STATE OF MINNESOTA

IN SUPREME COURT

A19-1902

Court of Appeals — Gildea, C.J.

State of Minnesota,

Respondent,

vs.

Filed: December 29, 2021
Office of Appellate Courts

Quanteze Damar Morgan,

Appellant.

Keith M. Ellison, Attorney General, Saint Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Sarah J. Vokes, Assistant County Attorney, Minneapolis, Minnesota, for respondent.

Cathryn Middlebrook, Chief Appellate Public Defender, Christopher L. Mishek, Assistant Public Defender, Saint Paul, Minnesota, for appellant.

S Y L L A B U S

1. Because a reduction of appellant's criminal history score could support a shorter sentence on remand, his challenge to his criminal history score is not moot.

2. The phrase "convicted of a violation of this chapter" in Minn. Stat. § 152.025, subd. 4(a) (2020), includes a petty misdemeanor violation of chapter 152.

Affirmed.

O P I N I O N

GILDEA, Chief Justice.

This case involves the sentence that appellant Quanteze Damar Morgan received for a 2019 domestic assault conviction. Morgan asks us to determine whether the district court used the proper criminal history score in sentencing. Morgan's criminal history includes a 2005 petty misdemeanor for possession of marijuana and a 2007 fifth-degree controlled substance conviction. The precise issue presented on appeal is whether Morgan's 2007 conviction should be counted as a gross misdemeanor or as a felony when calculating his criminal history score. Convictions for possession of certain controlled substances are gross misdemeanors if, among other things, the defendant "has not been previously convicted of a violation of" chapter 152, the chapter covering controlled substance offenses. Minn. Stat. § 152.025, subd. 4(a) (2020). Morgan argues that his 2005 petty misdemeanor is not a previous conviction of a violation of chapter 152. Accordingly, he argues that his 2007 fifth-degree controlled substance conviction should be classified as a gross misdemeanor in his criminal history score, rather than a felony. The district court disagreed, concluding that Morgan's petty misdemeanor was a prior conviction under the statute and so his 2007 conviction was properly counted as a felony in his criminal history score. The court of appeals affirmed. Because we conclude that Morgan's 2005 petty misdemeanor qualifies as a prior conviction under Minn. Stat. § 152.025, subd. 4(a), we affirm.

FACTS

This case arises in the context of Morgan's sentencing for felony domestic assault in violation of Minn. Stat. § 609.2242, subd. 4 (2020), an offense to which Morgan pleaded guilty in 2019. Prior to the domestic assault matter, Morgan had two relevant drug offenses. First, in 2005, the State charged Morgan with misdemeanor possession of marijuana in a motor vehicle under Minn. Stat. § 152.027, subd. 3 (2020). Under a plea agreement, Morgan pleaded guilty to an amended charge of petty misdemeanor possession of a small amount of marijuana under Minn. Stat. § 152.027, subd. 4(a). Second, in 2007, Morgan was convicted of fifth-degree possession of cocaine under Minn. Stat. § 152.025, subd. 2(1) (2020). Morgan now disputes how the prior drug offenses are counted in determining the criminal history score for sentencing on the current domestic assault charge.

As part of the sentencing process for the domestic assault, the district court ordered a presentence investigation report, which included a sentencing worksheet. The probation officer calculated Morgan's criminal history score as 4.5 under the sentencing guidelines, which included one-half of a felony point for Morgan's 2007 conviction of fifth-degree possession of cocaine. Morgan challenged the calculation, arguing that the 2007 conviction should not be classified as a felony for sentencing purposes, because his guilty plea to the 2005 petty misdemeanor did not bar the 2007 conviction from being classified

as a gross misdemeanor.[1] Morgan relied on section 152.025, subdivision 4(a), as amended by the 2016 Drug Sentencing Reform Act, which classifies a fifth-degree drug offense as a gross misdemeanor rather than a felony if, among other things, the offender "has not been previously convicted of a violation of this chapter or a similar offense in another jurisdiction." He argued that the statute uses the terms "conviction," "violation," and "offense" interchangeably, and he contended that petty misdemeanors are not offenses. Because a petty misdemeanor is not an "offense," Morgan argued, it cannot be a "conviction."

The district court denied Morgan's motion to reduce his criminal history score, concluding that his 2007 conviction of fifth-degree possession of cocaine was properly classified as a felony. The court reasoned that section 152.025, subdivision 4(a), does not limit previous convictions to crimes; it includes any violation of chapter 152, and a petty misdemeanor for possessing a small amount of marijuana is a violation of chapter 152. The court sentenced Morgan to 24 months in prison based on a criminal history score of 4, which was "middle of the box."[2]

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[1] For criminal history score purposes, prior offenses are classified as felonies, gross misdemeanors, misdemeanors, or petty misdemeanors using the law in effect at the time of sentencing on the current offense, not the law in effect when the prior offense was committed. Minn. Sent. Guidelines 2.B.7.a; *see State v. Strobel*, 932 N.W.2d 303, 304, 308–10 (Minn. 2019) (interpreting Minnesota Sentencing Guideline 2.B.7.a and affirming "that the classification of a prior offense is determined by reference to the statute setting forth the elements of the crime").

