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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-2080**

Shah Aziz, petitioner,  
Appellant,

vs.

State of Minnesota,  
Respondent.

**Filed September 23, 2008  
Affirmed  
Toussaint, Chief Judge**

Hennepin County District Court  
File No. 98063932

Shah Aziz, #137424, 970 Pickett Street North, Bayport, MN 55003 (pro se appellant)

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

Michael O. Freeman, Hennepin County Attorney, J. Michael Richardson, Assistant County Attorney, C-2000 Government Center, 300 South Sixth Street, Minneapolis, MN 55487 (for respondent)

Considered and decided by Toussaint, Chief Judge; Shumaker, Judge; and  
Stoneburner, Judge.

## UNPUBLISHED OPINION

**TOUSSAINT**, Chief Judge

Appellant Shah Aziz challenges the order denying his petition for postconviction relief, arguing that the amendment to Minn. Stat. § 244.10 (2004), precipitated by *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004), is a new substantive rule that applies to his sentence. Because *Blakely* has been held not to apply retroactively, we affirm.

### DECISION

As a result of his 1999 conviction of kidnapping, appellant was sentenced to 210 months in prison, an upward durational departure from the presumptive guideline sentence based on certain aggravating factors not found by a jury. He argues that his sentence violates *Blakely*. *Id.* at 303-05, 124 S. Ct. at 2537-38 (holding that Sixth Amendment to United States Constitution guarantees right to have jury determine beyond reasonable doubt any fact, other than prior conviction, that increases punishment for offense beyond maximum authorized by jury's verdict and defendant's admissions). When reviewing a postconviction court's denial of relief, this court examines issues of law de novo. *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007).

In response to *Blakely*, the legislature amended Minn. Stat. § 244.10, subd. 5(a), to read:

When the prosecutor provides reasonable notice under subdivision 4, the district court shall allow the state to prove beyond a reasonable doubt to a jury of 12 members the factors in support of the state's request for an aggravated departure from the Sentencing Guidelines as provided in

paragraph (b) or (c) [addressing when the proceeding is to be unitary or bifurcated].

Minn. Stat. § 244.10, subd. 5(a) (Supp. 2005); *see* 2005 Minn. Laws ch. 136, art 16, § 4.

The amendments became effective June 3, 2005. *Id.*

Appellant acknowledges that his case was final before the 2005 amendments became effective but contends that he is entitled to retroactive application of the statute because the amendments are substantive changes. But Minnesota statutes are not given retroactive application “unless clearly and manifestly so intended by the legislature.” Minn. Stat. § 645.21 (2006).<sup>1</sup> Here, the amendments to Minn. Stat. § 244.10, subd. 5(a), became effective on June 3, 2005, and the legislature did not express an intention for them to apply retroactively. *See* 2005 Minn. Laws ch. 136, art. 16, § 4.

Appellant relies on *Schrivo v. Summerlin*, 542 U.S. 348, 124 S. Ct. 2519 (2004), and *Teague v. Lane*, 489 U.S. 288, 109 S. Ct. 1060 (1989), for the proposition that a new substantive rule of law must be applied retroactively. But this reliance is misplaced because these cases address whether a new rule of law *established by a decision of a court* should be applied retroactively. *See Schrivo*, 542 U.S. at 351, 124 S. Ct. at 2522 (stating that new substantive rule announced by United States Supreme Court must be applied retroactively); *Teague*, 489 U.S. at 310-11, 109 S. Ct. at 1075 (assessing whether new rule of law established by case precedent must be given retroactive effect). Although the amendments to Minn. Stat. § 244.10, subd. 5(a), were precipitated by *Blakely*, they were enacted by the legislature.

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<sup>1</sup> This statutory directive also applies to the amendment of existing laws. *See, e.g., Rural Am. Bank of Greenwald v. Herickhoff*, 485 N.W.2d 702, 706-07 (Minn. 1992).

Finally, settled precedent precludes application of the *Blakely* rule to cases that were final at the time *Blakely* was decided. *See State v. Houston*, 702 N.W.2d 268, 270-273 (Minn. 2005) (concluding that *Blakely* was not “watershed” rule under *Teague* analysis and applies retroactively only to cases on direct review when it was released). Thus, the district court did not err in denying appellant postconviction relief.

**Affirmed.**