

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1476**

State of Minnesota,
Respondent,

vs.

Nathaniel Gerome Davenport,
Appellant.

**Filed July 27, 2020
Reversed and remanded
Jesson, Judge**

Mower County District Court
File No. 50-CR-17-610

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

Kristen Nelsen, Mower County Attorney, Megan A. Burroughs, Assistant County Attorney, Austin, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sara J. Euteneuer, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Worke, Judge; and Jesson, Judge.

S Y L L A B U S

A person charged—prior to the effective date of the 2005 amendment to Minnesota Statutes section 243.166, subdivision 1(1), 2005 Minn. Laws ch. 136, art. 3, § 8, at 939— with aiding and abetting criminal sexual conduct is required to register as a predatory offender only if they were subject to predatory-offender registration on or after the effective date of the amendment.

OPINION

JESSON, Judge

Appellant Nathaniel Gerome Davenport pleaded guilty to disorderly conduct in October 2001, and the state dismissed a charge of aiding and abetting fourth-degree criminal sexual conduct. At the time of his sentencing, Davenport was not required to register as a predatory offender. But the legislature amended the registration statute in 2005, requiring a person charged with aiding and abetting criminal sexual conduct to register as a predatory offender. Following his release from prison in 2017 on an unrelated matter, Davenport was told that he must register. Davenport now challenges his 2019 guilty plea to failing to update his predatory-offender-registry address, asserting that the 2005 amendments did not apply to him, and that his plea was not accurate. Because Davenport was not subject to predatory-offender registration, we reverse and remand the matter to the district court to allow Davenport to withdraw his guilty plea.

FACTS

In November 2000, appellant Nathaniel Gerome Davenport was charged with aiding and abetting fourth-degree criminal sexual conduct and disorderly conduct, relating to a November 23, 2000, incident.¹ In October 2001, Davenport pleaded guilty to disorderly conduct, and the aiding-and-abetting charge was dismissed. The district court sentenced Davenport to ten days in jail with one year of probation.

¹ The underlying facts of the 2000 incident that led to Davenport's guilty plea are not part of the record of this appeal.

At the time of his conviction for disorderly conduct, Davenport was not required to register as a predatory offender despite being charged with aiding and abetting criminal sexual conduct. *See* Minn. Stat. § 243.166, subd. 1(1) (2000). In 2005, the legislature amended section 243.166 to require registration if a person is charged with aiding and abetting criminal sexual conduct and is “convicted of . . . that offense or another offense arising out of the same set of circumstances.” 2005 Minn. Laws ch. 136, art. 3, § 8, at 939. The amendment was made “effective the day following final enactment and appl[ies] to persons subject to predatory offender registration on or after that date.” *Id.* at 951. The governor signed the amendment into law on June 2, 2005. *See* State of Minnesota, *Journal of the House*, 84th Sess. 5050-51 (June 2, 2005).

In 2017, Davenport was discharged from prison on an unrelated offense and informed that he was obligated to register as a predatory offender. Davenport registered at an address in Austin, Minnesota in March 2017. Davenport only stayed in Austin for a short period of time and then moved to North Dakota without updating his predatory-offender registration or informing the relevant authorities that he was leaving the state. Davenport resided in North Dakota until sometime the following year.

In March 2017, the state charged Davenport with failing to register his change of address. In accordance with the terms of a plea agreement, Davenport pleaded guilty to the present failure-to-register charge in exchange for the dismissal of a separate failure-to-register charge. The state recommended a downward durational departure of a year-and-one-day prison term. The district court sentenced Davenport in accordance with the plea agreement. Davenport appeals his failure-to-register conviction.

ISSUE

Is Davenport required to register as a predatory offender?

ANALYSIS

When Davenport was originally sentenced in October 2001 for disorderly conduct, he was not required to register as a predatory offender. This is because, at the time of sentencing, section 243.166 did not require registration when a person was charged with aiding and abetting criminal sexual conduct. *See* Minn. Stat. § 243.166, subd. 1(1).

That changed. In 2005, the legislature amended the statute to require registration when a person is charged with aiding and abetting criminal sexual conduct if that person was convicted of another offense arising out of the same set of circumstances. 2005 Minn. Laws ch. 136, art. 3, § 8, at 939. And the legislature added an effective date, stating that the amendments are “effective the day following final enactment and *apply to persons subject to predatory offender registration on or after that date.*” *Id.* at 951 (emphasis added).

Davenport argues that because he was not subject to predatory-offender registration on the effective date of the amendment, he was not subject to the statute and his conviction must be reversed.² This contention presents a question of statutory interpretation, which we review de novo. *State v. Defatte*, 928 N.W.2d 338, 340 (Minn. 2019).

² While Davenport frames his first challenge as a request to reverse his conviction, appellate courts have a responsibility “to decide cases in accordance with law.” *State v. Hannuksela*, 452 N.W.2d 668, 673 n.7 (Minn. 1990). And we note that “a criminal defendant’s valid guilty plea waives all non-jurisdictional defects arising prior to the entry of the plea.” *State v. Cruz Montanez*, 940 N.W.2d 162, 163 (Minn. 2020) (quotation omitted). In order to be valid, a guilty plea must be accurate, voluntary, and intelligent.

