STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0549

Robert Allen Taylor,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed September 16, 2013
Affirmed
Hooten, Judge

Hennepin County District Court
File No. 27-CR-06-079793

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

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

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

Considered and decided by Halbrooks, Presiding Judge; Schellhas, Judge; and Hooten, Judge.

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

HOOTEN, Judge

Appellant challenges the district court's denial of his petition for postconviction relief from a five-year conditional-release period following a period of commitment.

Appellant argues that the five-year conditional-release period was not part of his sentence on the record, was without jurisdiction because it was imposed after the expiration of his period of commitment, and was not authorized for attempted first-degree driving while intoxicated (DWI). Because the five-year conditional-release period was orally imposed at the sentencing hearing, and because appellant was convicted of a charge within the purview of the first-degree DWI statute, we affirm.

FACTS

On November 17, 2006, appellant Robert Allen Taylor was found to be operating a motor vehicle without the owner's permission while intoxicated. He was later charged with two felonies: theft of a motor vehicle and first-degree DWI. Appellant executed a petition to enter a plea of guilty to attempted theft of a motor vehicle and attempted first-degree DWI. The plea document indicated that appellant would "plead to both," but would be sentenced to the Minnesota Department of Corrections (DOC) for "38 months if [he] return[ed] in one week" for sentencing, but would be sentenced to a 78-month commit if he did not.

At the sentencing hearing, the prosecutor noted that appellant was released at the time of the plea hearing on the condition that he return for sentencing, with the understanding that he would be given a 38-month sentence. Appellant's attorney noted that they agreed to "sentence [both charges] as an attempt," and appellant pleaded guilty to attempted theft of a motor vehicle and attempted first-degree DWI. The district court then sentenced appellant to a year and a day for attempted theft of a motor vehicle and 38 months for attempted first-degree DWI. The district court noted that the sentences would

be served concurrently, but told appellant that he "need[ed] to be aware that after you're done with prison you will be on five years of conditional release, which is mandatory for all DWIs." After other warnings, appellant questioned the court:

> [APPELLANT]: So I will be on probation for five years after release from prison?
> [DISTRICT COURT]: It's a conditional release handled through parole. There are rules, but it primarily means not drinking alcohol.
> [APPELLANT]: So I'm on parole for five years after doing two years?
> [DISTRICT COURT]: Yes.
> [APPELLANT]: I didn't know that.

After the hearing ended, the Clerk of Court created a warrant of commitment, which stated that appellant was adjudicated guilty and was sentenced to a year and a day for attempted theft of a motor vehicle and 38 months for attempted first-degree DWI with the sentences to be served concurrently. But the warrant did not mention the conditional-release period. The 38-month sentence, with applicable jail credit, expired on April 7, 2010.

In a letter to the sentencing judge dated August 23, 2012, the DOC referred to an unpublished opinion of this court, *State ex rel. Newcomb v. Roy*, 2011 WL2437489 (Minn. App. June 20, 2011), which had held, under a separation of powers doctrine, that the DOC's imposition of a conditional-release period without the authority of the district court violated the separation of powers. As a result, the DOC reviewed its files for cases where it was not clear that a conditional-release period was imposed in sentencing documents. In any file where it was not clear whether a conditional-release condition had been imposed, the DOC asked the district court to review the record and "[i]f the court

ordered or intended to order the period of conditional release imposed, but that intent was not reflected in the Commitment documents," the district court was to provide the DOC "with an Amended Sentencing Order." In finding that appellant's case was one of those files, the DOC requested that the district court review the record and determine whether it "intended to and did impose a 5-year conditional-release term at the time of sentencing." In a letter responding to the DOC's request, the sentencing judge noted that the conditional-release term was imposed at the sentencing hearing, that appellant knew about the conditional-release term, and that appellant "is subject to the stated conditional-release period."

Appellant filed a motion to correct his sentence under Minn. R. Crim. P. 27.03, subd. 9. The district court decided that the oral sentence controlled over the written record, such that the conditional-release period had been orally imposed at the time of the sentencing hearing. The district court also decided that the conditional-release period for the "legal fiction" of attempted DWI was mandated by the felony DWI statute, regardless of the attempt modifier for appellant's sentence. As a result, and given appellant's notice of the conditional-release term, the district court denied appellant's petition for post-conviction relief. This appeal follows.

