STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0487

State of Minnesota,
Appellant,

vs.

Linda Marie Cobb,
Respondent.

Filed December 9, 2008
Reversed and remanded
Stauber, Judge

Dakota County District Court
File No. K8053468

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

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Lawrence Hammerling, Chief Appellate Public Defender, Suite 300, 540 Fairview Avenue North, St. Paul, MN 55104; and

Ira W. Whitlock, Whitlock Law Office, L.L.C., 300 Degree of Honor Building, 325 Cedar Street, St. Paul, MN 55101-1013 (for respondent)

Considered and decided by Peterson, Presiding Judge; Shumaker, Judge; and Stauber, Judge.

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

STAUBER, Judge

In this sentencing appeal, the state argues that the district court erred by failing to impose the mandatory minimum sentence required under Minn. Stat. § 152.025, subd. 3(b) (2004). Despite our concerns about the harsh effect of the statute in this case, established precedent requires that we reverse and remand.

FACTS

Respondent Linda Marie Cobb was charged with fifth-degree possession of a controlled substance in violation of Minn. Stat. § 152.025, subd. 2(1) (2004), after police executing a search warrant discovered a trace amount of methamphetamine in her home. Cobb chose to plead guilty to the charge. Before Cobb entered her plea, the state requested that she be sentenced pursuant to Minn. Stat. § 152.025, subd. 3(b) (2004), because she had previously been convicted of a controlled-substance crime. Under the statute, repeat offenders are subject to a minimum six-month sentence. Minn Stat. § 152.025, subd. 3(b). The district court declined to impose the six-month sentence and promised to place Cobb on probation if she pleaded guilty. In declining to impose the sentence, the district court expressed its disagreement with the law and noted that (1) two and a half years had passed since the crime occurred; (2) only a trace amount of drugs was found; and (3) the jail time would waste government resources because it would not rehabilitate Cobb. Cobb entered an *Alford* plea to the charge and the court placed her on probation for three years. This appeal followed.

D E C I S I O N

The state argues that the district court acted outside its authority in refusing to impose the minimum sentence required by Minn. Stat. § 152.025, subd. 3(b) (2004). The statute provides that "[i]f the [fifth-degree controlled substance] conviction is a subsequent controlled substance conviction, a person . . . shall be committed to the commissioner of corrections or to a local correctional authority for not less than six months." Minn. Stat. § 152.025, subd. 3(b). Whether the statute requires a mandatory minimum term of incarceration is a question of statutory construction, which this court reviews de novo. *Brookfield Trade Ctr., Inc. v. County of Ramsey*, 584 N.W.2d 390, 393 (Minn. 1998). However, no interpretation is necessary here because this issue is controlled by *State v. Bluhm*, 676 N.W.2d 649, 653 (Minn. 2004).

In *Bluhm*, the supreme court ruled that the minimum six-month sentence under Minn. Stat. § 152.025, subd. 3(b), for offenders who have previous qualifying controlled-substance convictions is mandatory and must be served. 676 N.W.2d at 654. Moreover, district courts may not impose probation as punishment for an offender who has a previous qualifying controlled-substance conviction until after the mandatory six-month sentence has been served. *See* Minn. Stat. § 152.026 (Supp. 2005) (stating that "[a] defendant convicted and sentenced to a mandatory sentence under section[] . . . 152.025. . . is not eligible for probation . . . until that person has served the full term of imprisonment as provided by law"). Thus, despite its reluctance to impose incarceration as punishment, the district court lacked discretion to place Cobb on probation in lieu of the statutorily mandated minimum sentence.

Although we are bound by *Bluhm*, we are troubled by the legislature's one-size-fits-all approach. As Justice Gilbert noted in his concurrence in *Bluhm*, and as applicable here, by removing the district court's discretion in sentencing the legislature has

> sen[t] the message that even though a . . . person accused of a drug-related crime does everything asked of her by the criminal justice system to rehabilitate herself, the law, in terms of minimum sentencing, treats her the same as if she had not rehabilitated herself. At a time when our prisons are full and Minnesota has a severe budget shortfall, the rehabilitative achievements of some of our many drug offenders must be taken into account in executing sentences.

676 N.W.2d at 655 (Gilbert, J., concurring) (footnote omitted).

The facts of this case show that respondent remained chemical free for more than two and a half years as she awaited resolution of the charges. Despite her rehabilitation, mandatory minimum sentencing has abrogated the courts' ability to fashion an appropriate sentence. In light of the unnecessarily harsh result in this case, we urge the legislature to reexamine its approach.

Reversed and remanded.