

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0013**

State of Minnesota,
Respondent,

vs.

Jesse John Jacobson,
Appellant.

**Filed December 6, 2021
Affirmed
Bratvold, Judge**

Pine County District Court
File No. 58-CR-19-1021

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

Reese Frederickson, Pine County Attorney, Michelle R. Skubitz, Chief Deputy County Attorney, Pine City, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sara J. Euteneuer, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Larkin, Judge; and Jesson, Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

In this appeal from a final judgment of conviction for first-degree controlled-substance crime, appellant argues that his sentence must be reversed and remanded for resentencing because the district court erroneously calculated his

criminal-history score. Because we conclude the district court did not abuse its discretion, we affirm.

FACTS

On September 30, 2019, the Pine County sheriff's office received reports of an apparently impaired man sleeping in a parked sedan. Upon arriving at the sedan, a sheriff's deputy found appellant Jesse John Jacobson in the driver's seat and noticed two baggies in his lap—one with crystalline substance and the other with pills. The deputy and another officer searched Jacobson and the sedan and found a .40-caliber handgun and other baggies with crystalline substances. Later testing determined the crystalline substances were methamphetamine.

Respondent State of Minnesota charged Jacobson with three counts: aggravated first-degree possession of methamphetamine under Minn. Stat. § 152.021, subd. 2b(1) (2018) (count one), first-degree possession of methamphetamine under Minn. Stat. § 152.021, subd. 2(a)(1) (2018) (count two), and possession of ammunition/firearm by an ineligible person under Minn. Stat. § 624.713, subd. 1(2) (2018) (count three).

At a hearing, Jacobson pleaded guilty to count two in exchange for the state's agreement to dismiss counts one and three; the parties also agreed they would ask the district court to impose a "top of the box" sentence. The district court found the factual basis sufficient and deferred accepting Jacobson's plea pending sentencing.

The probation office prepared Jacobson’s sentencing worksheet, which stated the presumptive sentence ranged from 115 months to 138 months.¹ The worksheet stated a current-offense severity of D8 and a criminal-history score of 5 on the Drug Offender Grid. Minn. Sent. Guidelines 4.C. Jacobson’s criminal-history score included, among other things, one and one-half criminal-history points for a 2014 conviction for third-degree possession of methamphetamine under Minn. Stat. § 152.023 (2012).

Jacobson moved to correct his criminal-history score. Jacobson’s motion argued his 2014 conviction was based on possession of 3.1 grams of methamphetamine.² Jacobson next argued ten grams of methamphetamine are required for third-degree drug possession because the legislature in 2016 enacted the Drug Sentencing Reform Act (DSRA) and amended the statute used to charge Jacobson in 2014. Under the DSRA amendments, as of Jacobson’s 2019 offense, 3.1 grams of methamphetamine is sufficient to prove fifth-degree drug possession. Minn. Stat. § 152.023 (2018). Based on these statutory changes, Jacobson argued that the district court should not assess one and one-half points, as stated in the sentencing worksheet, “when under current guidelines [fifth-degree drug possession] would be assessed 0.5 points.”³ The state opposed Jacobson’s motion.

¹ This sentencing range was discussed at Jacobson’s plea hearing.

² Jacobson cited the complaint for his 2014 conviction, which referred to laboratory testing.

³ Jacobson’s brief to this court contends that if his 2014 conviction had been assigned one-half of a point, his total criminal-history score would have been four points and yielded a presumptive sentencing range of 105-126 months—lower than the sentence imposed by the district court.

After hearing arguments, the district court denied Jacobson’s motion and imposed a sentence of 138 months in prison. This appeal follows.

DECISION

On appeal, Jacobson argues the district court erred by assigning one and one-half criminal-history points to his 2014 conviction for third-degree drug possession. Jacobson’s argument relies on the DSRA amendments, which became effective on August 1, 2016. 2016 Minn. Laws ch. 160 §§ 1–22. Jacobson argues that his criminal-history score should have been corrected to reflect one-half of a point for his 2014 conviction for third-degree drug possession because the facts of his prior offense would be fifth-degree possession under the law in effect at the time of his current offense. The state argues the district court did not abuse its discretion.⁴

A. Criminal history under the Minnesota Sentencing Guidelines

In felony cases, a defendant’s presumptive sentence under the Minnesota Sentencing Guidelines is determined by reference to a grid with two axes: (1) the severity of the current offense (“primary factor”) and (2) the defendant’s criminal-history score

