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**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0290**

State of Minnesota,
Respondent,

vs.

Jeremy Shane Zimmermann,
Appellant.

**Filed November 9, 2020
Affirmed
Bjorkman, Judge**

Scott County District Court
File No. 70-CR-15-23903

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

Ronald Hocevar, Scott County Attorney, Todd P. Zettler, Assistant County Attorney, Shakopee, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bryan, Presiding Judge; Ross, Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges his sentence for two convictions of failing to register as a predatory offender. He argues that the district court (1) lacked jurisdiction to impose a

conditional-release term after his executed prison term expired and (2) committed plain error by admitting unobjected-to other-acts evidence at his sentencing trial. We affirm.

FACTS

Appellant Jeremy Zimmermann is required to register as a predatory offender. In December 2011, he was convicted of violating his registration requirements and was imprisoned until October 2015. Later that year, police discovered that he was again violating his registration requirements, and he was arrested and charged with two counts of failing to register as a predatory offender. Zimmermann initially pleaded guilty but later withdrew his plea. After a September 2017 trial, a jury found Zimmermann guilty on both counts. That November, the district court sentenced him to 39 months' imprisonment, with 698 days (just over 23 months) of jail credit, and imposed a ten-year conditional-release term. *See* Minn. Stat. § 243.166, subd. 5a (2014) (requiring district court to impose ten-year conditional-release term when sentencing level-three offender to prison for failure to register as a predatory offender).

On appeal, we affirmed Zimmermann's convictions but concluded that the district court erred by imposing a ten-year conditional-release term absent a jury determination that Zimmermann was a level-three predatory offender at the time of the offense. *State v. Zimmermann*, No. A18-0231, 2019 WL 1006798, at *8 (Minn. App. Mar. 4, 2019) (citing *State v. Her*, 862 N.W.2d 692 (Minn. 2015)), *review denied* (Minn. May 28, 2019). We denied his request to vacate the conditional-release term but reversed and remanded for the district court to empanel a sentencing jury or obtain a jury-trial waiver. *Id.* at *8-9.

The day of his sentencing trial, Zimmermann moved to dismiss, arguing that the district court lacked jurisdiction because his sentence expired in March 2019. The court reserved ruling on the motion. During trial, the state presented the testimony of a department of corrections employee and, without objection, two documents: (1) a 2011 report from an end-of-confinement review committee designating Zimmermann as a level-three offender and (2) a public fact sheet the department distributed to local law enforcement upon Zimmermann’s 2015 release, which notifies the community about his predatory-offender status, and includes several statements describing his underlying sexual misconduct. The jury found that Zimmermann was a level-three offender at the time of the registration offenses. The district court then denied Zimmermann’s jurisdictional objection and re-imposed the ten-year conditional-release term. Zimmermann appeals.

D E C I S I O N

I. The district court had jurisdiction to impose a conditional-release term.

“The expiration of a sentence operates as a discharge that bars further sanctions for a criminal conviction.” *State v. Purdy*, 589 N.W.2d 496, 498 (Minn. App. 1999). For that reason, we have repeatedly held that the district court lacks jurisdiction to impose a conditional-release term for the first time after the defendant’s sentence expired. *Martinek v. State*, 678 N.W.2d 714, 718 (Minn. App. 2004); *Purdy*, 589 N.W.2d at 498. But we recently concluded that the district court retains jurisdiction to re-impose a conditional-release term that it had vacated based on *Her*, even though the defendant’s prison sentence (including supervised release) had expired and he was serving the conditional-release portion of his sentence. *State v. Franson*, 921 N.W.2d 783, 786 (Minn. App. 2018), *review*

denied (Minn. Feb. 27, 2019). We review de novo whether the district court had jurisdiction to impose a conditional-release term. *Id.*

