STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1362

State of Minnesota,
Respondent,

vs.

Delaney Ledell Johnson,
Appellant.

Filed August 10, 2020
Affirmed
Bratvold, Judge

Ramsey County District Court
File No. 62-CR-18-6351

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

John J. Choi, Ramsey County Attorney, Alexandra Meyer, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Charles F. Clippert, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Bjorkman, Judge; and Halbrooks, Judge.[*]

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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

BRATVOLD, Judge

In this appeal from two final judgments of conviction for first-degree criminal sexual conduct, both of which were sentenced during the same hearing, appellant argues the district court erroneously imposed a lifetime-conditional-release term on his second conviction. Appellant contends that his "adjudications were entered simultaneously" and he had no "prior sex offenses," as that phrase is defined in Minn. Stat. § 609.3455, subd. 1(g) (2018). Because the district court convicted Johnson of one sex offense before it convicted Johnson of the second offense, we affirm.

FACTS

In February through June 2017, appellant Delaney Ledell Johnson lived with his girlfriend and her two children, ages nine (child A) and ten (child B). Approximately one year later, the children told their brother that Johnson had sexually abused them in 2017. The brother told their father about the abuse in July 2018 and the father reported the abuse to police.

The state charged Johnson with two counts of first-degree criminal sexual conduct (penetration; significant relationship; multiple acts over time) under Minn. Stat. § 609.342, subd. 1(h)(iii) (2016), against child A (count one) and child B (count two) for conduct that occurred at a St. Paul residence, and two counts of first-degree criminal sexual conduct (sexual contact; significant relationship; multiple acts over time) under Minn. Stat. § 609.342, subd. 1(h)(iii), against child A (count three) and child B (count four) for conduct that occurred at a Maplewood residence.

Johnson initially pleaded not guilty and the case went to trial. The parties reached a plea agreement shortly after jury selection began. Johnson pleaded guilty to counts one (child A) and two (child B). In exchange, the state agreed to dismiss counts three and four at sentencing. The district court found that Johnson entered his plea "knowingly, intelligently, and voluntarily" and stated there was a "sufficient basis" to support the guilty plea on counts one and two. The district court did not accept Johnson's plea, ordered a presentence investigation, and set a sentencing hearing.

During a sentencing hearing several months later, the district court accepted the plea agreement and, on count one, committed Johnson to the commissioner of corrections for 234 months with a ten-year conditional-release term. On count two, the district court committed Johnson to the commissioner of corrections for 306 months with a lifetime-conditional-release term. This appeal follows.

D E C I S I O N

Johnson appeals from his sentence and argues that the district court erroneously imposed a lifetime-conditional-release term as part of his sentence for count two because the district court simultaneously entered his convictions. Johnson asks this court to reverse the lifetime-conditional-release term on his second conviction as unlawful. "Resolving the issue of whether convictions that are adjudicated simultaneously can result in [both] a prior conviction and a present offense is a matter of statutory interpretation, which is an issue of law that we review de novo." *State v. Brown*, 937 N.W.2d 146, 156 (Minn. App. 2019); *see also State v. Williams*, 771 N.W.2d 514, 520 (Minn. 2009) (applying de novo review to determine whether a sentence conforms to statutes).

The Minnesota Legislature "has the exclusive authority to define crimes and offenses and the range of the sentences or punishments for their violation." Minn. Stat. § 609.095(a) (2018). District courts must sentence defendants in accordance with state statutes, the sentencing guidelines, and other applicable laws. *See State v. Noggle*, 881 N.W.2d 545, 547 (Minn. 2016). By statute, district courts "shall" impose a lifetime-conditional-release term when committing an offender to the custody of the commissioner of corrections for certain sex offenses if that offender has a "prior sex offense conviction." Minn. Stat. § 609.3455, subd. 7(b) (2018).

A conviction is considered to be a "prior sex offense conviction" if "the offender was convicted of committing a sex offense before the offender has been convicted of the present offense," so long as each conviction "involved separate behavioral incidents." *Id.*, subd. 1(g) (2018). This occurs "regardless of whether the offender was convicted for the first offense before the commission of the present offense." *Id.* A "sex offense" includes convictions under section 609.342 for first-degree criminal sexual conduct. *Id.*, subd. 1(h) (2018).

Johnson argues on appeal that he "had no prior sex offense convictions" at the time he was sentenced and "the district court never formally adjudicated [him] guilty of either count one or count two." Reasoning from these facts, Johnson contends that his convictions were "simultaneously adjudicated in the district court's Warrant of Commitment" filed after the sentencing hearing. Johnson relies on this court's ruling in *Brown* that a simultaneously-entered conviction cannot serve as a prior sex-offense conviction.

937 N.W.2d at 156-57 (concluding "no conviction can be prior to the other" when entered simultaneously during same hearing). *Brown* also held that a district court errs by imposing a lifetime-conditional-release term following the simultaneous entry of two convictions. *Id.* The state argues that "the district court's language indicates [Johnson] was convicted sequentially, not simultaneously." The state points to federal caselaw and unpublished appellate decisions to support its position that the district court "implicitly accepted a plea on each count just before imposing sentence."