⁴ Besides the arguments discussed below, the state argues that the amelioration doctrine is inapplicable, as explained in *State v. Kirby*, 899 N.W.2d 485 (Minn. 2017) and *State v. Otto*, 899 N.W.2d 501 (Minn. 2017). Jacobson does not contend otherwise and in his brief argues that *Kirby* and *Otto* do not apply to his case. We agree. The amelioration doctrine “establishes a presumption in Minnesota that an amendment mitigating punishment applies to *non-final* cases.” *Kirby*, 899 N.W.2d at 490 (emphasis added). In *Kirby*, the supreme court explained that the amelioration doctrine requires the resentencing of a defendant whose conviction was not yet final on the effective date of the DSRA, and that the defendant must receive a sentence that follows the DSRA. *Id.* at 496. Jacobson’s 2014 conviction was final when the DSRA took effect in 2016. Thus, the amelioration doctrine is inapplicable.

(“secondary factor”). Minn. Sent. Guidelines 2.B.01 (Supp. 2019). “An offender’s criminal history score is the sum of points from eligible” prior felonies, among other prior offenses or adjudications. Minn. Sent. Guidelines 2.B. Stated slightly differently, “[a] defendant’s criminal history score is calculated, in part, by allotting ‘points’ for each of a defendant’s prior convictions for which a felony sentence was imposed.” *State v. Strobel*, 921 N.W.2d 563, 574 (Minn. App. 2018), *aff’d*, 932 N.W.2d 303 (Minn. 2019) (quotation omitted). “The Guidelines provide uniform standards for the inclusion and weighting of criminal history information.” Minn. Sent. Guidelines 2.B.02.

Generally, we review a criminal-history score for abuse of discretion. *Strobel*, 921 N.W.2d at 573. The “[i]nterpretation of the Minnesota Sentencing Guidelines is a question of law that [appellate courts] review de novo.” *Strobel*, 932 N.W.2d at 306. When interpreting the guidelines, appellate courts “apply the same principles . . . as [they] apply to statutes, including the canons of statutory interpretation set forth in Minn. Stat. § 645.08.” *Id.* at 306-07. “If the language of the Guidelines is plain and unambiguous, it is presumed to manifest the intent of the Minnesota Sentencing Guidelines Commission.” *Id.* at 307.

B. The district court did not abuse its discretion by assigning one and one-half points to Jacobson’s 2014 conviction.

On appeal, Jacobson does not argue the guidelines are ambiguous and acknowledges his criminal-history score is governed by guideline 2.B.1. Jacobson contends, “[t]he weight assigned to an offender’s prior felony convictions is determined according to the severity level of the offense at the time of the current offense.” To be precise, guideline 2.B.1

instructs the district court to “[a]ssign a particular weight, *as set forth in paragraphs a and b*, to each . . . [prior] felony conviction” and “[t]he severity level ranking in effect at the time *the current offense* was committed determines the weight assigned to *the prior offense*.” (Emphasis added.)

Tracking the language of guidelines 2.B.1., Jacobson’s “current offense” is first-degree drug possession committed on September 30, 2019. Jacobson focuses on “the prior offense” that was used to determine his sentence for the 2019 offense, which is his 2014 conviction for third-degree drug possession. Guideline 2.B.1. expressly refers to “paragraph a,” which includes a chart that provides the severity level for third-degree drug possession is D6. Minn. Sent. Guidelines 2.B.1.a. The same chart assigns one and one-half points for a D6 severity level. *Id.*; *see also* Minn. Sent. Guidelines 5.B. Thus, the district court followed guideline 2.B.1 when it determined Jacobson’s criminal-history score by assigning one and one-half points for his 2014 third-degree drug-possession conviction.

Jacobson contends this conclusion is flawed given the DSRA. While 3.1 grams of methamphetamine was sufficient to sustain a third-degree possession conviction in 2014, the DSRA increased the amount of a controlled substance required for a conviction under each degree of drug possession. After the DSRA, a conviction of third-degree drug possession requires evidence of ten grams of methamphetamine. Minn. Stat. § 152.023 (2018). After the DSRA, evidence of 3.1 grams of methamphetamine is sufficient to sustain a conviction of fifth-degree drug possession. Minn. Stat. § 152.025 (2018). Because Jacobson’s 2014 conviction rested on evidence he possessed 3.1 grams of methamphetamine, Jacobson argues the district court erred. In other words, Jacobson

contends he should receive a half-point for the prior conviction because it is “the equivalent of fifth-degree controlled substance crime.”