Zimmermann argues that *Purdy* and *Martinek* control, and compel a conclusion that the district court lacked jurisdiction. We are not persuaded. Zimmermann is correct that one aspect of our reasoning in *Franson* does not apply here because Zimmermann's conditional-release term was not lawful when imposed in 2017. *Cf. id.* at 786-87 (concluding that Franson's conditional-release term was lawful when imposed pre-*Her* and could be re-imposed). But that distinction does not make a difference. Indeed, in *Franson* we rejected precisely the argument Zimmermann now advances. *Id.* at 788. We reasoned that, in both *Purdy* and *Martinek*, the district court did not impose a conditional-release term until after the defendant's prison sentence expired. *Id.* By that time, the defendants had "developed a crystallized expectation of finality" in sentences that did not include a conditional-release term. *Id.* But in *Franson*, the defendant had no such expectation because he was on notice from the time the complaint was filed that conditional release was a mandatory part of his sentence. *Id.* Accordingly, the expiration of his prison sentence did not deprive the district court of jurisdiction to impose the conditional-release term.

Zimmermann was likewise on notice from the beginning of this case that he would be subject to a conditional-release term. The complaint noted the requirement of "10 year conditional release for violations committed by level III offenders" and alleged that Zimmermann is a "level III offender." When Zimmermann initially pleaded guilty, he acknowledged the conditional-release term, and the district court included it in his

sentence. After he withdrew that plea and a jury found him guilty, the district court again included the conditional-release term in his sentence. And even though we concluded that the district court erred by doing so without a jury finding or Zimmermann's jury waiver regarding his offender status, we expressly rejected his request to vacate the term. *Zimmermann*, 2019 WL 1006798, at *8-9. As such, our decision put Zimmermann on notice that he would be subject to a conditional-release term on remand unless a fact-finder determined that he was not a level-three offender. Zimmermann, like Franson, never developed a crystalized expectation in the finality of a sentence without a conditional-release term, and the district court similarly retained jurisdiction to re-impose the mandatory conditional-release term.

II. Zimmermann is not entitled to relief based on the admission of the unredacted public fact sheet.

Where, as here, a defendant fails to object to the admission of evidence at trial, we review only for plain error. *State v. Winbush*, 912 N.W.2d 678, 682 (Minn. App. 2018), *review denied* (Minn. May 29, 2018). To succeed on a claim of plain error, an appellant must establish (1) error, (2) that is plain, and (3) that affects his substantial rights. *State v. Sontoya*, 788 N.W.2d 868, 873 (Minn. 2010). We need not consider other plain-error factors if the appellant fails to show prejudice. *Id.*

Zimmermann contends it was plain error for the district court to admit the public fact sheet without redacting the following language: "Offender has a history of sexual conduct and contact with adult female victims. Conduct has included indecent exposure and contact has included sexual touching. Offender has been known and unknown to

victims.” He contends this information was irrelevant, unfairly prejudicial, and constitutes improper bad-acts evidence. This argument is unavailing because, even if we assume that the district court plainly erred by failing to sua sponte redact the challenged sentences, Zimmermann has not demonstrated prejudice.

Zimmermann bears the “heavy burden” of persuading us that there is a reasonable likelihood that the erroneous admission of these sentences had a significant effect on the jury’s verdict. *Id.* (quotation omitted). He has not done so. The statements comprise only a fractional portion of the exhibit—two lines in the middle of a full page of dense, small text. The state did not rely on the statements in any way in urging the jury to find that Zimmermann was a level-three offender. More importantly, the state’s evidence on the dispositive sentencing issue—Zimmermann’s level-three predatory offender status—was so conclusive that he did not even dispute it, arguing that the designations are arbitrary and that a level-two designation “would have been more beneficial.” *See id.* at 873-74 (noting that state’s evidence was “overwhelming” and the claimed error “not pervasive” in concluding no prejudice from admission of unobjected-to evidence). And the unchallenged top portion of the fact sheet states in bold, capital letters “Risk Level Three.” On this record, Zimmermann has not demonstrated that he is entitled to relief based on the district court’s failure to redact the statements describing his past sexual misconduct.

Affirmed.