STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1742

State of Minnesota,
Respondent,

vs.

Nicholas Franklin Edwards,
Appellant.

Filed August 29, 2011
Affirmed
Willis, Judge[*]

Crow Wing County District Court
File No. 18-CR-09-1967, 18-CR-10-2721

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Donald F. Ryan, Crow Wing County Attorney, Rockwell J. Wells, Assistant County Attorney, Brainerd, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Sharon E. Jacks, Assistant Public Defender, St. Paul, Minnesota

Considered and decided by Worke, Presiding Judge; Wright, Judge; and Willis, Judge.

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

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

WILLIS, Judge

Under a plea agreement, appellant pleaded guilty to identity theft and violation of a predatory-offender registration requirement. He argues on appeal that the district court erred by sentencing him to pay a surcharge and a law-library fee, which he had not agreed to pay in his plea agreement. He also argues that the district court erred by requiring him to pay a co-payment for the representation he received from his public defender. Because the surcharge and law-library fee are not subject to negotiation in a plea agreement, and because appellant waived his argument regarding the public-defender co-payment, we affirm.

FACTS

On April 7, 2009, the state charged appellant Nicholas Franklin Edwards in Crow Wing County with one count of felony identity theft, in violation of Minn. Stat. § 609.527, subds. 2, 3(3) (2008). The state alleged in its complaint that Edwards used his mother's identity to open two credit accounts and that the total balance on the two accounts was $1,264. On June 22, 2009, the state also charged Edwards in Crow Wing County with one count of knowingly violating a predatory-offender registration requirement, a felony under Minn. Stat. § 243.166, subd. 5(a) (2008). The state alleged in its complaint that Edwards registered as his primary address a residence where he no longer lived.

Edwards, represented by a public defender, pleaded guilty to both counts on July 7, 2010, under a plea agreement. On the identity-theft charge, Edwards and the

prosecutor agreed to a reduction in the level of the charge from a felony to a gross misdemeanor, an executed jail sentence of 365 days, the "min[imum] fine," and restitution. With regard to the registration-violation charge, Edwards and the prosecutor agreed to a 31-month executed prison sentence, a "$50 fine plus fees & surcharges," and Edwards's submission of a DNA sample. The district court accepted Edwards's guilty pleas and sentenced him on the same day, imposing all of the above conditions. The court imposed a "minimum fine" of $135 for each conviction. The district court also ordered Edwards to pay a co-payment for the services he received from his public defender, in the amount of $75 for each case. Edwards appeals.

D E C I S I O N

I.

The interpretation and enforcement of plea agreements present issues of law, which we review de novo. *State v. Jumping Eagle*, 620 N.W.2d 42, 43 (Minn. 2000). The district court must accept or reject a guilty plea on the terms of the plea agreement. Minn. R. Crim. P. 15.04, subd. 3(1). The district court must not usurp the prosecutor's authority to enter into a plea agreement with a defendant by altering the agreement's terms. *Johnson v. State*, 641 N.W.2d 912, 917-18 (Minn. 2002); *see also State v. Vahabi*, 529 N.W.2d 359, 361 (Minn. App. 1995) (reversing a sentence because the district court imposed a plea agreement and anticipated sentence to which the prosecution objected).

Edwards argues that the district court altered his plea agreement with the prosecutor by imposing "a $135 fine on each count" when sentencing him. The district court explained at the sentencing hearing that it was imposing "a $135 minimum fine" on

the identity-theft conviction and "the minimum fine, which is $135," on the registration-violation conviction.

Both Edwards and the district court use the term "fine" overbroadly because the $135 imposed actually represents the total of the minimum fine, a surcharge, and a law-library fee. The legislature requires the district court to impose a minimum fine on every person convicted of a crime. Minn. Stat. § 609.101 (2008 & Supp. 2009). The amount of this minimum fine must be "not less than 30 percent of the maximum fine authorized by law nor more than the maximum fine authorized by law," with one exception not applicable here. *Id.*, subds. 2-4. The district court may forego the 30-percent requirement and impose a minimum fine of $50 if the defendant qualifies for a public defender. *Id.*, subd. 5(b). The legislature also requires the district court to impose a $75 surcharge on every person convicted of a crime. Minn. Stat. § 357.021, subd 6(a) (Supp. 2009). This surcharge is in addition to the minimum fine required by section 609.101. Minn. Stat. § 609.101, subd. 4. Finally, the district court may assess a law-library fee on every person convicted of a crime. Minn. Stat. § 134A.10, subd. 3 (Supp. 2009). The law-library fee in place in Crow Wing County at the time of Edwards's conviction was $10. 34 Minn. Reg. 1304 (Mar. 29, 2010).

