STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1459

Amy Luann Seelye, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed June 28, 2021
Affirmed
Jesson, Judge

Stearns County District Court
File No. 73-CR-17-10109

Cathryn Middlebrook, Chief Appellate Public Defender, Erik I. Withall, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Janelle P. Kendall, Stearns County Attorney, Michael J. Lieberg, Chief Deputy County Attorney, St. Cloud, Minnesota (for respondent)

Considered and decided by Jesson, Presiding Judge; Ross, Judge; and Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

JESSON, Judge

Appellant Amy Seelye, charged with third-degree driving while impaired—with her seven-year-old son in the car—entered into a plea agreement with the state. In exchange for Seelye's guilty plea, the state agreed to a six-year stay of imposition of her sentence.

Seelye entered an *Alford* plea to third-degree driving while impaired, and the district court accepted the plea and sentenced her according to the terms of the plea agreement.[1]

Nearly two years later, after her conviction interfered with her ability to adopt her grandchild, Seelye asked the district court to "dismiss" her conviction. The court denied Seelye's request as untimely but also found that she was not entitled to relief on the merits of her claim. We affirm.

FACTS

A state trooper stopped appellant Amy Seelye after receiving a report of erratic driving and observing her cross the fog line. A blood test confirmed the presence of THC.[2] Based on the results of the blood test and the fact that Seelye's seven-year-old son was in the car, the state charged Seelye with one count of third-degree driving while impaired (DWI).[3] The state also offered Seelye a plea agreement: if she pleaded guilty to third-degree DWI, the state would request a six-year stay of imposition of her sentence.

Seelye agreed to the offer and entered an *Alford* plea to third-degree DWI. The district court accepted Seelye's plea, finding that there was a sufficient factual basis to do so and that she knowingly and voluntarily waived her right to a jury trial on the issue of

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[1] *See North Carolina v. Alford*, 400 U.S. 25, 37, 91 S. Ct. 160, 167 (1970) (holding that a district court may, in some circumstances, accept a defendant's guilty plea even when he or she maintains their innocence).

[2] THC—tetrahydrocannabinol—is a chemical found in marijuana. THC and its metabolites are Schedule I controlled substances. Minn. Stat. § 152.02, subd. 2(h) (Supp. 2017).

[3] Minn. Stat. §§ 169A.20, subd. 1(2), .26, subd. 1(a) (2016). A person is guilty of third-degree DWI if, while committing a DWI, there was an aggravating factor present. Minn. Stat. § 169A.26, subd. 1(a). Here, the aggravating factor was the presence of a child. *See* Minn. Stat. § 169A.03, subd. 3(3) (2016) (defining "aggravating factors").

guilt. The court then sentenced Seelye, granting a stay of imposition and placing her on probation for a period of up to six years.[4]

Nearly two years later, Seelye sent a letter to the district court requesting that the court "dismiss" her conviction because it prevented her from adopting her grandchild. Seelye explained that in entering her *Alford* plea, she believed that her conviction would not be used against her in the adoption process. Had she known the impact of pleading guilty, she "would have plead[ed] not guilty and [gone] to trial." The court construed Seelye's letter as a petition for postconviction relief and notified the state of the filing.

A public defender was assigned to Seelye's case and an amended petition for postconviction relief was filed shortly thereafter. In her amended petition, Seelye raised four issues: (1) her plea was not accurate because of an insufficient factual basis; (2) her plea was not accurate because she did not acknowledge that the evidence was sufficient to convict her under a reasonable-doubt standard; (3) she was entitled to a jury determination on the issue of the presence-of-a-child aggravating factor; and (4) her plea was not knowing and voluntary because she did not believe her plea would prevent her from adopting her grandchild. As such, Seelye argued, the postconviction court should vacate or set aside the judgment of conviction and allow her to withdraw her guilty plea.

The postconviction court denied Seelye's petition for relief, finding that it was untimely "as to the new issues alleged." Despite this, the court addressed the merits of Seelye's petition and found that her plea was accurate, voluntary, and intelligent, and that

[4] The court also sentenced Seelye to 30 days' imprisonment, with credit given for one day and the remaining 29 days to be served by electronic home monitoring.

she was not entitled to a jury determination on whether a child was present at the time of the offense.

Seelye appeals.

DECISION

Seelye challenges the postconviction court's decision on two grounds. First, she assigns error to the postconviction court's denial of her petition for relief on timeliness grounds, arguing that because she filed her initial petition before the two-year deadline, it was timely. Second, Seelye argues that the district court should have advised her of her right to a jury determination on the "aggravating sentencing factor"—the presence of a child—because that fact was used to "enhance" her sentence from fourth-degree DWI to third-degree DWI. Based on this alleged error, Seelye asserts that we should vacate the "aggravating factor" and reduce the severity of her conviction to fourth-degree DWI. We address each argument in turn.

I. We need not consider the timeliness of Seelye's petition.

Seelye argues that the postconviction court's denial of her petition for relief was erroneous because she filed her petition before the two-year statutory deadline passed.[5] The state concedes that the court's findings on the timeliness issue are unclear and suggests that we need not reach this issue because the postconviction court decided Seelye's case on the merits. We agree.

