xls (last visited August 21, 2019); Minn. Judicial Branch, *2014 State Payables List – Traffic/Criminal*, http://mncourts.gov/mncourtsgov/media/scao_library/Statewide%20Payables/2014_Traffic_Criminal_Payables_ListR.xls (last visited August 21, 2019); *see also* Minn. R. Crim. P. 6.01, subd. 4(a) (identifying that "[t]he citation must contain the summons and complaint, and must direct the defendant to appear at a designated time and place or to contact the court or violations bureau to schedule an appearance").

Both claims are unavailing because Minn. Stat. § 609.13, subd. 3, involves an unrelated sentencing issue and Minn. Stat. § 169.797, subd. 4(a), is subject to the expansive language of Minn. Stat. § 609.131, subd. 3.

Pursuant to Minn. Stat. § 609.13, subd. 3:

> If a defendant is convicted of a misdemeanor and is sentenced, or if the imposition of sentence is stayed, and the defendant is thereafter discharged without sentence, the conviction is deemed to be for a misdemeanor for purposes of determining the penalty for a subsequent offense.

As explained above, Selseth was not convicted of a misdemeanor because the sentence imposed—payment of the fine—resulted in a petty-misdemeanor conviction. *See* Minn. R. Crim. P. 23.02. At no time was Selseth convicted of a misdemeanor for that same payable offense. Selseth's fine payments on the citations also did not result in a stay of imposition. *See* Minn. Stat. § 609.135 (2016); Minn. Sent. Guidelines 1.B.19.a (2016) (defining stay of imposition). Therefore, Minn. Stat. § 609.13, subd. 3, does not apply.

The expansive language in section 609.131, subdivision 3, "[n]otwithstanding any other law," denotes that this statutory provision disallowing the use of petty misdemeanors to enhance a subsequent offense to a gross misdemeanor eclipses any other purportedly contrary provision. *See State v. Fleming*, 883 N.W.2d 790, 796 (Minn. 2016) ("We have previously said that '[t]he word 'notwithstanding' is the equivalent of the words 'in spite of.'"") (quoting *Governmental Research Bureau, Inc. v. Borgen*, 28 N.W.2d 760, 765 (Minn. 1947)). And despite the broad language of Minn. Stat. § 169.797, subd. 4(a), which simply allows "the first of two prior convictions under this section" to be used for enhancing to a gross-misdemeanor violation, that language does not alter the legislature's

plain language in Minn. Stat. § 609.131, subd. 3, prohibiting the state from using Selseth's prior petty-misdemeanor convictions for enhancement purposes.

Finally, the state argues that interpreting Minn. Stat. § 609.131, subd. 3, as we do here would cause an absurd or unreasonable result. We consider this argument because "courts should construe a statute to avoid absurd results and unjust consequences." *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 278 (Minn. 2000). This rule, however, "is not available to override the plain language of a clear and unambiguous statute, except in an exceedingly rare case in which the plain meaning of the statute utterly confounds the clear legislative purpose of the statute." *Schatz v. Interfaith Care Ctr.*, 811 N.W.2d 643, 651 (Minn. 2012) (quotation omitted). If "the statute's unambiguous language merely produces a troubling result, we must apply it without reference to its drafting history." *Anker v. Little*, 541 N.W.2d 333, 336 (Minn. App. 1995), *review denied* (Minn. Feb. 9, 1996). The result of this case does not create an absurd, unreasonable, or troubling result. The plain meaning of Minn. Stat. § 609.131, subd. 3, recognizes that petty misdemeanors, which are "not considered a crime[,]" under Minn. R. Crim. P. 23.06, cannot be used to enhance a misdemeanor offense to a gross misdemeanor. Because the plain meaning of the statute does not utterly confound the clear legislative purpose, we are bound by the statute's plain meaning.

D E C I S I O N

Because the state cannot use a criminal defendant's prior petty-misdemeanor conviction to enhance a misdemeanor offense to a gross misdemeanor pursuant to the plain language of Minn. Stat. § 609.131, subd. 3, Selseth's conviction must be reversed.

Although Selseth may not be convicted of a gross misdemeanor by operation of Minn. Stat. § 609.131, subd. 3, Selseth may be convicted of a misdemeanor violation based on the stipulated facts found by the district court. In accordance with Minn. R. Crim. P. 28.02, subd. 12(c), we reverse and remand for the district court to reduce the conviction to the lesser included misdemeanor offense and for resentencing.

Reversed and remanded.