STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2281

State of Minnesota,
Respondent,

vs.

Mia Nicole St. John,
Appellant.

Filed September 14, 2010
Reversed and remanded
Stoneburner, Judge

Pine County District Court
File No. 58CR09107

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

Michael O. Freeman, Hennepin County Attorney, Minneapolis, Minnesota; and

John K. Carlson, Pine County Attorney, Steven C. Cundy, Senior Assistant County Attorney, Pine City, Minnesota (for respondent)

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

Considered and decided by Halbrooks, Presiding Judge; Stoneburner, Judge; and Stauber, Judge.

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

STONEBURNER, Judge

Appellant challenges the district court's imposition of a mandatory minimum sentence for her conviction of fifth-degree controlled substance crime, arguing that because a deferred prosecution in Wisconsin was not a conviction, the provision of Minn. Stat. § 152.025, subd. 3(b) (2008), imposing a mandatory minimum sentence for a subsequent controlled substance conviction, does not apply to her sentence. We agree and reverse the imposition of the mandatory minimum sentence and remand for resentencing consistent with this opinion.

FACTS

In July 2009, appellant Mia Nicole St. John pleaded guilty to one count of fifth-degree controlled-substance crime committed on February 5, 2009, in violation of Minn. Stat. § 152.025, subds. 2(1), 3(a) (2008). In exchange for her guilty plea, St. John was to receive a stay of adjudication pursuant to Minn. Stat. § 152.18 (2008), a maximum of 45 days in jail, probation, a chemical-use assessment, and other court-imposed conditions. At the sentencing hearing, the district court concluded that St. John was not eligible for a stay of adjudication because a prior offense by St. John in Wisconsin triggered a mandatory 180-day sentence under Minn. Stat. § 152.025, subd. 3(b).

The district court acknowledged that the Wisconsin offense, which resulted in a deferred prosecution and dismissal of the charge in 2004, did not result in a conviction. Nonetheless, the district court imposed the jail time it determined was required by Minn. Stat. § 152.025, subd. 3(b), stayed imposition of sentence and placed St. John on

probation for five years. The district court stayed 135 days of the jail time pending the outcome of this appeal.

D E C I S I O N

St. John argues that the deferred prosecution and ultimate dismissal of the Wisconsin charge was not a conviction under Minn. Stat. § 152.025, subd. 3(b),[1] and therefore does not trigger the mandatory 180 days in jail required by that statute. The state concedes that St. John's argument is correct.

A criminal sentence that is contrary to the requirements of the applicable sentencing statute is unauthorized by law. *State v. Cook*, 617 N.W.2d 417, 419 (Minn. App. 2000), *review denied* (Minn. Nov. 21, 2000). "Whether Minn. Stat. § 152.025, subd. 3(b), requires a mandatory minimum term of incarceration is a question of statutory construction which this court reviews de novo." *State v. Bluhm*, 676 N.W.2d 649, 651 (Minn. 2004).

Under Minn. Stat. § 152.025, subd. 3(b), "[i]f the conviction is a subsequent controlled substance conviction, a person convicted under subdivision 1 or 2 shall be committed to the commissioner of corrections or to a local correctional authority for not less than six months nor more than ten years." "'Conviction' means any of the following accepted and recorded by the court: (1) a plea of guilty; or (2) a verdict of guilty by a jury or a finding of guilty by the court." Minn. Stat. § 609.02, subd. 5 (2008). And a second or subsequent violation or offense "means that prior to the commission of the violation or offense, the actor has been *adjudicated guilty* of a specified similar violation or offense." Minn. Stat. § 609.02, subd. 11 (2008) (emphasis added).

[1] Section 152.025, subdivision 3, was repealed in 2009. 2009 Minn. Laws ch. 83, art. 3, § 24, at 1078. But because St. John's crime was committed before July 1, 2009, the 2008 version of the statute controls for purposes of her appeal. *Id.*

Based on the definition of "second or subsequent offense" in Minn. Stat. § 609.02, subd. 11, and the fact that St. John was never adjudicated guilty of the Wisconsin offense or any other felony-level possession offense, the present conviction does not constitute a "subsequent controlled substance conviction" under section 152.025, subdivision 3(b). The district court erred in concluding that Minn. Stat. § 152.025, subd. 3(b) required the imposition of a 180 day sentence in this case. We therefore reverse the sentence imposed and remand for resentencing consistent with this opinion and the plea agreement.

Reversed and remanded.