[5] Generally, a petition for postconviction relief must be filed within two years of entry of judgment of a conviction or a sentence. Minn. Stat. § 590.01, subd. 4(a)(1) (2018).

The postconviction court, in denying Seelye's petition for postconviction relief, found that her petition was "untimely as to the new issues alleged." But the court did not explain whether it concluded that *all* of Seelye's claims were untimely or that only the additional claims raised in her amended petition were untimely. And although the postconviction court acknowledged that Seelye's initial petition to the court was filed before the postconviction deadline expired, the court did not specify whether any deficiencies of service made that petition invalid. Nevertheless, the court still considered the merits of Seelye's petition. Accordingly, we review Seelye's claims on those grounds and do not address the timeliness issue here.

II. The postconviction court did not err by denying Seelye's petition for relief.

Seelye's second argument, and the focus of our review, is that she was entitled to a separate jury determination on the presence-of-a-child aggravating factor, but was not advised of that right, resulting in an invalid plea. Her argument is based upon the premise that the DWI statutes, when read together, create a "core" DWI offense and resultant sentences. Under this interpretation, Seelye contends, the degrees of DWI are sentencing provisions of the "core" DWI statute, not distinct offenses. To grant her relief, Seelye asserts that we must vacate the "aggravating factor" and reduce her sentence to fourth-degree DWI.

Seelye's argument raises a question of statutory interpretation which we review de novo. *Dupey v. State*, 868 N.W.2d 36, 39 (Minn. 2015). In interpreting a statute, we first determine whether it is ambiguous as applied to the facts of the present case. *Id.* If the statute is unambiguous, we enforce the plain meaning of the statute. *Id.* If the statute

is ambiguous, then we look beyond the plain language of the statute to determine the legislature's intent in enacting the statute. *Id.*

Our de novo review begins with an overview of the statutes at issue: those that define each degree of driving while impaired. Minn. Stat. §§ 169A.20-.27 (2016 & Supp. 2017). As is relevant to this appeal, Minnesota Statutes section 169A.20, subdivision 1(2), establishes that "[i]t is a crime for any person to drive, operate, or be in physical control of any motor vehicle" when that person is "under the influence of a controlled substance." The statute then identifies the different degrees of DWI with which a person may be charged:

> A person who violates this section may be sentenced as provided in section 169A.24 (first-degree driving while impaired), 169A.25 (second-degree driving while impaired), 169A.26 (third-degree driving while impaired), or 169A.27 (fourth-degree driving while impaired).

Minn. Stat. § 169A.20, subd. 3. Because Seelye was charged with third-degree DWI, we turn to section 169A.26, subdivision 1(a), for the definition of the crime:

> A person who violates section 169A.20, subdivision 1, 1a, 1b, or 1c (driving while impaired crime), is guilty of third-degree driving while impaired *if one aggravating factor was present* when the violation was committed.

(Emphasis added.) Having already determined what constitutes a violation of section 169A.20—driving a motor vehicle while under the influence of a controlled substance—the only remaining inquiry is how the statute defines an "aggravating factor." For that

answer, we look to Minnesota Statutes section 169A.03, subdivision 3, which establishes that, in the context of DWI offenses, aggravating factors include:

> (1) a qualified prior impaired driving incident within the ten years immediately preceding the current offense;
> (2) having an alcohol concentration of 0.16 or more as measured at the time, or within two hours of the time, of the offense; or
> (3) *having a child under the age of 16 in the motor vehicle at the time of the offense* if the child is more than 36 months younger than the offender.

(Emphasis added.) With the relevant statutory language in mind, we consider the parties' arguments about the proper interpretation of these provisions.

Seelye contends that the structure of the DWI statutes establishes a "core" offense of DWI—defined in section 169A.20—which is then divided into degrees based on the presence of "sentencing aggravating factors." The state, on the other hand, argues that the aggravating factors listed in the degrees of DWI enhance the offense level, not the sentence. Both parties contend that their interpretation derives from the plain language of the statute.

Despite the parties' opposing interpretations, our review of these provisions leads us to conclude that, as applied to the facts here, the third-degree DWI statute is unambiguous. Seelye was charged with third-degree DWI.[6] Under the plain language of the statute, in order to convict Seelye, the state would have had to prove at trial that she: (1) operated a motor vehicle, (2) while under the influence of a controlled substance, (3) *with a child in the car*. Minn. Stat. §§ 169A.03, subd. 3(3), .20, subd. 1(2), .26,

[6] Seelye further asserts that the complaint and the warrant of commitment support her interpretation of the DWI statutes because both distinguish section 169A.20 from section 169A.26. But for the reasons described in our analysis, we are unpersuaded.

subd. 1(a). Therefore, the presence-of-a-child aggravating factor is an *element* of the crime of third-degree DWI.

