STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0479

Mark Anthony Rehm, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed December 14, 2020
Affirmed
Gaïtas, Judge

Hubbard County District Court
File No. 29-CR-14-68

Mark Rehm, Moose Lake, Minnesota (pro se appellant)

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

Jonathan D. Frieden, Hubbard County Attorney, Park Rapids, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Reyes, Judge; and Gaïtas, Judge.

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

GAÏTAS, Judge

Appellant Mark Anthony Rehm appeals from the district court's order denying his motion to correct his sentence. In sentencing Rehm for second-degree criminal sexual conduct, the district court imposed a lifetime-conditional-release period to follow Rehm's

prison sentence because Rehm had a prior sex-offense conviction. Rehm argues this was error. First, he argues that he did not have a prior sex-offense conviction for the purpose of the lifetime-conditional-release requirement. Second, he contends that the sentencing judge violated his constitutional right to a jury trial by failing to convene a jury to determine whether he had a prior sex-offense conviction. Third, he argues that using a prior conviction to enhance his sentence violated his constitutional protection against ex post facto punishment. Finally, he alleges that the district court erred in denying an evidentiary hearing on his motion to correct his sentence. We affirm.

FACTS

In January 2014, Rehm was charged with four counts of second-degree criminal sexual conduct in violation of Minn. Stat. § 609.343, subd. 1(a) (2012), each alleging sexual contact with a child under age 13. The parties reached a plea agreement pretrial. Rehm agreed to plead guilty to a single count of second-degree criminal sexual conduct, and in exchange, the state agreed to dismiss the remaining three charges and to withdraw its *Blakely* motion for an upward sentencing departure.[1] The state indicated that it would seek a sentence at the top of the presumed sentencing guidelines range. After Rehm

[1] The United States Supreme Court has held that courts may not impose a sentence beyond the statutory maximum unless a jury determines additional facts, beyond those reflected in a jury's guilty verdict or a defendant's guilty plea, that support an upward sentencing departure. *State v. Shattuck*, 704 N.W.2d 131, 140-42 (Minn. 2005) (applying *Blakely v. Washington*, 542 U.S. 296, 303, 124 S. Ct. 2531, 2537 (2004); *Apprendi v. New Jersey*, 530 U.S. 466, 466, 120 S. Ct. 2348, 2350 (2000)). A "*Blakely* motion" commonly refers to the state's notice of intent to seek an aggravated sentence. Minn. R. Crim. P. 7.03; *see* Minn. R. Crim. P. 1.04(d).

pleaded guilty, the district court ordered a presentence investigation (PSI) and scheduled a separate sentencing hearing.

The PSI shows that Rehm was adjudicated delinquent of first-degree criminal sexual conduct in 2001 as a juvenile and convicted of third-degree criminal sexual conduct in 2004 as an adult. The criminal history worksheet also confirmed Rehm's 2004 conviction.

At Rehm's sentencing hearing, defense counsel acknowledged that the PSI recommended the imposition of a lifetime-conditional-release term as required by law. The district court also informed Rehm that lifetime conditional release applied, stating, "As noted by the [criminal history] worksheet and by your counsel, you were subject to a conditional release requirement that applies for the rest of your life." The district court sentenced Rehm to 78 months in prison with lifetime conditional release to follow.

In December 2019, Rehm, representing himself, moved for a corrected sentence under Minnesota Rule of Criminal Procedure 27.03, subdivision 9, and requested an evidentiary hearing. The state opposed Rehm's motion. The district court denied the motion and declined to hold an evidentiary hearing.

This appeal followed.