[2] Presumptive sentences under the Minnesota Sentencing Guidelines are determined by offense severity and a defendant's criminal history score. Minn. Sent. Guidelines 2. A fractional criminal history score is rounded down to the nearest whole point. Minn. Sent.

Morgan appealed, and the court of appeals affirmed. *State v. Morgan*, 953 N.W.2d 729, 735 (Minn. App. 2020). The court concluded that section 152.025, subdivision 4(a), is unambiguous. *Id.* at 733. It rejected Morgan's dictionary-based argument that a person may only be "convicted" of a "crime." *Id.* The court instead looked to the statutory definition of "conviction" in Minn. Stat. § 609.02, subd. 5 (2020). *Morgan*, 953 N.W.2d at 733. Because Morgan pleaded guilty to a petty misdemeanor violation of Minn. Stat. § 152.027, subd. 4(a), the court held that he was " 'previously convicted of a violation' of chapter 152." *Id.* at 734. Therefore, his 2007 conviction of fifth-degree possession of cocaine was not a first-time possession offense that qualified for classification as a gross misdemeanor under section 152.025, subdivision 4(a). *Id.*

We granted Morgan's petition for review on the issue of whether the phrase "convicted of a violation of this chapter" in Minn. Stat. § 152.025, subd. 4(a), includes a petty misdemeanor.

Guidelines 2.B.1.i. Morgan's criminal history score was calculated as 4.5 points, which included one-half of a point for the offense at issue here. Because of the rounding-down rule, the district court determined his presumptive sentence using a criminal history score of 4 points.

Each box in the Sentencing Guidelines grid contains a presumptive range and a presumptive duration. Minn. Sent. Guidelines 1.B.13.b–c. The longest and shortest terms in the presumptive range are commonly called the "top of the box" and the "bottom of the box." *See Rushton v. State*, 889 N.W.2d 561, 565 n.2 (Minn. 2017). The presumptive duration is often referred to as the "middle of the box." *Id.* The applicable presumptive disposition for Morgan's domestic assault conviction with a criminal history score of 4 is a commitment to state imprisonment for 21–28 months. *See* Minn. Sent. Guidelines 4.A.

ANALYSIS

Morgan argues that, for purposes of determining his criminal history for sentencing, his 2007 conviction of fifth-degree possession of cocaine should be classified as a gross misdemeanor, not a felony, under Minn. Stat. § 152.025, subd. 4(a), because his 2005 petty misdemeanor did not qualify as a previous conviction of a violation of chapter 152. The State argues, as a threshold matter, that Morgan's appeal must be dismissed as moot because even if Morgan prevails, his criminal history score will stay the same. On the merits, the State argues that the phrase "previously convicted of a violation of this chapter" unambiguously includes a petty misdemeanor. Before addressing the statutory interpretation issue, we must first resolve the justiciability issue.

I.

The State argues that this matter is moot because even if Morgan prevails, his criminal history score for sentencing purposes will not change. The district court concluded that Morgan's criminal history score was 4.5, which the court rounded down to 4 for sentencing purposes. *See* Minn. Sent. Guideline 2.B.1.i ("If the sum of the [felony point total] results in a partial point, the point value must be rounded down to the nearest whole number."). If Morgan prevails in this appeal, his criminal history score will be reduced from 4.5 to 4. Accordingly, the applicable presumptive sentencing range will not change even if Morgan prevails, and so, the State argues, this appeal is moot.[3]

[3] The court of appeals did not address this issue because Morgan also challenged two other felony convictions (each valued at one-half of a point) on a different ground. If the court had held that those convictions should not be classified as felonies, his criminal

An appeal is moot if "a decision on the merits is no longer necessary or an award of effective relief is no longer possible." *State ex rel. Young v. Schnell*, 956 N.W.2d 652, 662 (Minn. 2021). But "[t]he standard for finding that the issues involved in a criminal appeal are moot is very stringent." *State ex rel. Djonne v. Schoen*, 217 N.W.2d 508, 510 (Minn. 1974).

