STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0819

State of Minnesota,
Respondent,

vs.

Melody Victoria Gray,
Appellant.

Filed July 20, 2020
Affirmed
Reyes, Judge

Clay County District Court
File No. 14-CR-18-922

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

Brian J. Melton, Clay County Attorney, Pamela Foss, Assistant County Attorney, Moorhead, Minnesota (for respondent)

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

Considered and decided by Ross, Presiding Judge; Reyes, Judge; and Slieter, Judge.

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

REYES, Judge

In this direct appeal from her conviction of felony possession of a firearm by an ineligible person, appellant argues that her guilty plea is invalid because her 2005

Wisconsin controlled-substance crime does not qualify as a crime of violence under Minn. Stat. § 624.712, subd. 5 (2016). We affirm.

FACTS

On March 5, 2018, a Minnesota state trooper responded to a report of a vehicle that slid off of the highway and into the median. The trooper made contact with the vehicle's occupants, appellant Melody Victoria Gray and a male passenger, and discovered that the vehicle had been reported as stolen. When the trooper attempted to handcuff the male passenger, appellant exited the vehicle, pointed a 9mm handgun at the trooper's head, and "attempted to pull the trigger," but the gun did not discharge. Appellant testified that she intended to kill the trooper. Law enforcement arrested appellant and the passenger.

Respondent State of Minnesota charged appellant with three counts: attempted first-degree murder, in violation of Minn. Stat. § 609.185(a)(4) (2016) (count I); possession of a firearm by an ineligible person, in violation of Minn. Stat. § 624.713, subd. 1(2) (2016) (count II); and receiving stolen property, in violation of Minn. Stat. § 609.53, subd. 1 (2016) (count III). Appellant entered into a plea agreement, pleading guilty to counts I and II in exchange for the state dismissing count III.

At the plea hearing, the district court determined that appellant "knowingly, intelligently, and voluntarily waived [her] rights" and "provided a sufficient factual basis for [her] pleas of guilty to both Count I . . . as well as, Count II." The district court did not add a criminal-history point for the Wisconsin controlled-substance offense appellant committed as a 17 year old, which it considered a third-degree controlled-substance sale in Minnesota, in violation of Minn. Stat. § 152.023, subd. 1(1) (2004). The district court

determined that this offense would not have resulted in a presumptive commitment to prison under Minnesota law and thus would not have resulted in an automatic certification to an adult court.

However, the district court determined that this offense qualified as a crime of violence, enabling appellant to be convicted of felony possession of a firearm by an ineligible person. The district court found appellant guilty of count II and imposed a 60-month sentence, increasing her criminal-history score from zero to one. The district court then found appellant guilty of count I and imposed a 228-month sentence. This appeal follows.

D E C I S I O N

Appellant argues that her guilty plea as to count II is inaccurate because the Wisconsin controlled-substance offense she committed when she was 17 years old does not qualify as a crime of violence under Minn. Stat. §§ 624.712, subd. 5, .713, subd. 1(2). We disagree.

We review the validity of a guilty plea de novo. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). We review questions of law, including statutory interpretation, de novo. *See State v. Leathers*, 799 N.W.2d 606, 608 (Minn. 2011). When a statute is unambiguous, we look only at its plain meaning. *Id.*

A court must permit a defendant to withdraw a guilty plea if "withdrawal is necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. A manifest injustice exists if a guilty plea is invalid. *Raleigh*, 778 N.W.2d at 94. A guilty plea is invalid if it is not "accurate, voluntary, [or] intelligent." *Id.* "To be accurate, a plea must

be established on a proper factual basis." *Id.* A defendant bears the burden of demonstrating the invalidity of a plea. *Id.*

Minn. Stat. § 624.713, subd. 1(2), provides that

> [t]he following persons shall not be entitled to possess . . . [a] firearm: . . . [A] person who has been convicted of, or adjudicated delinquent or convicted as an extended jurisdiction juvenile for committing, in this state or elsewhere a crime of violence. For purposes of this section, crime of violence includes crimes in other states or jurisdictions which would have been crimes of violence as herein defined if they had been committed in this state[.]

A crime of violence includes convictions of felony controlled-substances offenses. Minn. Stat. § 624.712, subd. 5. "A person who was adjudicated delinquent for . . . a crime of violence as defined in section 624.712, subdivision 5, is not entitled to ship, transport, possess, or receive a firearm for the remainder of the person's lifetime." Minn. Stat. § 260B.245, subd. 1(b) (2016).

Appellant acknowledges that we recently held that juvenile delinquency adjudications qualify as crimes of violence, *see Roberts v. State*, 933 N.W.2d 418 (Minn. App. 2019), *aff'd*, ___ N.W2d ___ (Minn. July 8, 2020), but she argues that *Roberts* is not binding precedent because it is based on statutory context as opposed to specific statutory language. But in *Roberts*, we specifically held that "the definition of 'crime of violence' contained within Minn. Stat. § 624.712, subd. 5, *unambiguously* includes juvenile adjudications for the listed offenses, and that Minn. Stat. § 624.713, subd. 1(2), therefore prohibits persons who have been adjudicated delinquent of a 'crime of violence' from possessing firearms." *Id.* at 423 (emphasis added). We based this holding on "the plain

language of" Minn. Stat. § 624.713, subd. 1(2), and Minn. Stat. § 624.712, subd. 5. *Id.* at 419. We noted that, "when reading Minn. Stat. § 624.713, subd. 1(2) alone, its plain language indicates that appellant's juvenile adjudication [for] a 'crime of violence[]' renders him ineligible to possess a firearm." *Id.* at 421. Only after analyzing the specific, unambiguous, statutory language did we then examine the statutory context to show that the appellant's interpretation of the language "makes no sense in [that] context." *Id.* at 422. Moreover, the Minnesota Supreme Court has determined that "the court of appeals did not err by concluding that the phrase 'felony convictions,' as used in the statutory definition of crime of violence, includes a juvenile delinquency adjudication for felony-level offenses listed in Minn. Stat. § 624.712, subd. 5." *Roberts v. State*, ___N.W.2d ___, ___, 2020 WL 3815949, at *3 (Minn. July 8, 2020). Appellant's argument fails.

