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**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0001**

Melvin L. Allen, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed May 26, 2020
Affirmed
Hooten, Judge**

Hennepin County District Court
File No. 27-CR-09-38072

Melvin L. Allen, Moose Lake, Minnesota (pro se appellant)

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

Michael O. Freeman, Hennepin County Attorney, Jonathan P. Schmidt, Assistant County
Attorney, Minneapolis, Minnesota (for respondent)

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

UNPUBLISHED OPINION

HOOTEN, Judge

In this appeal, appellant argues that the district court abused its discretion when it denied his motion to correct an unauthorized sentence because: (1) the sentencing court should have impaneled a jury or had an evidentiary hearing to determine whether or not a

previous conviction for criminal sexual assault existed for the purpose of implementing a lifetime conditional release, and (2) the district court's reliance on one of his prior convictions for criminal sexual assault as a predicate offense to impose a lifetime conditional release violates the ex post facto clauses of the United States and Minnesota Constitutions. We affirm.

FACTS

In 1988, appellant Melvin Allen, a minor who was tried as an adult, was found guilty of criminal sexual assault of a ten-year-old boy and aggravated criminal sexual assault of a six-year-old girl after a bench trial in Illinois. *People v. Allen*, 580 N.E.2d 1291, 1293 (Ill. App. Ct. 1991). These convictions withstood a sufficiency of the evidence challenge on appeal. *Id.* at 1297. At some point after 1991, Allen moved from Illinois to Minnesota.

In 2009, Allen's ten-year-old daughter reported being sexually assaulted by Allen. Allen was charged with three counts of first-degree criminal sexual conduct: one count in violation of Minn. Stat. § 609.342, subd. 1(h)(iii) (2008), and two counts in violation of Minn. Stat. § 609.342, subd. 1(a) (2008). A jury found Allen guilty on all three counts in 2010.

The district court convicted Allen for his violation of Minn. Stat. § 609.342, subd. 1(h)(iii), and imposed an executed sentence of 144 months and a lifetime conditional release as required by Minn. Stat. § 609.3455, subd. 7(b) (2008) (imposing a lifetime conditional release for specific sexual offenses when the offender has a previous sex offense conviction). This conviction survived a constitutional challenge and a sufficiency

of the evidence challenge in a direct appeal to this court. *State v. Allen*, No. A10-1117 (Minn. App. July 5, 2011), *review denied* (Minn. Sept. 20, 2011).

In 2019, Allen filed a motion to correct his sentence under Minn. R. Crim. P. 27.03, subd. 9 (providing that a court may correct a sentence not authorized by law at any time). Allen claimed that he was not subject to the lifetime conditional release as mandated by Minn. Stat. § 609.3455, subd. 7(b), because his 1988 predicate offenses predate the enactment of the statute, and a jury should have been empaneled during sentencing to determine whether or not Allen even had a previous conviction for sex offenses. The district court denied Allen’s motion to correct his sentence.

Allen appeals.

D E C I S I O N

Allen appears to argue that the district court abused its discretion by denying his motion to correct his sentence under Minn. R. Crim. P. 27.03 because: (1) the sentencing court should have either impaneled a jury or had an evidentiary hearing to determine whether or not a previous conviction for criminal sexual assault existed, and (2) relying on one of his 1988 convictions for criminal sexual assault as a predicate offense to impose a lifetime conditional release violates the ex post facto clauses of the United States and Minnesota Constitutions.

“We review a district court’s denial of a motion to correct a sentence [under Minn. R. Crim. P. 27.03, subd. 9] for an abuse of discretion. Specifically, we review the district court’s legal conclusions de novo and its factual findings under the clearly erroneous standard.” *Townsend v. State*, 834 N.W.2d 736, 738 (Minn. 2013).

A. *The district court did not abuse its discretion when it concluded that the sentencing judge did not err in its failure to impanel a jury or have an evidentiary hearing to determine the existence of a predicate offense for the implementation of a lifetime conditional release.*

While Allen does not contest the existence of his 1988 criminal sexual conduct convictions, he claims that he was nonetheless entitled to a jury trial or, in the alternative, an evidentiary hearing regarding the existence of a predicate offense before a lifetime conditional release may be imposed.

The right to a jury trial under the Sixth Amendment is a fundamental right that “indisputably entitle[s] a criminal defendant to a jury determination that he is guilty of every element of the crime with which he is charged, beyond a reasonable doubt.” *Apprendi v. New Jersey*, 530 U.S. 466, 477, 120 S. Ct. 2348, 2356 (2000) (quotation omitted). The scope of the sentencing judge’s authority is derived wholly and exclusively from the jury’s verdict. *Blakely v. Washington*, 542 U.S. 296, 306, 124 S. Ct. 2513, 2539 (2004). Accordingly, a sentencing judge is limited in its authority to impose a sentence outside of the presumptive range. *State v. Shattuck*, 704 N.W.2d 131, 141 (Minn. 2005). A sentencing judge may find the existence of a prior conviction in the context of an imposition of a conditional release term when that prior conviction is not an element of the offense for which the defendant is sentenced. *State v. Her*, 862 N.W.2d 692, 698 (Minn. 2015).