We agree with Davenport. It is uncontested that he was not subject to predatory-offender registration as of the effective date of the 2005 amendment—July 3, 2005. Therefore, by the plain language of the 2005 amendment, Davenport is not required to register as a predatory offender due to his November 2000 charge of aiding and abetting fourth-degree criminal sexual conduct.

To attempt to persuade us otherwise, the state argues that caselaw requires that the 2005 amendment retroactively applies to Davenport’s 2000 charge. Certainly, precedent generally supports retroactive application of the registry statutes to offenses committed prior to their enactment. In *State v. Lilleskov*, this court pointed out that “[t]he intended goal of the [registration] statute, to monitor sex offenders released into the community, would have been substantially impeded if it applied only to offenders who committed their offense after the statute’s effective date.” 658 N.W.2d 904, 908 (Minn. App. 2003).

Furthermore, this court noted that because the purpose of the predatory-offender registry is to aid law enforcement in subsequent investigations, retroactive application of amendments to the statute “allows the legislature to enlarge or reduce the group of offender registrants as necessary to effectuate the purpose of the statute.” *State v. Jedlicka*,

Brown v. State, 449 N.W.2d 180, 182 (Minn. 1989). “The main purpose of the accuracy requirement is to protect the defendant from pleading guilty to a more serious offense than he could properly be convicted of at trial.” *Id.* And “a defendant who challenges a judgment of conviction against him based on an invalid guilty plea may . . . appeal directly to this court.” *State v. Anyanwu*, 681 N.W.2d 411, 413 n.1 (Minn. App. 2004), *overruled on other grounds by Wheeler v. State*, 909 N.W.2d 558 (Minn. 2018). Accordingly, we treat Davenport’s argument that he could not be found guilty of violating the registration statute because he was not a person required to register as a challenge to the accuracy of his guilty plea, and thus, its validity.

747 N.W.2d 580, 584 (Minn. App. 2008) (quotation omitted). This is because the offender-registration statute, according to precedent, is not punitive in nature. *State v. Manning*, 532 N.W.2d 244, 249 (Minn. App. 1995), *review denied* (Minn. July 20, 1995). And, as the state points out, this court specifically held in *Jedlicka* that the 2005 amendments to section 243.166 apply retroactively. 747 N.W.2d at 584.

But while caselaw supports the determination that the predatory-offender-registry statutes *may* apply retroactively, retroactivity is not ironclad. None of the above cases presented the same procedural dilemma involving Nathaniel Davenport. In *Lilleskov*, the appellant was adjudicated delinquent in May 1994 and informed by his probation officer approximately at the time of sentencing of his registration obligation based on retroactive application of the 1994 amendments to the statute. 658 N.W.2d at 906-07. Under these facts, we explained that retroactive application was appropriate because “[t]he statute, by making the offender register *upon his release into the community*, either on probation or following release from prison, necessarily operates without regard to the date of his conviction.” *Id.* at 908 (emphasis added). Here, unlike *Lilleskov*, Davenport had already completed his sentence prior to the enactment of the 2005 amendments. As a result, we are not presented with the scenario of an offender beginning or continuing a period of supervised release following amendment of the statute, but rather with an offender who had already completed his sentence and was no longer on probation at the time the statute was amended.

Our determination in *Jedlicka* that the 2005 amendments apply retroactively likewise can be harmonized with the determination that the 2005 amendments do not apply

to Davenport. In *Jedlicka*, this court applied the 2005 amendment to retroactively absolve Jedlicka of the obligation to register, because under the amendment his conviction for burglary no longer triggered the registration requirement. 747 N.W.2d at 582-83. Unlike Davenport, Jedlicka was a person subject to predatory-offender registration as of the effective date of the amendment. It was only by retroactive operation of the 2005 amendments that he was no longer a person subject to registration.

In sum, Davenport's case presents the converse factual scenario from *Lilleskov* and *Jedlicka*. Their retroactivity analyses do not apply here. Therefore, we return to the plain language of the amendment. Under the effective-date provision, Davenport was not a person subject to predatory-offender registration. Thus, while the legislature has the ability to enlarge or reduce the group of offenders subject to registration, *id.* at 584, here, the legislature did not set the effective date of the amendment to include someone like Davenport—someone who was not subject to registration on or after July 3, 2005. Because the amendment did not obligate Davenport to register, he pleaded guilty to an offense for which he could not properly be convicted of at trial. *See Brown*, 449 N.W.2d at 182. Therefore, we reverse and remand the matter back to the district court so that Davenport may withdraw his inaccurate guilty plea.³

³ Because we remand Davenport's guilty plea on the basis that the 2005 amendments to Minnesota Statutes section 243.166, subdivision 1(1), were not effective against him, we do not reach his arguments regarding whether the record made at the time he entered his guilty plea established that he knowingly violated the registration statute.

DECISION

Because Davenport was not subject to predatory-offender registration on or after the effective date of the 2005 amendments to Minnesota Statutes section 243.166, subdivision 1(1), he was not required to register as a predatory offender due to his November 2000 charge of aiding and abetting fourth-degree criminal sexual conduct. On this basis, we reverse and remand the matter to the district court to allow Davenport to withdraw his guilty plea to failing to register as a predatory offender.

Reversed and remanded.