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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A12-1626**

State of Minnesota,  
Respondent,

vs.

Michelle Andrea Hoover,  
Appellant.

**Filed May 6, 2013  
Reversed in part and remanded  
Bjorkman, Judge**

Carlton County District Court  
File No. 09-CR-11-2677

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

Thomas H. Pertler, Carlton County Attorney, Carlton, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Cathryn Young Middlebrook,  
Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Connolly, Judge; and  
Stauber, Judge.

**UNPUBLISHED OPINION**

**BJORKMAN**, Judge

Appellant was convicted of introducing contraband into a correctional facility.  
Appellant argues that the district court erred by (1) imposing a felony probation period

for a gross-misdemeanor offense and (2) ordering her to register as a predatory offender. Because we conclude that the district court erred in sentencing, we reverse in part and remand. And because we cannot effectively review the registration order on this record, we remand for findings.

## **FACTS**

Appellant Michelle Hoover was a counselor at the Minnesota Sex Offender Program (MSOP) in Moose Lake. In October 2010, M.C., a patient at MSOP, reported that he “had an ongoing relationship” with Hoover since July 2009 and that Hoover brought marijuana and alcohol to him at MSOP between August and November 2009.

On May 9, 2011, respondent State of Minnesota charged Hoover with third-degree criminal sexual conduct and two counts of introducing contraband into a correctional facility. The district court dismissed all three charges on November 10.

One month later, the state filed a new complaint again charging Hoover with two counts of introducing contraband into a correctional facility. Hoover pleaded guilty to introducing alcohol into a correctional facility in exchange for dismissal of the marijuana-related charge. At the guilty-plea hearing, the district court noted the dismissed criminal-sexual-conduct charge and questioned whether the predatory-offender registration statute would apply. Defense counsel stated that she did not believe it would because the criminal-sexual-conduct charge was dismissed and this “is a completely new file”; the prosecutor agreed. The district court deferred accepting Hoover’s guilty plea until sentencing to “make sure about the registration” and advised Hoover that she could withdraw her plea if she were required to register.

The presentence investigation report (PSI) identified the introducing-alcohol offense as a felony and recommended the court stay imposition of sentence and place Hoover on probation for three years. The PSI also stated that Hoover is “subject to [registration] requirements due to the fact that she was originally charged with an offense requiring her to register but subsequently entered a plea of guilty to an offense that arose out of the same set of circumstances.”

At sentencing, the district court accepted Hoover’s guilty plea, stayed imposition of sentence, placed Hoover on probation for three years, and ordered her to register as a predatory offender. Hoover did not object to the sentence or the registration order and did not ask to withdraw her plea. This appeal follows.

## D E C I S I O N

### **I. The district court erred by imposing a three-year probation term.**

We review a sentence imposed or stayed for abuse of discretion. *State v. Bradley*, 756 N.W.2d 129, 132 (Minn. App. 2008). But we review the interpretation of sentencing statutes de novo. *State v. Borrego*, 661 N.W.2d 663, 666 (Minn. App. 2003).

Minnesota law limits the length of time a district court may place an offender on probation when it stays imposition or execution of a sentence. *See* Minn. Stat. § 609.135, subd. 2 (2008). For most felony convictions, “the stay shall be for not more than four years or the maximum period for which the sentence of imprisonment might have been imposed, whichever is longer.” *Id.*, subd. 2(a). For most gross-misdemeanor convictions, “the stay shall be for not more than two years.” *Id.*, subd. 2(c).

Hoover argues that the district court erred by imposing a three-year probation period because she was convicted of a gross misdemeanor. We agree. Introduction of contraband into a state correctional facility is a felony when the contraband in question is a controlled substance or a weapon, but it is a gross misdemeanor if the contraband in question is alcohol. Minn. Stat. § 243.55, subd. 1 (2008). Hoover was charged with both a felony-level (marijuana) offense and a gross-misdemeanor-level (alcohol) offense, but the felony count was dismissed in exchange for her guilty plea to introducing alcohol into MSOP. Because Hoover was convicted of a gross-misdemeanor offense, the district court erred by imposing a felony-length probation term. Accordingly, we reverse and remand for imposition of a probation term no longer than two years.

