

*This opinion is nonprecedential except as provided by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
A22-1762**

State of Minnesota,
Respondent,

vs.

Donalonte Jamar Wade,
Appellant.

**Filed July 3, 2023
Affirmed
Smith, John, Judge ***

Hennepin County District Court
File No. 27-CR-21-14122

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

Mary F. Moriarty, Hennepin County Attorney, Sarah J. Vokes, Assistant County Attorney,
Minneapolis, Minnesota (for respondent)

Francis Herbert White III, Francis White Law, PLLC, Woodbury, Minnesota (for
appellant)

Considered and decided by Cochran, Presiding Judge; Frisch, Judge; and Smith,
John, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

SMITH, JOHN, Judge

We affirm the district court's sentencing order because the district court did not err in determining that the appellant violated his presentence conditions of release and in imposing a higher guidelines sentence consistent with the plea agreement.

FACTS

Respondent State of Minnesota charged appellant Donalonte Jamar Wade with one count of felony first-degree aggravated robbery in July 2021. Wade entered into a plea agreement with the state in July 2022. The plea agreement contemplated that Wade would plead guilty to the charge and receive a 92-month sentence, the bottom of the presumptive guidelines range. *See* Minn. Sent'g Guidelines 4.A (2020). The state agreed to dismiss all other active charges against Wade as well as refrain from charging two uncharged offenses. The plea agreement also provided for Wade to be conditionally released for one week of Electronic Home Monitoring (EHM) prior to sentencing to undergo knee surgery.

The district court held a plea hearing at which it added a term to the plea agreement. It required that Wade comply with the conditions of his presentence release and appear for his sentencing hearing to receive the 92-month sentence; Wade would receive a higher guidelines sentence of 123 months if he failed to appear for sentencing or otherwise violated the conditions of release.¹ The district court then issued a conditional-release

¹ Although Wade failed to order a copy of the plea-hearing transcript for the appellate record, he conceded at the sentencing hearing that this oral provision was added to the plea agreement. On appeal, Wade does not challenge the addition of this provision to the plea agreement.

order on August 3, 2022, consistent with the plea agreement. The conditions of release included that Wade remain law abiding, attend all court appearances and appointments with probation, and comply with EHM rules. The conditional-release order provided for a furlough from EHM on August 16 for Wade's scheduled surgery.

Hennepin County Community Corrections and Rehabilitation filed a conditional-release violation report on August 11, 2022, alleging that Wade failed to abide by EHM rules and failed to remain law abiding. The report stated that Wade did not return from an EHM furlough on August 10. EHM staff learned that law enforcement in Isanti County had conducted a traffic stop of Wade's vehicle for expired tabs and subsequently arrested Wade for felony fifth-degree drug possession and driving after revocation.

At the sentencing hearing, the state argued that Wade violated the conditions of release and requested that the district court impose a 123-month sentence. Defense counsel argued that Wade had not violated the conditions of release because he had only been charged with, not convicted of, new offenses in Isanti County. The district court took judicial notice of the conditional-release violation report that included information about Wade's new charges. The district court found that Wade also violated the conditions of release by failing to comply with the EHM rules. The district court accepted Wade's guilty plea and sentenced him to 123 months in prison.

DECISION

Wade argues that the district court violated his due-process rights by determining that he violated the conditions of release without holding an evidentiary hearing on the issue. He contends that judicial notice of the allegations contained in the

conditional-release violation report “cannot satisfy the burden of proof required” to subject Wade to a loss of his liberty interest in the lower sentence contemplated by the plea agreement. He suggests that the district court should have waited for the disposition of the Isanti County case to determine whether Wade violated the conditions of release or held an evidentiary hearing on the alleged violation.

As a threshold matter, we note that appellate courts “generally will not decide issues which were not raised before the district court, including constitutional questions of criminal procedure.” *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996). Furthermore, a defendant’s failure to request an evidentiary hearing before sentencing results in forfeiture of the issue on appeal. *See State v. Schroeder*, 401 N.W.2d 671, 675 (Minn. App. 1987) (stating that a “defendant may not wait until appeal to contest the veracity of facts in the presentence report” that the district court used to support an upward sentencing departure), *rev. denied* (Minn. Apr. 23, 1987); *see also State v. Booker*, 348 N.W.2d 753, 755-56 (Minn. 1984) (holding that appellant forfeited a hearsay challenge to the presentence investigation report on which appellant’s sentence was based because appellant did not request an evidentiary hearing to challenge the information in the report).

Here, Wade claims that he “raised due-process concerns before the district court at the sentencing hearing.” However, we are not convinced that he raised a due-process argument at that time.

To support his claim, Wade cites to a portion of the sentencing-hearing transcript in which defense counsel argued that Wade “has not actually violated those conditions of release” and that “top of the box conditions are not warranted unless and until such time as

the . . . Defendant is adjudicated as guilty of” the new criminal charges in Isanti County. At oral argument before this court, Wade’s counsel also pointed to a portion of the sentencing-hearing transcript in which Wade stated, “So, I would hope that the Court will let me continue to do what I was doing or at least let me prove my innocence.” Wade’s counsel argued that both he and Wade “obliquely” or “implicitly” requested an evidentiary hearing through these statements. He also cited *Emspak v. United States* for the proposition that “no ritualistic formula or talismanic phrase is essential in order to invoke” a constitutional right. 349 U.S. 190, 194 (1955). In other words, he argued, Wade was not required to utter “magic words” at the sentencing hearing to successfully preserve his due-process claim on appeal.

We agree that there are no “magic words” a defendant must use to request an evidentiary hearing or otherwise raise a due-process challenge. However, Wade did need to articulate his request in some form. Our review of the sentencing-hearing transcript leads us to conclude that Wade made no such request. He did not explicitly request an evidentiary hearing or argue that he was entitled to any additional process. He did not ask for the opportunity to elicit testimony from the author of the conditional-release violation report or to present evidence to contradict the allegations in the report. We therefore conclude that Wade forfeited this issue on appeal because he did not raise a due-process claim in district court or request an evidentiary hearing to determine whether he violated the conditions of his release.

Even if we were to address Wade’s due-process argument on the merits, it would fail. Appellate courts undertake a two-step analysis to determine whether the district court violated a defendant’s right to due process:

A due-process analysis requires courts to consider whether the state has interfered with a party’s liberty or property interest and, if so, whether the procedures provided were constitutionally sufficient. A constitutionally protected liberty interest arises from a legitimate claim of entitlement rather than simply an abstract need or desire or a unilateral expectation.

State v. Batchelor, 786 N.W.2d 319, 322-23 (Minn. App. 2010) (quotation omitted). A defendant has no legitimate claim of entitlement to the sentence contemplated by a plea agreement if he fails to comply with the conditions of the plea agreement. *Id.* at 323.

Here, the district court’s finding that Wade violated the conditions of release by failing to abide by EHM rules is dispositive of this issue. Wade disputes that his new criminal charges constituted a failure to remain law abiding, and at oral argument Wade’s counsel argued that the criminal charges were the “proximate cause” of Wade’s alleged violation of the EHM rules. However, there is no reasonable dispute that Wade did not return from the EHM furlough and was terminated from the EHM program. And we conclude that the district court’s judicial notice of the conditional-release violation report was sufficient to support its finding that Wade failed to comply with the EHM rules. This alone constitutes a violation of the conditions of release, which allowed the district court to impose the 123-month sentence pursuant to the plea agreement. Therefore, we affirm the district court’s sentence on these grounds.

Affirmed.