Jacobson cites no caselaw directly supporting his position. Instead, he draws an analogy to two other circumstances described in the sentencing guidelines.

First, Jacobson argues that “the analysis is similar” to classification of a prior offense as a felony or gross misdemeanor. When determining a criminal-history score under the sentencing guidelines, “[t]he classification of a prior offense as a petty misdemeanor, misdemeanor, gross misdemeanor, or felony is determined by current Minnesota *offense definitions*.” Minn. Sent. Guidelines 2.B.7.a (emphasis added).

In *State v. Strobel*, the Minnesota Supreme Court examined a district court’s determination of Strobel’s criminal-history score for a 2012 conviction of fifth-degree drug possession. The supreme court stated that “offense definitions” referred specifically to “element-based definitions of crimes.” 932 N.W.2d at 309-10.⁵ Because the DSRA amended fifth-degree drug possession to revise the weight thresholds for a violation to be classified as a felony or gross misdemeanor,⁶ the supreme court held that severity of Strobel’s 2012 conviction should be determined by comparing the facts of his prior offense

⁵ While Jacobson also cites *State v. Scovel*, 916 N.W.2d 550 (Minn. 2018), for this proposition, we do not find *Scovel* helpful. As the supreme court noted in *Strobel*, because the offense sentenced in *Scovel* occurred before the effective date of the DSRA, the supreme court did not interpret the guidelines language later discussed in *Strobel*. *Strobel*, 932 N.W.2d at 307 n. 8.

⁶ Fifth-degree drug possession is a felony if the amount possessed is greater than 0.25 grams (or 0.05 grams of heroin) and is a gross misdemeanor if the amount possessed is less than 0.25 grams. Minn. Stat. § 152.025, subd. 4.

to the current element-based offense definitions. *Id.* The supreme court first determined the state offered no evidence of a specific possession amount for Strobel’s 2012 offense. The supreme court then concluded Strobel’s prior offense should have been classified as a gross misdemeanor when determining his criminal-history score for his current offense. *Id.* at 307.

Second, Jacobson argues that the weighting of a prior Minnesota conviction “can be likened to the weighting of an out-of-state offense.” He urges us to reason, “if Mr. Jacobson’s 2014 conviction were from a different state, under the Guidelines it would only be weighted at a half-point after comparison of the elements.” Jacobson is correct that when calculating the criminal-history score for a prior out-of-state offense, the guidelines instruct district courts to “[f]ind the equivalent Minnesota offense based on the elements of the prior non-Minnesota offense.” Minn. Sent. Guidelines 2.B.5.b. The guidelines also state that “[f]or prior non-Minnesota controlled substance convictions, the amount and type of the controlled substance should be considered in the determination of the appropriate weight to be assigned to a prior felony sentence for a controlled substance offense.” Minn. Sent. Guidelines 2.B.503.

We are not persuaded by Jacobson’s analogy to other guidelines provisions. No caselaw applies the guidelines related to classification of prior offenses or prior out-of-state offenses to determining the weight assigned to a prior Minnesota conviction. Both guideline 2.B.7.a on classification of a prior offense and guideline 2.B.5.b on prior out-of-state offenses contain specific provisions narrowly tailored to assigning weight for prior convictions in two circumstances. These sections explicitly limit their application to

“classification of prior offense[s]” and “prior non-Minnesota offense[s].” Minn. Sent. Guidelines 2.B.7.a; Minn. Sent. Guidelines 2.B.5.b. On the other hand, guideline 2.B.1 governs how to assign weight for prior Minnesota convictions and instructs that district courts are to “[a]ssign a particular weight, as set forth in paragraphs a and b, to each . . . [prior] felony conviction,” and that “[t]he severity level ranking in effect at the time the current offense was committed determines the weight assigned to the prior offense.”

It is undisputed that in 2014 Jacobson was convicted of third-degree possession of methamphetamine and the severity level “in effect at the time of the current offense”—Jacobson’s 2019 offense—was D6, as stated in the chart found in paragraph a of the 2019 guidelines. This yields a criminal-history weight of one and one-half points, according to the chart included with the guidelines. *See* Minn. Sent. Guidelines 2.B.1.a. Having resolved the narrow issue presented to us by Jacobson’s brief to this court, we conclude the district court did not abuse its discretion by denying Jacobson’s motion to correct his criminal-history score.

Affirmed.