Our interpretation is bolstered by similar statutory constructs found in Minnesota criminal statutes. For example, our statutes distinguish first-degree controlled substance crime from aggravated first-degree controlled substance crime based on the presence of additional facts which the state must prove in order to convict. Minn. Stat. § 152.021, subds. 1-2, 2b (2020). After defining first-degree sale and possession crimes in subdivisions 1 and 2, the statute identifies aggravated first-degree controlled substance crime in subdivision 2b:

> A person is guilty of aggravated controlled substance crime in the first degree if the person violates subdivision 1, clause (1), (2), (3), (4), or (5), or subdivision 2, paragraph (a), clause (1), (2), or (3), *and* the person or an accomplice sells or possesses 100 or more grams or 500 or more dosage units of a mixture containing the controlled substance at issue *and*:
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> (1) the person or accomplice possesses on their person or within immediate reach, or uses . . . a firearm; or
>
> (2) the offense involves two aggravating factors.

(Emphasis added.) As with the DWI statutes, aggravated first-degree controlled substance crime requires proof of additional factors in order to convict. Not only must the state prove that a person sold or possessed a controlled substance, the state must *also* prove that the person did so with a certain amount of the controlled substance, while either possessing or using a firearm or while two *aggravating factors* were present.

A similar distinction is also present in our criminal statutes for simple and aggravated robbery. Minn. Stat. §§ 609.24-.245 (2020). A person is guilty of first-degree aggravated robbery if, *while committing a robbery*, the person was *also* armed with a

dangerous weapon. Minn. Stat. § 609.245. Again, the state must prove both the underlying crime (robbery) and additional facts to convict a person of the aggravated crime.

Still, Seelye asserts that *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004), *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348 (2000), and *State v. Dettman*, 719 N.W.2d 644 (Minn. 2006), support her argument that the presence of a child was a sentencing aggravating factor requiring a separate jury determination. Seelye makes much of the fact that these cases involved aggravating factors which the district court erroneously relied upon to increase the defendants' sentences. *Blakely*, 542 U.S. at 299, 124 S. Ct. at 2535 ("The Act lists aggravating factors that justify such a departure . . . ."); *Apprendi*, 530 U.S. at 494, 120 S. Ct. at 2365 ("[T]he effect of New Jersey's sentencing 'enhancement' here is unquestionably to turn a second-degree offense into a first degree offense . . . ."); *Dettman*, 719 N.W.2d at 650 ("Dettman notes that he neither stipulated to the aggravating factors nor consented to judicial fact finding on those issues."). But Seelye's reliance on these cases is misguided. The use of the word "aggravating factor" to describe both a sentencing factor and an element of third-degree DWI in two different contexts does not transform an *element* of a crime into a *sentencing factor* requiring fact-finding by a court or a jury or advisement of that right in a plea hearing.

Seelye further relies on *State v. Schwartz*, 957 N.W.2d 414 (Minn. 2021), and *State v. Kjeseth*, 828 N.W.2d 480 (Minn. 2013), *review denied* (Minn. June 18, 2013), to support her assertion that the degrees of DWI are sentencing provisions. We remain unpersuaded. *Schwartz* addressed whether the state was required to prove knowledge as

an element of DWI. 957 N.W.2d at 418. Although the supreme court referenced the DWI statutes, it did not consider the specific issue before us: whether an aggravating factor is an element of a DWI offense or a sentencing factor. *Id.* at 418-25. And in *Kjeseth*, while the supreme court noted that "[a] person violating the DWI statute is sentenced under one of four separate penalty statutes," the court went on to state that "[f]irst-degree DWI is a felony *offense*." 828 N.W.2d at 482 (emphasis added).[7]

Finally, Seelye attempts to persuade us to adopt her interpretation of the DWI statutes by citing to legislative history.[8] But because the statutes are unambiguous, we need not look beyond the language of the statutes to determine the intent of the legislature in enacting them. *Dupey*, 868 N.W.2d at 39.

In sum, the presence of an "aggravating factor"—in this case, the presence of a child—is an element of the crime of third-degree DWI. *See* Minn. Stat. §§ 169A.03, subd. 3(3), .20, subd. 1(2), .26, subd. 1(a). When Seelye waived her right to a jury trial on the issue of guilt, she waived her right to a jury determination on all of the elements of the

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[7] Seelye also relies on *State v. Hayes*, 826 N.W.2d 799 (Minn. 2013), to support her interpretation of the DWI statutes. But the supreme court's interpretation of the drive-by-shooting statute in *Hayes* further undermines her argument. There, the supreme court determined that the language "may be sentenced" indicated that the statutory provision at issue was a sentencing provision. *Id.* at 805. But the supreme court also stated that the phrase "is guilty of a felony" indicated "that the provision *creates and defines a criminal offense*." *Id.* (emphasis added). Although Seelye focuses on the language of section 169A.20 to support her assertions, we note that section 169A.26—the third-degree DWI statute—states that "[t]hird-degree driving while impaired is a gross misdemeanor." Minn. Stat. § 169A.26, subd. 2. As the supreme court noted, this sort of language in a statute, "creates and defines a criminal offense." *Hayes*, 826 N.W.2d at 805.

[8] We further observe that Seelye only cites to a House Research Bill Summary when referencing legislative history.

charged offense—including the presence of a child. And because the district court advised Seelye of her right to a jury trial on the issue of guilt, the postconviction court did not err by denying her petition for relief.

Affirmed.