STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0812

State of Minnesota,
Respondent,

vs.

Roosevelt Montgomery,
Appellant.

Filed November 9, 2020
Affirmed
Connolly, Judge

Hennepin County District Court
File No. 27-CR-13-2586

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

Michael O. Freeman, Hennepin County Attorney, Jordan W. Rude, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Richard A. Schmitz, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Worke, Judge; and Connolly, Judge.

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

CONNOLLY, Judge

Appellant, convicted of violating the predatory-offender registration requirements, challenges the district court's denial of his motion to correct his sentence, arguing that the ten-year conditional-release term is illegal because appellant did not waive his jury-trial rights on factors used to enhance his sentence before he admitted that he had a risk-level of three. Because appellant's sentence was not unauthorized by law and there was no abuse of discretion in the district court's denial of appellant's motion, we affirm.

FACTS

In March 2013, appellant Roosevelt Montgomery pleaded guilty to violating the predatory-offender registration statute. At the plea hearing, he replied, "Yes" when asked if he had been given a risk factor and if his risk factor was three. His plea agreement did not mention conditional release. Appellant was sentenced to a year and a day in prison and ten years of conditional release. He did not file a direct appeal, and his sentence became final in June 2013.

In December 2019, appellant moved to correct his sentence by vacating the ten-year conditional-release term. The district court denied his motion. He appeals, arguing that his sentence was not authorized by law because he had not waived his right to a jury trial on factors enhancing his sentence when he admitted his risk level three status.

D E C I S I O N

"This court will not reverse the district court's denial of a motion brought under [Minn. R. Crim. P. 27.03, subd. 9] to correct a sentence, unless the district court abused its

discretion or the original sentence was unauthorized by law." *State v. Amundson*, 828 N.W.2d 747, 752 (Minn. App. 2013).

"A person convicted of failing to register as a predatory offender is subject to a [ten]-year period of conditional release if the offender was a risk-level-III offender at the time of the offense." *State v. Meger*, 901 N.W.2d 418, 420 (Minn. 2017). Appellant argues that his admission of his risk-level-three status at the plea hearing cannot be used to enhance his sentence because he did not know about the ten-year conditional release when he made the admission. But the district court noted, and the transcript reflects, that when the prosecutor asked, "[Y]ou were a level three risk factor; is that correct?" appellant replied, "Yes." The prosecutor then said, "I have no other questions. . . I do have to note now. . . that [appellant] needs to be given a ten-year conditional release term on this, that is part of the statutory requirement."

In accordance with appellant's wish, the district court imposed the agreed-on sentence at the hearing and asked appellant if he had any questions. Appellant asked, "Why is it a ten-year mandatory registration?" The district court said, "I think it's conditional release"; the prosecutor said, "It is"; and appellant said, "I understand that." The district court clarified that the ten-year registration related to appellant's current offense, not his earlier offense, and appellant again said, "I understand." The district court said, "Maybe you've had a chance to talk to [your attorney] about what that means," and appellant said, "Yes." The district court asked, "You want to go forward with [the sentence] as well then?" and appellant said, "Yes"; he said "No" when asked a final time if he wanted to say anything else.

The district court concluded:

> I will accept the sentence that you have discussed and that is to sentence you to one year and one day in the custody of the Department of Corrections. You [addressing appellant's attorney] may want to help me [with] that when you express the conditions, with the ten-year conditional release period following that, is that what we [said]?

Appellant's attorney said, "That [the ten-year conditional-release period] follows that [the executed sentence], yes." The transcript supports the district court's conclusion that appellant "accurately, voluntarily, and intelligently entered a plea of guilty and, at a level three risk factor, agreed to a ten-year conditional release term. [His] plea to being a level three risk factor was valid."

Appellant relies on *State v. Her*, 862 N.W.2d 692, 696-97 (Minn. 2015) (holding that a district court may not impose a ten-year conditional-release term for failure to register unless either the defendant admits or a jury finds that the defendant was a risk-level-III offender at the time of the failure to register). But *Meger*, which also concerned a sentence that was final before *Her* was decided, concluded that "*Her* is a new rule that is not retroactive to [an] amended sentence" and that therefore "[the] period of conditional release was not unlawful at the time it was imposed." 901 N.W.2d at 425. The district court quoted this language in *Meger* and concluded that, "[As in] *Meger*, *Her* cannot retroactively apply to [appellant].

Appellant argues that *Her* does apply to his case "notwithstanding the holding of *State v. Meger*" and that this court should take "a fresh look at the underpinnings that provided the legal foundation for the Minnesota Supreme Court's decision in *Her*" and

produce "a new review of the issue [that] compels" the opposite conclusion. But this court, like the district court, "is bound by supreme court precedent" and cannot reverse a district-court decision that follows an explicit holding of the supreme court. *State v. Curtis*, 921 N.W.2d 342, 346 (Minn. 2018). Deciding that *Her* can be applied retroactively would violate the supreme court's explicit holding in *Meger*.

The district court also noted that, even if *Her* did apply to appellant's case, his sentence would still be authorized by law because, under *Her*, whether a person is a level-three offender "must be admitted by the [person] or found by a jury beyond a reasonable doubt" before a ten-year conditional-release period can be imposed and "[appellant] admitted on the record, during his guilty plea, that he was a level-three offender at the time of the violation in this case." *See Her*, 862 N.W.2d at 693. We agree. The district court did not err in concluding that appellant's sentence was not unauthorized by law. *See Amundson*, 828 N.W.2d at 752.

Affirmed.