D E C I S I O N

"This court will not reverse the district court's denial of a motion brought under rule 27.03, subdivision 9, to correct a sentence, unless the district court abused its discretion or the original sentence was unauthorized by law." *State v. Greenough*, 915 N.W.2d 915, 918 (Minn. App. 2018) (quotation omitted). Whether a sentence properly adheres to applicable statutes and sentencing guidelines is a question of law subject to de novo review. *State v.*

Williams, 771 N.W.2d 514, 520 (Minn. 2009). "Generally, we afford district courts great discretion in the imposition of sentences, and we will reverse a sentencing decision only when a district court abuses its discretion." *State v. Washington*, 894 N.W.2d 168, 172 (Minn. App. 2017) (quotation omitted), *aff'd*, 908 N.W.2d 601 (Minn. 2018). A district court abuses its discretion by misapplying the law. *State v. Hoskins*, 943 N.W.2d 203, 211 (Minn. App. 2020). And a sentence is unauthorized by law when it conflicts with governing statutes and sentencing guidelines. *Greenough*, 915 N.W.2d at 918.

Rehm raises four issues on appeal. We address each in turn.

I. The district court correctly sentenced Rehm to conditional release for life.

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 follow state statutes, sentencing guidelines, or other applicable law when sentencing a criminal defendant. *State v. Noggle*, 881 N.W.2d 545, 547 (Minn. 2016). If a sentence is unauthorized by law because it exceeds the limits established by the legislature, the district court may correct that sentence "at any time." Minn. R. Crim. P. 27.03, subd. 9.

Minnesota law requires that certain first-time criminal-sexual-conduct offenders be placed on conditional release for ten years. Minn. Stat. § 609.3455, subd. 6 (2012). If such an offender later receives another sex-offense conviction, the first conviction becomes a "prior sex offense conviction" and the district court *must* impose lifetime conditional release in sentencing the new offense. *Id.*, subds. 1(g)-(h), 7(b) (2012). The plain language of this statute affords the district court no discretion. *Id.*, subd. 7(b) ("[T]he [district] court

shall . . . place the offender on conditional release for the remainder of the offender's life." (emphasis added)).

Rehm claims that his sentence is unauthorized by law because he did not have a prior sex-offense conviction that allowed the district court to impose lifetime conditional release. He appears to argue that the district court erroneously used a prior juvenile adjudication, and not a conviction, in determining the applicable conditional-release term.

The state contends that the district court was required to impose lifetime conditional release because Rehm was convicted of third-degree criminal sexual conduct in 2004—as an adult—before he was convicted and sentenced in 2014 for second-degree criminal sexual conduct. For that reason, the state argues lifetime conditional release was mandatory.

The state is correct. As noted, under Minnesota law, a sentencing court is obligated to impose lifetime conditional release when sentencing a defendant with a prior conviction for selected criminal-sexual-conduct offenses. Minn. Stat. § 609.3455, subds. 1(g)-(h), 7(b). Rehm was convicted of third-degree criminal sexual conduct in 2004, which qualifies as a prior sex-offense conviction for the purpose of the statutory conditional-release requirement. *Id.*, subd. 1(h) (defining prior sex-offense conviction to include third-degree criminal sexual conduct in violation of Minn. Stat. § 609.344). Both the criminal history worksheet and PSI reflect the 2004 conviction. And the sentencing hearing transcript confirms that the district court relied on the criminal history worksheet in determining Rehm's sentence. Rehm's counsel similarly acknowledged that the PSI contemplated lifetime conditional release and did not challenge this recommendation. Thus, the record

supports the district court's finding that Rehm had a prior sex-offense conviction from 2004 when he was sentenced on this matter in 2014.

Rehm is correct that a juvenile adjudication may not serve as a predicate "prior sex offense conviction," except under limited circumstances. *See* Minn. Stat. § 609.3455, subds. 1(b), (g), 7(b) (2012) (precluding juvenile adjudications from "prior sex offense conviction" definition unless extended juvenile jurisdiction was revoked and the sentence was executed). But there is no indication that the district court improperly relied on Rehm's juvenile adjudication rather than his adult conviction. To the contrary, the court made clear in sentencing Rehm that it had considered and was relying on the criminal history worksheet. The criminal history worksheet does not list any juvenile adjudications, only Rehm's 2004 adult conviction for third-degree criminal sexual conduct and other unrelated crimes. The worksheet also states, "Lifetime conditional release due to prior crim sex conviction."