D E C I S I O N

A motion to correct a sentence may be treated as a petition for postconviction relief. *See Powers v. State*, 731 N.W.2d 499, 501 n.2 (Minn. 2007) ("[T]he language of Minn. Stat. § 590.01 . . . is broad enough to encompass a motion pursuant to Minn. R. Crim. P. 27.03."); *see also Bonga v. State*, 765 N.W.2d 639, 642–43 (Minn. 2009). We

review a district court's decision to deny postconviction relief for an abuse of discretion. *State v. Rhodes*, 675 N.W.2d 323, 326 (Minn. 2004). The "scope of review is limited to the question of whether sufficient evidence exists to support the postconviction court's findings." *Perkins v. State*, 559 N.W.2d 678, 685 (Minn. 1997). However, "[w]hen reviewing a postconviction court's decision to grant or deny relief, issues of law are reviewed de novo." *Pageau v. State*, 820 N.W.2d 271, 274 (Minn. App. 2012).

Appellant first argues that, because his 38-month sentence expired, the district court was without jurisdiction to impose the conditional-release period. *See State v. Purdy*, 589 N.W.2d 496, 498 (Minn. App. 1999) ("The expiration of a sentence operates as a discharge that bars further sanctions for a criminal conviction."). This is predicated on appellant's argument that, because the conditional-release period was not included in the "sentencing order, Judgment, or Warrant of Commitment, or even transcript filed," it was not entered into the record, and therefore was not part of the sentence. Appellant relies on *State v. Hoelzel*, 639 N.W.2d 605, 609 (Minn. 2002), to support his assertion that a portion of a sentence not made part of the official documentary record is not included in the sentence. But *Hoelzel* is distinguishable because that case addressed whether the defendant was "convicted" of a burglary charge where the district court did not record the adjudication. *Id.* The court noted that, "[f]or accepted pleas, verdicts, or findings of guilt to become convictions under Minnesota law, the conviction must be recorded." *Id.* This court later cited *Hoelzel* to support the point that "[t]o be effective, a court order must become a part of the official record, whether by transcript or document." *Martinek v. State*, 678 N.W.2d 714, 718 (Minn. App. 2004).

However, this court has also made clear that "an orally pronounced sentence controls over a judgment and commitment order when the two conflict." *State v. Staloch*, 643 N.W.2d 329, 331 (Minn. App. 2002) (quotation omitted). *Staloch* involved a written order staying a portion of the defendant's sentence on the condition that the defendant remain law abiding, while the oral sentence only stated that the same portion of the defendant's sentence was suspended. *Id.* at 330. This court concluded that the unambiguous oral sentence controlled. *Id.* at 331.

Appellant claims that his postconviction claim for relief is controlled by *Martinek*, 678 N.W.2d at 716–17. In that case, the defendant pleaded guilty to an offense in a plea hearing during which nothing was mentioned about a supervised-release period. *Id.* At the subsequent sentencing hearing, however, the prosecutor and district court stated that a supervised-release period was required, though the length was unclear because it depended on how the DOC "construes [a] statute regarding second or subsequent offenses." *Id.* The district court stated that the supervised-release period would be determined and the defendant would be informed of the length of the release period, but neither the sentencing judgment nor the warrant of commitment mentioned any additional supervised-release period. *Id.* Two years later, while the defendant was still incarcerated, DOC asked the district court to determine whether the conditional-release period was imposed, and the judge responded that the period was to be 10 years. *Id.* at 716–17. That correspondence was not filed with the court. *Id.* at 717.

After his release, the defendant did not contact his parole officer because he assumed he had been discharged. *Id.* He was later arrested for failing to contact his

parole officer, and he unsuccessfully sought postconviction relief from the district court. *Id.* In reversing the district court's denial of the defendant's claim for postconviction relief, we determined that the defendant had not been informed that a conditional-release period was imposed but merely that one would be imposed in the future. *Id.* at 718. We further concluded that the district court's letter to the DOC did not constitute an amended sentencing order because it was not filed with the district court or court administrator and therefore had not become part of the official record. *Id.* We held that, under these circumstances, the defendant was deprived of the right to due process because he did not receive notice of the imposition of the release period and could not have discovered it by reviewing the file. *Id.*