Appellant also argues that *Roberts* is not binding because the supreme court granted review, and our decisions acquire legal force when the review deadline expires. *See, e.g.*, *Sefkow v. Sefkow*, 427 N.W.2d 203, 213 (Minn. 1988) (stating appellate published decisions become binding when supreme court denies review). However, the supreme court has since affirmed our *Roberts* decision. *Roberts*, 2020 WL 3815949 at *1. Moreover, we follow a published opinion of this court unless and until the supreme court announces a different rule of law. *See State v. M.L.A.*, 785 N.W.2d 763, 767 (Minn. App. 2010) (stating we are "bound by" both supreme court precedent and published appellate court opinions), *review denied* (Minn. Sept. 21, 2010).

Nonetheless, *Roberts* is not the only case in which we have determined that a juvenile delinquency qualifies as a crime of violence under section 624.713, subdivision

1(2). *See State v. Turnbull*, 766 N.W.2d 78, 81 (Minn. App. 2009) (providing that section 624.713, subdivision 1(2)[1] "is not ambiguous, and its plain meaning includes those 'convicted,' those 'adjudicated delinquent,' and those 'convicted as an extended jurisdiction juvenile'); *State v. Grillo*, 661 N.W.2d 641, 643, 645 (Minn. App. 2003) (affirming conviction of firearm possession by ineligible person when predicate "crime of violence" is juvenile delinquency adjudication and acknowledging that section 624.713, subdivision 1(2) "clearly states that a person adjudicated delinquent for commission of a violent crime is prohibited from carrying a firearm"), *review denied* (Minn. Aug. 5, 2003).

Appellant argues that the legislature's omission of a comma after "adjudicated delinquent" in section 624.713, subdivision 1(2), reveals its intent for only extended-jurisdiction juvenile dispositions to qualify as crimes of violence: "a person who has been convicted of, or adjudicated delinquent or convicted as an extended jurisdiction juvenile for committing, in this state or elsewhere, a crime of violence." But appellant's interpretation is unreasonable because the statute explaining the effect of juvenile court proceedings refers to the result of extended-jurisdiction juvenile proceedings as "convictions," whereas it refers to the result of juvenile criminal proceedings as "delinquencies." *See* Minn. Stat. § 260B.245, subd. 1(b) (referring to "[a] person who was adjudicated delinquent for, or convicted as an extended jurisdiction juvenile of, a crime of violence").[2]

[1] Section 624.713, subdivision 1(b), corresponds to Minn. Stat. § 624.713, subd. 1(2).
[2] Minn. Stat. § 260B.245, subd. 1(a) (2016), also correlates extended-jurisdiction juvenile proceedings with convictions: "An extended jurisdiction juvenile conviction shall be

Appellant argues that the Juvenile Court Act's policy of "[giving] children access to opportunities for personal and social growth," Minn. Stat. § 260B.001, subd. 2 (2018), the policy of lenity to resolve ambiguity in favor of criminal defendants, and the fact that the legislature removed felony violations and felonious enumerated offenses from the definition of "crime of violence" in 2003, compel us to interpret "crimes of violence" as excluding juvenile-delinquency adjudications. But when a statute is unambiguous, we do not consider policy, *see* Minn. Stat. § 645.16 (2018), lenity, *see State v. Peck*, 773 N.W.2d 768, 772 (Minn. 2009), or statutory history, *see* Minn. Stat. § 645.16 (directing courts not to consider "the former law" or "legislative history" of unambiguous statutes).

Finally, appellant argues that equating a Wisconsin juvenile-delinquency adjudication with an adult conviction in Minnesota would violate equal protection by exposing someone with a non-Minnesota juvenile offense to greater criminal liability than someone with a Minnesota juvenile offense because the Minnesota juvenile offense cannot be considered a conviction, per section 260B.245, subdivision 1(a). Because appellant raised this argument in her reply brief but not in her main brief, we need not consider it. Issues raised "for the first time in [an appellant's reply brief in a criminal appeal]," having not been raised in the respondent's brief, are "not proper subject matter for [the] appellant's reply brief," and they may be deemed "waived" and be "stricken" by an appellate court. *State v. Yang*, 774 N.W.2d 539, 558 (Minn. 2009) (applying Minn. R. Civ. App. P. 128.02, subd. 4). Moreover, as we concluded above, section 624.713, subdivision 1(2), applies to

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treated in the same manner as an adult felony criminal conviction for purposes of the Sentencing Guidelines."

those who have been "adjudicated delinquent," and not just to those who have been "convicted."

In sum, appellant has failed to meet her burden of establishing the invalidity of her guilty plea because the plain language of section 624.713, subdivision 1(2), criminalizes possession of a firearm by a person adjudicated delinquent of a crime of violence. The district court did not err by accepting her guilty plea for unlawful possession of a firearm.

Affirmed.