We conclude that the district court correctly sentenced Rehm to lifetime conditional release. Rehm's 2004 conviction qualifies as a "prior sex offense conviction" and Minnesota law therefore mandated conditional release for life. *See* Minn. Stat. § 609.3455, subds. 1(g)-(h), 7(b).

II. The sentencing court properly used Rehm's prior conviction to impose lifetime conditional release without a *Blakely* jury determination.

The Sixth Amendment guarantees those accused of a crime the right to a jury determination of guilt for the crime charged, beyond a reasonable doubt. *United States v. Gaudin*, 515 U.S. 506, 510, 115 S. Ct. 2310, 2313 (1995). The United States Supreme

Court has refined this right in holding that "any fact that increases the penalty for a crime beyond the prescribed statutory maximum, *other than the fact of a prior conviction*, must be submitted to a jury and proved beyond a reasonable doubt." *Apprendi*, 530 U.S. at 466, 120 S. Ct. at 2350 (emphasis added). The "statutory maximum" is the maximum sentence that may be imposed solely from the facts directly implicated by the jury's verdict or admitted by the defendant. *Blakely*, 542 U.S. at 303, 124 S. Ct. at 2537.

Rehm argues that a jury, not the district court, must determine the existence of his prior conviction for the purpose of imposing lifetime conditional release. He contends that the district court violated his constitutional right to a jury trial by enhancing the term of conditional release from ten years to lifetime without a jury determination on the facts underlying the enhancement.

Rehm's arguments rest on an inaccurate interpretation of the law, however. "The *Apprendi/Blakely* rule requires that facts used to increase a defendant's sentence beyond the statutory maximum provided for the offense must be found by a jury or admitted by the defendant." *State v. McFee*, 721 N.W.2d 607, 609 (Minn. 2006). Even so, "[p]rior convictions are a well-recognized exception to the rule." *Id.* This exception allows the district court to recognize a defendant's prior conviction at sentencing, unless the prior conviction is an element of the instant offense. *State v. Her*, 862 N.W.2d 692, 698 (Minn. 2015) (explaining the exception "is justified in part by 'the certainty [of] procedural safeguards attached to any "fact" of prior conviction.'" (quoting *Apprendi*, 530 U.S. at 488, 120 S. Ct. at 2362)). But the district court may not go beyond the fact of the prior conviction itself; doing so triggers the need for a jury. *Her*, 862 N.W.2d at 698, 700

(reversing ten-year conditional-release term because defendant was sentenced without a jury determination that he was a "risk-level-III offender," as required by sentencing-enhancement statute).

To enhance Rehm's conditional release to a lifetime term, the district court—and not a jury—made a factual determination that Rehm had a prior qualifying conviction. Rehm was not entitled to have a jury make that factual determination. The existence of the prior conviction was not an element of the offense. And the decision about whether Rehm had a qualifying prior conviction fell within the narrow prior-conviction exception to *Blakely*. Thus, no jury trial was required on this issue. The district court did not err in making the determination that Rehm had a prior sex-offense conviction and imposing lifetime conditional release.

III. Rehm's lifetime conditional release is not an ex post facto violation.

Ex post facto laws are prohibited under the federal and state constitutions. U.S. Const. art. I, § 10; Minn. Const. art. I, § 11. "To fall within the ex post facto prohibition, a law must be [1] retrospective—that is, it must apply to events occurring before its enactment—and [2] it must disadvantage the offender affected by it." *Jones v. State*, 883 N.W.2d 596, 600 (Minn. 2016) (quoting *Hankerson v. State*, 723 N.W.2d 232, 241 (Minn. 2006)). A law may disadvantage a defendant by (1) criminalizing an act that was innocent when performed, (2) enhancing the punishment of a crime after its commission, (3) depriving the accused of a previously available defense, or (4) modifying the rules of evidence so as to lower the burden of proof required to establish guilt than was previously required. *See id.*