That "stringent" standard is not met here. *Id.* If, after deciding the merits, we were to remand Morgan's case to the district court for resentencing, the district court could consider Morgan's criminal history—including the number of prior felony-level offenses—and impose a sentence that is less than Morgan's initial middle-of-the-box sentence. Therefore, Morgan could—in theory—obtain some relief. *See Young*, 956 N.W.2d at 662. The possibility of a shorter sentence in the present case is sufficient for us to conclude that Morgan's appeal is not moot. *See Djonne*, 217 N.W.2d at 510. Accordingly, we will decide the merits of Morgan's appeal.

II.

Morgan argues that his 2007 conviction of fifth-degree possession of cocaine should be classified as a gross misdemeanor when calculating his criminal history score. Fifth-degree possession of a controlled substance is a felony, but if the defendant "has not been previously convicted of a violation of this chapter [chapter 152] or a similar offense in another jurisdiction," and other requirements are met, the fifth-degree offense is a gross

history score would have been reduced to 3.5 points, and (because of the rounding-down rule) the presumptive disposition would have been a 21-month stayed sentence. *See* Minn. Sent. Guidelines 4.A. But those two other convictions are not before us in this appeal.

misdemeanor.[4] Minn. Stat. § 152.025, subd. 4(a). The parties disagree about whether Morgan, because of his 2005 petty misdemeanor, has been "previously convicted of a violation" of chapter 152. This statutory interpretation issue is one of first impression, and one that we review de novo. *State v. Serbus*, 957 N.W.2d 84, 87 (Minn. 2021).

When interpreting a statute, we seek to ascertain the Legislature's intent. Minn. Stat. § 645.16 (2020); *Serbus*, 957 N.W.2d at 87. We first determine whether the statutory language is ambiguous, that is, whether the statute is susceptible to more than one reasonable interpretation. *Serbus*, 957 N.W.2d at 88. If a word is defined in a statute, that definition controls. *State v. Sanschagrin*, 952 N.W.2d 620, 625 (Minn. 2020). But if no statutory definition resolves the question, we will look to ordinary meaning or technical and special usage of words to determine if the statutory language is ambiguous. *See* Minn. Stat. § 645.08(1) (2020) ("[W]ords and phrases are construed according to rules of grammar and according to their common and approved usage; but technical words and phrases and such others as have acquired a special meaning . . . are construed according to such special meaning . . . ."). If the statute is not ambiguous, the inquiry stops there, and we apply the plain meaning of the statute. *Serbus*, 957 N.W.2d at 87.

Here, chapter 152 does not define the operative terms—"convicted" and "violation." But the Legislature has defined those terms elsewhere, and those definitions

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[4] This statutory distinction was created by the 2016 Drug Sentencing Reform Act; before the change, all fifth-degree drug offenses were felonies. *See* Act of May 22, 2016, ch. 160, § 7, 2016 Minn. Laws 576; Minn. Stat. § 152.025 (2014). To receive a gross misdemeanor rather than a felony, the weight of the drugs must also be under certain thresholds. Minn. Stat. § 152.025, subd. 4(a). The weight of the drugs is not at issue on appeal.

apply to chapter 152. Minnesota Statutes § 609.02 defines "conviction" as "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.[5] And Minn. Stat. § 609.015, subd. 2 (2020), provides that the definitions in section 609.02 "apply to crimes created by statute other than in this chapter [chapter 609]," unless otherwise stated. Because chapter 152 does not expressly state otherwise, the section 609.02 definition of "conviction" applies to the crimes defined in chapter 152, which includes section 152.025, the statute at issue here.

Minnesota Statutes § 645.44, subd. 17 (2020), defines "violate" as "failure to comply with." This statute also makes clear that when the terms defined in this section are "used in Minnesota Statutes . . . [those terms] shall have the meanings given them in this section, unless another intention clearly appears." Minn. Stat. § 645.44, subd. 1 (2020).

Guided by the definitions provided by the Legislature, we conclude that "convicted of a violation of this chapter," as used in Minn. Stat. § 152.025, subd. 4(a), unambiguously includes Morgan's 2005 petty misdemeanor. Morgan was convicted because he pleaded guilty to the petty misdemeanor and the district court accepted and recorded the plea. And, in his guilty plea, Morgan admitted to violating chapter 152. Thus, Morgan's 2007

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[5] Our case law is in accord with this definition. We have recognized that "a conviction 'requires that a district court both accept and record the guilty plea' " and have held that a guilty plea is "recorded" when the court accepts a guilty plea and adjudicates the defendant guilty on the record. *See State v. Martinez-Mendoza*, 804 N.W.2d 1, 6 (Minn. 2011) (quoting *State v. Thompson*, 754 N.W.2d 352, 355 (Minn. 2008)). A clerk's entry of judgment is also sufficient, though not necessary, for a plea to be considered recorded. *See id.*; *State v. Hoelzel*, 639 N.W.2d 605, 609 (Minn. 2002).

conviction for fifth-degree possession of cocaine is a felony offense when calculating his criminal history score for sentencing on the current domestic assault charge.