The sum of the $50 minimum fine, the $75 surcharge, and the $10 law-library fee is $135. The district court did not sentence Edwards to pay a $135 "fine"; rather, the district court sentenced him to pay a $50 fine and assessed an additional payment of $75 for the surcharge and $10 for the law-library fee.

Edwards argues that the plea agreement with the prosecutor contemplated the payment of only $50 per case, not $135 per case. In other words, he contends that he did not agree to pay the $75 surcharge and $10 law-library fee in exchange for pleading guilty to the two charges. The plea petition, however, indicates that Edwards agreed to pay the surcharge and law-library fee in addition to the $50 minimum fine, at least on the felony count. For the felony count, the plea petition states "$50 fine plus fees & surcharges." For the gross-misdemeanor count, the petition states "min[imum] fine."

Even if the plea agreement could be construed to exclude the surcharge, the legislature has mandated the payment of the surcharge in all criminal cases. Minn. Stat. § 357.021, subd. 6(b), (c). The district court has no authority to waive statutorily mandated sentencing provisions, even if the parties have agreed not to include them. *See State v. Garcia*, 582 N.W.2d 879, 881-82 (Minn. 1998) (noting that district courts "generally do not have the authority to depart from mandatory sentences"). And Edwards has no right to specific performance of a plea agreement that excludes a mandatory assessment. *See id.* (holding that the court cannot grant specific performance of "a sentence which it had no authority to impose in the first place"). Thus, even if the plea agreement can be read to exclude the surcharge, because the surcharge was mandatory, Edwards is not entitled to relief from its assessment against him.

We conclude that the same basic analysis applies to the $10 law-library fee. The statute provides that the district court "may, upon the recommendation of the board of trustees and by standing order," include in the costs and disbursements assessed against a defendant in a criminal prosecution "a county law library fee." Minn. Stat. § 134A.10,

subd. 3. Although "may" is permissive, a "standing order" is defined as an "order that applies to all cases pending before a court." *Black's Law Dictionary* 1207 (9th ed. 2009); *cf.* Minn. Stat. § 645.44, subd. 15 (2010) (providing that "may" is "permissive"). The state cites an official notice in the State Register setting a $10 law-library fee in Crow Wing County for petty-misdemeanor, misdemeanor, gross-misdemeanor, and felony cases. 34 Minn. Reg. 1034; *see* Minn. Stat. § 134A.10, subd. 4 (2008) (requiring that law-library fees be published in the State Register).

Edwards does not claim that Crow Wing County lacked a standing order or that the county had in place an order that allowed waivers of law-library-fee assessments in criminal prosecutions. And to the extent this court is without an adequate record as to the law-library fee, it appears that is because Edwards did not raise the issue in the district court. Thus, he may be considered to have waived the issue. *See State v. Glad*, 381 N.W.2d 101, 101 (Minn. App. 1986) (declining to consider issue of defendant's "continuing obligation to pay court fees," including law-library fee, because issue was not raised in the district court).

The district court did not err by assessing an additional cost to Edwards on each case for a surcharge and a law-library fee, even though these costs may not have been reflected in Edwards's plea agreement.

II.

Edwards also argues that the district court erred by requiring him to pay a co-payment on each case for the representation he received from his public defender. "Upon disposition of the case, an individual who has received public defender services shall pay

to the court a $75 co-payment for representation provided by a public defender, unless the co-payment is, or has been, waived by the court." Minn. Stat. § 611.17(c) (Supp. 2009).

Edwards contends that the district court erred by failing to waive the public-defender co-payment on each case. But he did not ask the district court to waive the co-payments and, therefore, is barred from raising the argument on appeal. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996). The district court did not err by requiring Edwards to pay a $75 co-payment for public-defender services on each conviction.

Affirmed.