We agree with the state based on our analysis of when Johnson was convicted of each offense. A criminal "conviction" occurs when either a guilty plea or a guilty verdict is "accepted and recorded by the court." Minn. Stat. § 609.02, subd. 5 (2018). A district court accepts a guilty plea on the record by using "clear and unambiguous language." *State v. Jeffries*, 806 N.W.2d 56, 62-63 (Minn. 2011) (holding conviction occurred when district court stated, "I'll accept your plea of guilty and find you guilty of the fifth-degree domestic assault . . . . So you are convicted of that"). No "magic words" are required to formally accept a guilty plea, record a conviction, and establish a prior conviction. *Id.*

The district court did not accept Johnson's guilty plea during the plea hearing. When a defendant "tenders a valid guilty plea," the district court "may order any of three separate dispositions: accept the plea on the terms of the plea agreement, reject the plea, or defer its decision to accept or reject the plea pending completion of a presentence investigation." *Id.* at 62; *see* Minn. R. Crim. P. 15.04, subd. 3(2). At Johnson's plea hearing, the district court found that Johnson's plea was valid and then set the sentencing hearing. We conclude

that the district court deferred acceptance of Johnson's plea until sentencing. *See, e.g.*, *State v. Thompson*, 754 N.W.2d 352, 356 (Minn. 2008) (deferring acceptance of plea until sentencing). The parties do not contend otherwise.

We turn to Johnson's argument that his convictions were entered simultaneously during the sentencing hearing. The state maintains that the district court implicitly entered each conviction, one after the other. To resolve this issue, we consider the record of the sentencing hearing.

After hearing from both parties and giving Johnson his right of allocution, the district court stated, "[Y]ou pled guilty before me to Count 1 criminal sexual conduct in the first-degree, victim under 16, a significant relationship and multiple acts. You also pled guilty to Count 2, criminal sexual conduct in the first-degree with a victim under 16, significant relationship and multiple acts." Next, the district court summarized the plea agreement, discussed Johnson's in-custody credit, and stated that the presumptive sentence for count one was 199 to 280 months. The district court then stated:

> On Count 1 I am going to sentence you to the Custody of the Commissioner of Corrections for a period of 234 months with credit for 246 days that you've already served. There will be a ten-year conditional release period that would apply to this count. And by operation of law you will have to . . . register as a predatory offender for your lifetime.
>
> Count 2, the Minnesota Sentencing Guidelines lists this [] as a severity level A offense. You have a criminal history score of 7. The presumptive guidelines range 306 to 360 months.
>
> I am going to impose [the] following sentence for Count 2: Commit you to custody of the Commissioner [of] Corrections for a period of 306 months with credit for 246 days that you've

> already served on this count. On this count, a lifetime conditional release period applies, and you will need to register as a predatory offender for your lifetime.

No objection was made during the sentencing hearing.

Based on this record, we determine that Johnson was convicted when the district court pronounced each sentence. The Minnesota Rules of Criminal Procedure explicitly provide that a sentence "is *an adjudication of guilt*." Minn. R. Crim. P. 27.03, subd. 8 (emphasis added). Although this rule is not cited by either party, it governs sentencing proceedings. We conclude that the district court adjudicated Johnson's guilt and convicted him on each count when it imposed a sentence for each count. And because the district court sentenced Johnson on count one *before* sentencing Johnson on count two, the convictions were *not* entered simultaneously.

Our decision is consistent with *State v. Nodes*, which held that a "prior sex offense conviction" under section 609.3455 "unambiguously includes a conviction for a separate behavioral incident entered before a second conviction, whether at different hearings or *during the same hearing*." 863 N.W.2d 77, 82 (Minn. 2015) (emphasis added). The supreme court reasoned that no "particular temporal gap" is required to establish a prior conviction. *Id.* So long as one conviction is entered before a second conviction, the former qualifies as a "prior sex offense conviction." *Id. Brown* is inapplicable to Johnson's circumstances because its holding hinged on the determination that no prior conviction occurs when there is "*no* temporal gap whatsoever between a district court's adjudication of offenses." *See* 937 N.W.2d at 156 (emphasis added). At Johnson's sentencing hearing, there was a temporal gap between the entries of the two convictions.

We reject Johnson's argument that he was convicted when the warrant of commitment was filed. He relies on caselaw that addresses "*whether* the defendant had been formally convicted of a particular [lesser-included] offense, not *when* [the] conviction occurred." *Nodes*, 863 N.W.2d 77 at 81 (discussing *State v. Hoelzel*, 639 N.W.2d 605 (Minn. 2002) and *State v. Pflepsen*, 590 N.W.2d 759 (Minn. 1999)). Although Johnson correctly states that a conviction is formally adjudicated once it appears in an official judgment of conviction, *see Hoelzel*, 639 N.W.2d 605, the official judgment itself is "not required to satisfy the requirement that the guilty plea be recorded." *Thompson*, 754 N.W.2d at 356 n.4 (citing Minn. Stat. § 609.02, subd. 5).

In sum, because Johnson's conviction of count one was entered before his conviction of count two, Johnson had a prior sex-offense conviction when the district court imposed a lifetime-conditional-release term under Minn. Stat. § 609.3455, subd. 7(b), on count two.

Affirmed.