Allen was adjudicated guilty and sentenced for violating Minn. Stat. § 609.342, subd. 1(h)(iii). This provision criminalizes the conduct of an actor who sexually penetrates someone under the age of 16 on multiple occasions with whom the actor has a significant

relationship. Minn. Stat. § 609.342, subd. 1(h)(iii). Allen’s previous convictions for criminal sexual assault in Illinois are not an element of this crime. Indeed, the district court only used one of the Illinois convictions as a predicate conviction so as to impose a lifetime conditional release term as required by Minn. Stat. § 609.3455, subd. 7(b).

As the Illinois convictions were not an element of the offense for which Allen was found guilty and sentenced, and sentencing judges are entitled to find the existence of a previous conviction in the context of determining an appropriate conditional release term, Allen does not have the right to have the existence of the Illinois convictions determined by a jury.

Allen alternatively argues that the district court abused its discretion when it determined that he was not entitled to an evidentiary hearing before the court to determine the existence of a predicate offense for the imposition of a lifetime conditional release. But, under Minn. R. Crim. P. 27.03, subd. 9, a motion to correct a sentence neither “expressly require[s] a hearing, nor . . . require[s] findings of fact.” *State v. Masood*, 739 N.W.2d 736, 739 (Minn. App. 2007).

The sentencing judge was able to determine that Allen had prior convictions without impaneling a jury or holding an evidentiary hearing. Because Minn. R. Crim. P. 27.03, subd. 9 does not mandate an evidentiary hearing for a motion to correct a sentence, the district court did not err when it determined that Allen was not entitled to an evidentiary hearing on his motion to correct his sentence.

B. The district court did not abuse its discretion when it determined that Allen's sentence did not violate the ex post facto clauses of the United States and Minnesota Constitutions.

Finally, Allen argues that the district court abused its discretion when it determined that Allen's sentence did not violate the ex post facto clauses of the United States and Minnesota Constitutions.

An ex post facto law is a law that applies to conduct that occurred before the law's enactment and that criminalizes or disadvantages an individual affected by it. *Weaver v. Graham*, 450 U.S. 24, 28, 101 S. Ct. 960, 964 (1981). The United States and Minnesota Constitutions prohibit the enactment of ex post facto laws. U.S. Const. art I, § 10; Minn. Const. art I, § 11. For a statute to be considered an ex post facto law, the statute must: "(1) punish as a crime an act which was innocent when committed; (2) increase the burden of punishment for a crime after its commission; or (3) deprive one charged with a crime of a defense that was available when it was committed." *State v. Manning*, 532 N.W.2d 244, 247 (Minn. App. 1995), *review denied* (Minn. July 20, 1995). However, enhancement statutes do not alter the penalty imposed for, or increase the burden of, an earlier conviction. *Nichols v. United States*, 511 U.S. 738, 747, 114 S. Ct. 1921, 1927 (1994); *see also State v. Willis*, 332 N.W.2d 180, 185 (Minn. 1983) (determining that an amendment to a DWI law that allowed past criminal convictions to enhance present crimes merely "increased the possible penalty for the latest crime" and does not punish the past crime).

The district court, in considering Allen's motion to correct his sentence, concluded that Allen was subject to a lifetime conditional release under Minn. Stat. § 609.3455, subd. 7(b). The 2008 statute stated:

Notwithstanding the statutory maximum sentence otherwise applicable to the offense, when the court commits an offender to the custody of the commissioner of corrections for a violation of section 609.342, 609.343, 609.344, 609.345, or 609.3453, and the offender has a previous or prior sex offense conviction, the court shall provide that, after the offender has completed the sentence imposed, the commissioner shall place the offender on conditional release for the remainder of the offender's life.

Minn. Stat. § 609.3455, subd. 7(b).

A “sex offense” is statutorily defined as “any violation of, or attempt to violate, section 609.342, 609.343, 609.344, 609.345, 609.3451, 609.3453, or any similar statute of the United States, this state, or any other state.” Minn. Stat. § 609.3455, subd. 1(h) (2018). This statute came into effect on August 1, 2005, and applies to any offenses committed on or after that date. 2005 Minn. Laws Ch. 136, art. 2, § 21, at 3120.

In 2010, Allen was convicted of, and sentenced for, first-degree criminal sexual assault in violation of Minn. Stat. § 609.342, subd. 1(h)(iii). This conviction subjected Allen to a mandatory lifetime conditional release under Minn. Stat. § 609.3455, subd. 7(b), should he have a prior conviction for a sexual offense in Minnesota or any other state. The record indicates that in 1988, Allen was convicted of two counts of criminal sexual assault under Illinois's equivalent of Minn. Stat. § 609.342, subd 1(h)(iii). *Allen*, 580 N.E.2d at 1293. Accordingly, either of Allen's Illinois convictions was an adequate predicate conviction so as to require a lifetime conditional release under Minn. Stat. § 609.3455, subd. 7(b). As the requirement of a lifetime conditional release due to his 1988 convictions only further punishes Allen for his 2010 conviction, and does not increase the burden of

punishment for his 1988 convictions, imposing a lifetime conditional release on Allen does not violate the constitutional prohibition against ex post facto laws.

The district court determined that the implementation of Minn. Stat. § 609.3455, subd. 7(b), was a consequence of Allen's 2010 conviction and did not further punish Allen for either of his 1988 convictions. Because the imposition of a lifetime conditional release was properly predicated on one of his 1988 convictions, we hold that the district court did not abuse its discretion when it denied Allen's motion to correct his sentence.

Affirmed.