There are significant distinguishing facts in this case that were not present in *Martinek*. We predicated our decision in *Martinek* on the conclusion that "fundamental principles of due process require that a defendant be given some notice of an order before that order can be effective." *Id.* at 718. In this case, the imposition of the conditional-release period on the record at the sentencing hearing was direct and unequivocal, such that there is no dispute that appellant was aware of the conditional-release period. Moreover, because the conditional-release period was explicitly imposed at the time of sentencing, appellant's argument that the conditional-release period was imposed without jurisdiction because it came after the expiration of his 38-month committed sentence is unavailing. Also, unlike *Martinek*, in which there was no court record supporting a finding that a definitive conditional-release period was imposed at sentencing, here there

were court reporter's notes and a transcript of the sentencing hearing which recorded the imposition of a definite conditional-release period.

This case is controlled by *Staloch* rather than *Martinek*. If we were to accept appellant's argument that the conditional-release term was not imposed since it was absent from the writ of commitment, then, in effect, we would be holding that a writ of commitment, which is usually prepared by a court clerk, controls over the unambiguous oral sentence given by the district court. Such a result is contrary to *Staloch*, where we held that an unambiguous oral sentence, given to the defendant in a sentencing hearing, controls. Moreover, there is no support for the argument that an oral pronouncement is only in the record when the transcript is filed with the court. *State v. Charles*, 634 N.W.2d 425, 433 (Minn. App. 2001) (noting that the district court should "make a contemporaneous record" by questioning the defendant when defense counsel indicates that defendant's presence is not necessary during the trial); *see also State v. Nordstrom*, 331 N.W.2d 901, 905 (Minn. 1983) (noting that "Rule 15.09 does not require a record in a misdemeanor case to be transcribed unless requested by the court, the defendant or the prosecution").

Appellant also argues that the conditional-release period must be vacated because a conditional-release period is not statutorily authorized for an attempted first-degree DWI conviction, as is required for a completed first-degree DWI conviction. But, as the district court stated, labeling appellant's conviction as attempted DWI was "a legal fiction created only to reduce his sentence without a departure as part of a plea

agreement" pursuant to the attempt modifier of the Minnesota Sentencing Guidelines.[1] *See* Minn. Sent. Guidelines II.G. (2006) ("For persons convicted of attempted offenses with a mandatory minimum of a year and a day or more, the presumptive duration is the mandatory minimum or one-half the duration specified in the applicable Sentencing Guidelines Grids cell, whichever is greater.").

That label does not affect the mandatory nature of the conditional-release period. Appellant was convicted of violating the first-degree DWI statute, Minn. Stat. § 169A.24, subd. 1 (2006). *See* Minn. Stat. § 169A.78 (2006) ("Every person who commits or attempts to commit . . . any act declared in this chapter to be an offense, . . . is guilty of that offense."). Minn. Stat. § 169A.24, subd. 2 (2006), requires imposition of the mandatory penalties in Minn. Stat. § 169A.276, subd. 1. The conditional-release period at issue here "shall" be imposed on all persons "commit[ted] . . . to the custody of [DOC] . . . under" Minn. Stat. § 169A.276, subd. 1. Thus, while the attempt modifier alters the imposition of the sentence within the sentencing guidelines, the mandatory statutory penalties nonetheless apply, and the district court was authorized and required to impose the five-year conditional-release period.

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[1] Under the Minnesota Sentencing Guidelines, appellant—who had five criminal history points at the time of sentencing—would have been sentenced within a range of 57–79 months for a felony DWI, with 66 months as the presumptive sentence. Minn. Sent. Guidelines IV. (2006). The sentencing guidelines allow this range to be halved, but not to be less than the mandatory minimum, and appellant's term of commitment was both within the halved presumptive range and above the minimum three-year sentence. Minn. Sent. Guidelines II.G. (2006); *see* Minn. Stat. § 169A.276, subd. 1(a) (2006) (requiring a person convicted of first-degree DWI to be sentenced to "not less than three years" imprisonment).

The district court orally imposed the conditional-release period at the sentencing hearing. The imposition of that conditional-release period was required for a conviction under the first-degree DWI statute. The district court did not err in denying appellant's postconviction relief.

Affirmed.