

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1073**

Bridgett Ann Burrell, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed July 11, 2022
Affirmed
Jesson, Judge**

Hennepin County District Court
File No. 27-CR-17-16837

Charles F. Clippert, St. Paul, Minnesota (for appellant)

Keith Ellison, Attorney General, Kristi Nielsen, Assistant Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Reyes, Presiding Judge; Jesson, Judge; and Wheelock, Judge.

SYLLABUS

A defendant's post-sentencing change in conduct does not authorize a postconviction court to reconsider the district court's denial of a downward-departure motion because that change in conduct does not render the appellant's sentence illegal as required by the postconviction statute, Minnesota Statutes section 590.01 (2020).

OPINION

JESSON, Judge

Appellant Bridget Ann Burrell was temporarily released from prison pending an appeal of her convictions and sentence. After we affirmed, Burrell petitioned for postconviction relief, asking the court to resentence her to probation instead of prison because she had been law-abiding for the duration of her temporary release. This case presents the question of whether a petitioner's law-abiding behavior during a release from custody authorizes a postconviction court to resentence the petitioner to probation instead of prison. The postconviction court concluded that it lacked authority to resentence Burrell on this basis. Because Burrell's law-abiding behavior during her temporary release did not authorize the postconviction court to resentence her, we affirm.

FACTS

In 2019, Burrell received an executed 74-month prison sentence following her convictions of racketeering and eight counts of aiding and abetting theft by swindle of over \$35,000 for her role in fraudulently obtaining over \$7.7 million in Medicaid funds from the state. Burrell challenged her sentence and the sufficiency of the evidence supporting her convictions on appeal. We affirmed in all respects. *State v. Burrell*, No. A19-1510, 2020 WL 6554870, at *2-6 (Minn. App. Nov. 9, 2020), *rev. denied* (Minn. Jan. 27, 2021).

While Burrell's appeal was pending, the COVID-19 pandemic began. In April 2021, Burrell and respondent State of Minnesota jointly moved the district court to

release her from custody while we decided her appeal.¹ The joint motion explained that, due to the pandemic, the “Attorney General’s Office reviewed its files for cases where it felt individuals could be released in light of the pandemic to reduce prison populations to protect the other individuals who are incarcerated,” and that “Burrell’s case is one of those cases.” The district court granted the motion. Burrell spent 15 months being supervised in the community without committing any new offenses.

Following our disposition of Burrell’s appeal and the supreme court’s denial of her petition for further review, she petitioned for postconviction relief. Burrell argued that the postconviction statute, Minnesota Statutes section 590.01, authorized the court to resentence her to a probationary term instead of prison. She contended that the 15 months she spent in the community without incident following her temporary release constituted a change in circumstances that showed she was particularly amenable to probation.

The state argued that the postconviction statute did not authorize the postconviction court to amend Burrell’s sentence because she did not allege that her sentence was illegal or present new evidence of actual innocence. The state further contended that, because Burrell did not challenge the district court’s denial of her motion for a dispositional departure on direct appeal, her current challenge to her sentence was not properly before the postconviction court.

¹ The parties’ joint motion rested on Minnesota Rule of Criminal Procedure 28.02, subdivision 7, which provides that a court may release a defendant pending appeal if the defendant shows that their appeal is not frivolous and there is no substantial risk that the defendant will fail to appear after the conclusion of the appeal or commit a new offense.

The postconviction court denied Burrell's petition, concluding that the postconviction statute did not authorize it to resentence her on the basis of her law-abiding behavior during her temporary release. This appeal follows.

ISSUE

Did the postconviction court err by concluding that the postconviction statute did not authorize it to resentence Burrell?

