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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-2124**

State of Minnesota,
Respondent,

vs.

Ryan Boyd Banwell,
Appellant.

**Filed August 12, 2019
Reversed and remanded
Cleary, Chief Judge**

Stearns County District Court
File Nos. 73-CR-18-1007 and 73-CR-18-796

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

Janelle P. Kendall, Stearns County Attorney, Kyle R. Triggs, Assistant County Attorney,
St. Cloud, Minnesota (for respondent)

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

Considered and decided by Cleary, Chief Judge; Hooten, Judge; and Florey, Judge.

UNPUBLISHED OPINION

CLEARY, Chief Judge

Appellant Ryan Boyd Banwell appeals from his convictions for stalking and violation of a harassment restraining order, arguing that the district court erred in the calculation of his criminal-history score. We reverse appellant's sentences and remand.

FACTS

In June 2018, appellant pleaded guilty to one count of stalking, Minn. Stat. § 609.749, subd. 4(b) (2016), and one count of violating a harassment restraining order (HRO), Minn. Stat. § 609.748, subd. 6(a) (2016). Both the stalking offense and the HRO violation were charged as felonies because appellant had two or more “qualified domestic violence-related offense convictions” within the ten years preceding these new offenses. Minn. Stat. § 609.748, subd. 6(d)(1), .749, subd. 4(b) (2016). At the plea hearing, in regard to both current offenses, appellant admitted to having previously been convicted of two violations of domestic abuse no-contact orders (DANCOs) on November 3, 2017.

Sentencing guidelines worksheets were prepared and filed with the district court in anticipation of sentencing. The sentencing worksheet for the stalking offense indicated that this crime was enhanced to a felony due to one of the November 2017 DANCO violation convictions admitted by appellant as part of his plea colloquy, and to a 2009 aggravated-assault conviction from Clinton County, Michigan—an offense to which appellant had not explicitly admitted. The sentencing worksheet for the HRO violation offense indicated that this crime was enhanced to a felony due to one of the November 2017 DANCO violations, and to a 2018 felony stalking conviction that appellant had also not admitted to in these proceedings. Also included in the calculation of appellant’s criminal-history score were two 2003 California felony convictions for marijuana possession, and a 2006 Michigan misdemeanor conviction for domestic violence.

The district court, relying on the sentencing worksheets, sentenced appellant on the stalking offense to 41 months in prison, and on the HRO violation to a concurrent 30 months in prison. This appeal follows.

D E C I S I O N

Appellant argues that the district court erred by assigning two felony criminal-history score points and a misdemeanor unit for three out-of-state convictions because the state did not meet its burden of demonstrating that these offenses were properly included in the calculation of his scores. He also argues that it was error for the court to have included a misdemeanor unit for the 2017 DANCO violation conviction that should have been used instead to enhance the current offenses to felonies.

A defendant may challenge a district court's calculation of his criminal-history score for the first time on appeal. *See State v. Maurstad*, 733 N.W.2d 141, 148 (Minn. 2007) (noting that "a defendant cannot forfeit review of [the defendant's] criminal history score calculation"). This court reviews a district court's criminal history determination for an abuse of discretion. *State v. Stillday*, 646 N.W.2d 557, 561 (Minn. App. 2002), *review denied* (Minn. Aug. 20, 2002). "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).

Appellant argues, and the state concedes, that his sentences must be reversed and that the matter be remanded for resentencing. Notwithstanding such agreement, however, this court has an obligation to "decide cases in accordance with [the] law"; a responsibility

that is not “diluted” by the concessions of the parties. *State v. Hannuksela*, 452 N.W.2d 668, 673 n.7 (Minn. 1990).

As a rule, “[t]he state has the burden of proving by a preponderance of the evidence ‘the facts necessary to justify consideration of out-of-state convictions in determining a defendant’s criminal history score.’” *State v. Outlaw*, 748 N.W.2d 349, 355 (Minn. App. 2008) (quoting *State v. Griffin*, 336 N.W.2d 519, 525 (Minn. 1983)), *review denied* (Minn. July 15, 2008). When a defendant challenges the inclusion of out-of-state convictions for the first time on appeal and the record is insufficient to resolve the issue, we reverse the sentence and permit the state on remand to develop a record from which the district court may determine whether the state has met this burden. *Id.* at 356.

Here, the district court included in appellant’s criminal-history score two felony convictions from California for marijuana possession in 2003, and a misdemeanor domestic-violence conviction from Michigan that occurred in 2006. Appellant argues that the district court abused its discretion in doing so because the state did not meet its burden of proving that any of these offenses were properly included in the calculations. The state concedes this point, and we agree that appellant’s sentence must be reversed and remanded for resentencing. *Id.* However, because appellant did not object to the inclusion of these out-of-state convictions at the time of sentencing, respondent shall on remand be “permitted to further develop the sentencing record so that the district court can appropriately make its determination” as to whether these offenses may properly be included in recalculating appellant’s criminal-history score. *Id.*

Because appellant is entitled to resentencing, we need not address whether he is entitled to equivalent relief on his additional claim of error.

Reversed and remanded.