**II. The record does not establish whether Hoover must register as a predatory offender.**

A defendant must register as a predatory offender if he or she “was charged with or petitioned for a felony violation of or attempt to violate, or aiding, abetting, or conspiracy to commit, any [enumerated offense], and convicted of or adjudicated delinquent for that offense or another offense arising out of the same set of circumstances.” Minn. Stat. § 243.166, subd. 1b(a)(1) (2008). “[T]he conviction offense need not be based on identical facts to the charged predatory offense, [but] the facts underlying the two must be sufficiently linked in time, location, people, and events to be considered the ‘same set of circumstances.’” *State v. Lopez*, 778 N.W.2d 700, 706 (Minn. 2010). When material evidence is undisputed, we review de novo the district court’s application of the predatory-offender statute. *Id.* at 705; *see also Boutin v.*

*LaFleur*, 591 N.W.2d 711, 716 n.4 (Minn. 1999) (concluding based on the record that the conviction offense “arose out of the same set of circumstances that supported the [enumerated-offense] charge,” without an express finding on that issue from the district court).

Hoover was not convicted of an enumerated offense. *See* Minn. Stat. § 243.166, subd. 1b(a)(1)(iii). Consequently, she is required to register as a predatory offender only if (1) she was charged with an enumerated offense and (2) her conviction of introducing alcohol into a correctional facility arose out of the same set of circumstances as the charged enumerated offense. We consider each of these elements in turn.

First, the original complaint charged Hoover with third-degree criminal sexual conduct, which is an enumerated offense. *See id.* Although that charge was dismissed, Hoover could still be required to register if that charge was dismissed as part of a plea agreement. *See Lopez*, 778 N.W.2d at 704 (noting that the registration statute applies even to those “merely *charged* with predatory offenses” to “ensure that true predatory offenders cannot plead out of the registration requirements”); *Gunderson v. Hvass*, 339 F.3d 639, 641-43 (8th Cir. 2003) (affirming registration requirement based on enumerated offense dismissed pursuant to plea agreement). But if the charge was dismissed on the merits for lack of probable cause, it cannot be considered when determining Hoover’s obligation to register as a predatory offender. *See Lopez*, 778 N.W.2d at 703 (considering challenge to probable cause for enumerated offense charged with nonenumerated conviction offense).

On this record, we cannot definitively discern the basis for the dismissal. A notation in the register of actions in the original case indicates that the criminal-sexual-conduct charge was dismissed for lack of probable cause. That notation is consistent with the apparent belief of the parties and the district court during Hoover's guilty-plea hearing in the current case that Hoover would not be required to register based on the dismissed charge. On the other hand, the state's Minn. R. Crim. P. 7.01 disclosure in the current case includes the transcript of an October 2010 interview in which Hoover admitted that she had a sexual relationship with M.C. Such an admission seems inconsistent with a dismissal for lack of probable cause. But the district court did not make findings addressing this conflict.

The inadequacy of the record also affects our ability to evaluate the second aspect of the registration issue—whether the dismissed charge arose out of the same set of circumstances as Hoover's introduction of alcohol into MSOP. The complaint charging the criminal-sexual-conduct offense is not in the record for this case. Nor does anything in the current complaint or the factual basis for Hoover's guilty plea address the facts underlying the dismissed charge. We observe that Hoover's admissions in the October 2010 interview suggest a substantial relationship between the dismissed charge and the conviction offense. But these unsworn admissions are not undisputed evidence from which we can independently determine the applicability of the registration requirement, particularly in light of the uncertainty about the basis for the dismissal. *Cf. id.* at 705 (applying de novo standard of review when “the charging documents and the briefs

consistently describe the set of allegations used by the State to support the [enumerated] charges”).

In short, without findings addressing the reason the criminal-sexual-conduct charge was dismissed and the relationship between that charge and the conviction offense, we cannot effectively review whether Hoover is required to register as a predatory offender. *See In re Welfare of M.D.O.*, 462 N.W.2d 370, 374–75 (Minn. 1990) (stating that the role of appellate courts is to correct errors, not to find facts). We therefore remand for the district court to make factual findings, leaving to the court’s discretion whether to reopen the record for additional evidence. The district court must first determine the basis for the dismissal of the criminal-sexual-conduct charge. If the charge was dismissed for lack of probable cause, then Hoover was not charged with an enumerated offense within the meaning of Minn. Stat. § 243.166 and is not required to register. If the charge was dismissed for some other reason, the district court must determine whether the requisite relationship exists between the facts underlying the criminal-sexual-conduct charge and Hoover’s conviction offense.

**Reversed in part and remanded.**