Rehm claims that his lifetime conditional release is an ex post facto punishment because his 2004 prior conviction—the qualifying prior conviction that triggered the lifetime term—predates the enactment of the conditional-release statute, section 609.3455, subdivision 7(b). In chronological order, Rehm was convicted of third-degree criminal sexual conduct in 2004, section 609.3455 was enacted the next year, and nine years later Rehm was convicted of second-degree criminal sexual conduct in this case for conduct that occurred between September 2013 and January 2014. *See* 2005 Minn. Laws ch. 136, art. 2, § 21 at 932 (codified at Minn. Stat. § 609.3455, subd. 7(b) (2006)). The state responds that Rehm "was not punished anew in 2014 for his offense in 2004. [He] was instead punished for his 2014 offense with notice of the consequences of his actions," and thus Rehm's prior conviction was not retrospectively enhanced.

We agree with the state. The law in this area is well settled. "The use of prior convictions to increase punishment for an underlying substantive offense committed after the effective date of a statute providing for increased penalties does not violate the ex post facto provisions of either the state or federal constitutions." *State v. Willis*, 332 N.W.2d 180, 185 (Minn. 1983). The district court's application of Minn. Stat. § 609.3455, subd. 7(b), did not increase the punishment of Rehm's prior conviction because "[e]nhancement statutes . . . do not change the penalty imposed for the earlier conviction." *Nichols v. United States*, 511 U.S. 738, 747, 114 S. Ct. 1921, 1927 (1994). Rather, the district court increased the penalty of Rehm's most recent conviction for a crime he committed well after the enhancement statute took effect. Further, the statute's enactment put Rehm on notice that he would be placed on conditional release for life if he ever reoffended and was again

convicted of a sex offense enumerated by section 609.3455. *See Hankerson*, 723 N.W.2d at 243-44.

The statutory requirement for lifetime conditional release does not violate the ex post facto clauses of the state and federal constitutions. Rehm's challenge to his sentence on this basis therefore fails.

IV. The district court acted within its discretion in denying Rehm's motion without an evidentiary hearing.

Again, we will not reverse a district court's denial of a motion for a corrected sentence "unless the district court abused its discretion or the original sentence was unauthorized by law." *Greenough*, 915 N.W.2d at 918 (quotation omitted). Given our determination that Rehm's sentence was authorized by law, reversal is inappropriate unless the district court abused its discretion. *See id.* Thus, we turn our attention to the substance of Rehm's motion and consider whether the district court abused its discretion in denying a hearing.

Rehm claims that the district court erred by depriving him of an evidentiary hearing on his motion for a corrected sentence because "[m]aterial facts are in dispute." He seeks both an evidentiary hearing and to impanel a jury for a single purpose—to establish the existence of his prior conviction. But as discussed, a jury determination is unnecessary to establish Rehm's prior conviction. And an evidentiary hearing is not required on a motion for a corrected sentence. *See* Minn. R. Crim. P. 27.03, subd. 9; *State v. Masood*, 739 N.W.2d 736, 739 (Minn. App. 2007) (affirming denial of motion for corrected sentence that sought jury determination on fact not implicated by *Blakely/Apprendi* rule). Thus, the

district court did not abuse its discretion in denying Rehm's motion without an evidentiary hearing.[2]

Affirmed.

[2] Rehm's brief to this court suggests that his motion should have been treated as a petition for postconviction relief under Minn. Stat. § 590.04 (2018). *See, e.g.*, *Johnson v. State*, 877 N.W.2d 776, 779 (Minn. 2016) (discussing propriety of a district court treating a motion for corrected sentence as a postconviction petition when the movant raises more issues than just the unauthorized sentence). But even if considered a postconviction relief petition, the district court still did not err in summarily dismissing all relief requested without an evidentiary hearing. Rehm's "petition and the files and records of the proceeding conclusively show that [he] is *entitled to no relief*" as a matter of law. Minn. Stat. § 590.04, subd. 1 (emphasis added). As a result, we conclude that no error resulted from denying Rehm a hearing.