But, Morgan argues, petty misdemeanors are not crimes and therefore cannot result in convictions. *See* Minn. Stat. § 609.02, subd. 4a (2020) (defining "petty misdemeanor" as "a petty offense which is prohibited by statute, which *does not constitute a crime*" (emphasis added)); *State v. Varnado*, 582 N.W.2d 886, 889 (Minn. 1998) ("A petty misdemeanor does not constitute a crime."). But the statutory definitions of "conviction" and "violate" do not distinguish between criminal and non-criminal offenses; neither definition includes the word "criminal" or "crime," or carves out petty misdemeanors as an exception. *See* Minn. Stat. §§ 609.02, subd. 5 (defining "conviction"), 645.44, subd. 17 (defining "violate").[6]

[6] In urging us to reverse, Morgan relies on dictionary definitions. But that reliance is misplaced because the Legislature has defined the words "conviction" and "violate," and so there is no room for dictionary definitions to interpret the statute at issue here. *See Sanschagrin*, 952 N.W.2d at 625; *see also State v. Alarcon*, 932 N.W.2d 641, 646 (Minn. 2019) ("*In the absence of statutory definitions*, we may consider dictionary definitions . . . ." (emphasis added)). Morgan also argues that "violation" is synonymous with "offense" because both words are used in the phrase "a violation of this chapter or a similar offense" in section 152.025, subdivision 4(a). And he asserts that the dictionary definition of "offense" encompasses crimes. Therefore, he argues, the word "violation" in the statute means "crime." Morgan's contention that a "violation" is limited to a "crime" is unavailing. As noted, dictionary definitions do not control here because the Legislature has defined the operative terms. But even if we looked to the dictionary definition that Morgan cites, it would not lead us to a different result. Although the dictionary definition of "offense" includes crimes, it is not limited to *only* crimes. *See Offense*, *Black's Law Dictionary* (11th ed. 2019) (defining "offense" as "[a] violation of the law; a crime, often a minor one"). Morgan's petty misdemeanor is plainly a "violation of the law."

Morgan also argues that a petty misdemeanor violation of chapter 152 is not a "conviction" because a defendant may plead guilty to a petty misdemeanor without appearing in court.[7] Morgan cites *State v. Martinez-Mendoza*, 804 N.W.2d 1, 6 (Minn. 2011), as defining the point at which a conviction occurs, that is, when the court accepts a guilty plea and adjudicates the defendant guilty on the record. But *Martinez-Mendoza* does not limit convictions to *only* those that occur on the record; in that case we did not address offenses that are resolved by payment without an appearance. And the Rules of Criminal Procedure explicitly allow petty misdemeanor pleas to be made off the record. *See* Minn. R. Crim. P. 23.03, subd. 3 (allowing fine payment, which "constitutes a plea of guilty"). So even though a petty misdemeanor plea may be made off the record, it still results in a conviction.

In sum, Morgan's interpretation is unreasonable because it misreads our case law and relies on dictionary definitions when statutory definitions govern.[8] The sole reasonable

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[7] Here, though, Morgan was represented by counsel, appeared in court, and pleaded guilty to the petty misdemeanor in person and on the record. But Morgan's argument is that because *some* petty misdemeanor pleas *may* be made off the record, petty misdemeanor offenses categorically cannot result in convictions.

[8] Morgan argues in the alternative that the statute is ambiguous and urges us to consider the Drug Sentencing Reform Act's legislative history, points to alleged absurd and unjust results, and asks us to read section 152.025, subdivision 4(a), *in pari materia* with another section in the chapter, Minn. Stat. § 152.18 (2020). Because we conclude that the language of the statute is unambiguous, we do not reach these arguments. *See State v. Pakhnyuk*, 926 N.W.2d 914, 924 (Minn. 2019) (considering legislative history only after finding the statute ambiguous); *State v. Altepeter*, 946 N.W.2d 871, 877 (Minn. 2020) (noting that an "illogical" result is only considered if the statute is ambiguous); *State v. Thonesavanh*, 904 N.W.2d 432, 437 (Minn. 2017) (stating that the canon of *in pari materia* "applies only to ambiguous statutes").

interpretation of the phrase "previously convicted of a violation," as used in Minn. Stat. § 152.025, subd. 4(a), includes a petty misdemeanor violation of chapter 152.

Because Morgan has been "previously convicted of a violation" of chapter 152 due to his 2005 petty misdemeanor violation of chapter 152, we hold that the district court properly classified Morgan's 2007 conviction of fifth-degree possession of cocaine as a felony when calculating his criminal history score.

CONCLUSION

For the foregoing reasons, we affirm the decision of the court of appeals.

Affirmed.