ANALYSIS

Burrell argues that the postconviction statute authorized the postconviction court to resentence her to a term of probation, after having previously imposed an executed sentence, based upon the fifteen months that she spent in the community without committing a new offense. As petitioner, Burrell bore the burden of establishing that she was entitled to relief. *Hannon v. State*, 957 N.W.2d 425, 432 (Minn. 2021). This claim requires us to interpret the postconviction statute, which presents a question of law, a question we review de novo. *Johnston v. State*, 955 N.W.2d 908, 911 (Minn. 2021).

The first step in statutory interpretation is to determine whether the statute's language is ambiguous. *State v. Jama*, 923 N.W.2d 632, 636 (Minn. 2019). Statutory language is ambiguous if it is subject to more than one reasonable interpretation. *State v. Culver*, 941 N.W.2d 134, 139 (Minn. 2020). If the statute is unambiguous, we apply its plain meaning without engaging in further construction. *State v. Alarcon*, 932 N.W.2d 641, 645 (Minn. 2019). When the statute does not define terms, we consider the ordinary meaning of the words used by the legislature. *Culver*, 941 N.W.2d at 139-40.

With this in mind, we consider the postconviction statute, which provides in relevant part:

Except at a time when direct appellate relief is available, a person convicted of a crime, who claims that:

(1) the conviction obtained *or the sentence* or other disposition made violated the person's rights under the Constitution or laws of the United States or of the state[] . . .

. . . .
may commence a proceeding to secure relief by filing a petition in the district court in the county in which the conviction was had . . . to resentence the petitioner

Minn. Stat. § 590.01, subd. 1 (emphasis added). Burrell's argument implicates the meaning of the phrase "the sentence . . . violated the person's rights under the . . . laws of the United States or of the state." *Id.*

This statutory language is unambiguous. The availability of resentencing as a remedy is expressly limited to those situations in which that sentence is unlawful as having violated the person's rights.

This conclusion refutes Burrell's claim that the postconviction statute authorizes the postconviction court to resentence a defendant to probation solely because of a subsequent change in circumstances or conduct. It does not. Rather, the postconviction statute only permits a postconviction court to grant relief when the existing sentence is unlawful. And if Burrell's existing executed sentence does not violate the law, then the postconviction court is without authority to modify it. *Id.*

Here, Burrell failed to meet her burden of demonstrating that her existing sentence is unlawful or that it violated her rights. Burrell was convicted of the unranked offense of racketeering, to which the district court assigned a severity level of nine for purposes of

sentencing, and the district court sentenced her to a presumptive executed term of 74 months. *Burrell*, 2020 WL 6554870 at *2. On appeal, this court affirmed the district court's assignment of the severity level. *Id.* at *5. And neither here on appeal nor in the postconviction proceedings did Burrell argue that the 74-month sentence was unlawful for any other reason at the time it was imposed.²

Furthermore, a post-sentencing change in a defendant's behavior does not render the initially imposed sentence unlawful post hoc based on the argument that these changed circumstances would *now* support a departure that the district court previously denied. Again, a postconviction court does not have the authority to modify an executed sentence or to resentence a defendant under the postconviction statute unless that sentence is unlawful. Minn. Stat. § 590.01, subd. 1.

Because Burrell has not shown that her sentence violated her legal rights, the postconviction court did not err by denying her petition for relief. Simply stated, a postconviction petition is not a vehicle to request reconsideration of a final sentence because—whether due to a pandemic or otherwise—a petitioner's post-sentencing conduct has changed.

DECISION

The postconviction statute requires a petitioner to show that her existing sentence is unlawful in order to be entitled to relief. Accordingly, demonstrating a change in a

² Although Burrell could have challenged the district court's denial of her motion for a dispositional departure on direct appeal, she did not, and so this claim is procedurally barred from being raised in a subsequent petition for postconviction relief. *State v. Knaffla*, 243 N.W.2d 737, 741 (Minn. 1976).

petitioner's post-sentencing conduct does not make the showing required for a postconviction court to grant relief absent an illegality in the existing sentence. The postconviction court therefore correctly determined that it lacked authority to resentence Burrell.

Affirmed.