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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0394**

State of Minnesota,
Respondent,

vs.

Lynette Marie Robbins,
Appellant.

**Filed May 22, 2017
Affirmed
Larkin, Judge**

Lyon County District Court
File No. 42-CR-15-457

Lori Swanson, Attorney General, Michael Everson, Assistant Attorney General, St. Paul, Minnesota; and

Rick Maes, Lyon County Attorney, Marshall, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sara L. Martin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Larkin, Judge; and Reilly,
Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges her conviction of first-degree controlled-substance crime and the subsequent denial of postconviction relief. Appellant argues that the district court erred by denying her request to suppress evidence as a discovery sanction and by granting the state's request to impeach her with prior convictions if she testified at trial. Appellant also argues that the postconviction court erred by refusing to resentence her under the Minnesota Drug Sentencing Reform Act. We affirm.

FACTS

Appellant Lynette Marie Robbins was convicted of first-degree controlled-substance crime (methamphetamine sale) after a jury trial. Before trial, the district court denied Robbins's request to suppress photographs of text messages between J.A. (an informant) and Robbins as a discovery sanction. The district court also ruled that the state could introduce Robbins's theft, larceny, and burglary convictions as impeachment evidence. Robbins did not testify, and the convictions were not introduced.

The evidence at trial showed that in 2014, Robbins's neighbor, J.A., contacted law enforcement and offered to act as an informant because he was concerned about criminal activity in his apartment building. On December 2, 2014, J.A. arranged to purchase one half of an ounce of methamphetamine from Robbins for \$700. Although law enforcement arranged a controlled buy between J.A. and Robbins, Robbins sent J.A. a text message indicating that her plans had changed. She informed J.A. that she was going to run errands, would give J.A. the methamphetamine before she left, and would get the money from him

when she returned. J.A. picked up the methamphetamine from Robbins as agreed, met with a law-enforcement officer promptly thereafter, and gave the officer approximately 14 grams of methamphetamine. At that time, the officer gave J.A. \$700 in recorded bills to pay for the methamphetamine. The officer also fitted J.A. with a recording device.

The officer dropped J.A. off near Robbins's apartment building, watched J.A. walk into the building, and listened to a conversation between Robbins and J.A., which occurred in Robbins's apartment. J.A. questioned the quality of the methamphetamine, suggesting that a friend had suffered negative side effects after using it. He also tried to convince Robbins to accept a lower price. J.A. eventually gave Robbins the \$700 in recorded bills as payment for the methamphetamine. An audio recording of this transaction was played at trial.

The jury found Robbins guilty as charged. Robbins completed a presentence investigation and moved for downward dispositional and durational departures. The district court denied both requests and sentenced Robbins to a presumptive sentence of 135 months in prison.

Robbins appealed to this court, and we stayed the appeal so she could seek postconviction relief. Robbins petitioned for postconviction relief, seeking a downward dispositional departure or a sentence reduction on the grounds that "[f]ollowing [Robbins's] conviction, the Minnesota legislature amended Minnesota controlled substance laws and the Minnesota Sentencing Guidelines Commission enacted changes that lowered presumptive sentences for controlled substance convictions." The postconviction court denied relief, reasoning that Robbins's conviction was for an offense

that predated the effective date of the amendments and that the amendments therefore did not apply. This court reinstated the appeal.

D E C I S I O N

I. The district court did not abuse its discretion by denying Robbins’s request for a discovery sanction.

One week before trial, the state disclosed the existence of photographs of text messages between J.A. and Robbins regarding the drug transaction. Robbins moved to suppress the photographs as a discovery sanction for late disclosure, and the district court denied her request. The state agrees that the late disclosure was a discovery violation.

Whether or not to impose a sanction for a discovery violation “is a matter particularly suited to the judgment and discretion of the [district] court.” *State v. Patterson*, 587 N.W.2d 45, 50 (Minn. 1998) (quotation omitted). Accordingly, an appellate court will not overturn such a ruling “absent a clear abuse of discretion.” *Id.* (quotation omitted).

When considering a sanction for a discovery violation, the district court should “take into account: (1) the reason why disclosure was not made; (2) the extent of prejudice to the opposing party; (3) the feasibility of rectifying that prejudice by a continuance; and (4) any other relevant factors.” *State v. Lindsey*, 284 N.W.2d 368, 373 (Minn. 1979). “Preclusion of evidence is a severe sanction which should not be lightly invoked.” *Id.* at 374.

In denying Robbins’s request, the district court applied the *Lindsey* factors and reasoned:

Here, the disclosure was not made because law enforcement did not provide the information to the State. There is no excuse for law enforcement’s failure to provide their full investigative file to the prosecution in this case. Certainly, more care and

effort should be taken in the future to avoid late disclosure of evidence. There is, however, no demonstrable prejudice to the Defense due to the late disclosure. The existence and general nature of the text messages were noted in the police reports which were timely disclosed. The Defense has no objection if [J.A.] testifies about the text messages. The text messages, then, presumably only tend to corroborate [J.A.'s] anticipated testimony. Due to the lack of any prejudice and taking into consideration that the Defendant remains in custody, a continuance is neither feasible nor necessary. In any event, the Defense has not requested a continuance of the trial. Based upon the totality of the circumstances, the Defense's motion to exclude the [photographs] is denied.

The state argues that the “district court correctly exercised its discretion . . . because the untimely disclosure was inadvertent and did not prejudice [Robbins].” Robbins argues that the district court’s refusal to suppress the photographs was an abuse of discretion and that she was prejudiced by this error because “[t]he late disclosure prevented the defense from preparing adequately and might have affected plea negotiations.” The state has the better argument.

Generally, a defendant must show prejudice to obtain a new trial based on a discovery violation. *State v. Boldman*, 813 N.W.2d 102, 109 (Minn. 2012). “To establish prejudice, a defendant must show that a reasonable probability exists that the outcome of the trial would have been different [if the discovery violation had not occurred].” *Id.*

The record establishes that the state timely disclosed the existence of the text messages and that it intended to offer evidence regarding the text messages at trial. The photographs merely confirmed the existence of the previously disclosed text messages. Moreover, Robbins did not request a continuance to further prepare for trial. Lastly, the state kept its plea offer open after it disclosed the photographs, and Robbins ultimately

rejected the offer. Under the circumstances, we are not persuaded that Robbins did not have adequate time to prepare after disclosure of the photographs or that the late disclosure impacted plea negotiations.

The record does not otherwise suggest that Robbins was prejudiced by the discovery violation. The jury heard testimony regarding the text messages. In addition, J.A. testified regarding the drug transaction and explained that he was wearing a recording device when he paid Robbins for the methamphetamine. The jury heard the audio recording of a conversation between J.A. and Robbins regarding the purchase price and quality of the methamphetamine. Lastly, Robbins's roommate, T.B., testified that Robbins told him that she had provided methamphetamine to J.A. Given the strength of the evidence against Robbins, we are not persuaded that the outcome of the trial would have been different if the photographs of the text messages had not been admitted.

In sum, Robbins has not demonstrated prejudicial error, and she therefore is not entitled to relief based on the district court's refusal to suppress the photographs as a discovery sanction.

II. The district court did not abuse its discretion by ruling that the state could introduce Robbins's prior theft and burglary convictions as impeachment evidence.

The district court ruled that if Robbins testified, the state could introduce her felony-level convictions of second-degree burglary (2006), theft (2006), and facilitation of larceny

(2014) as impeachment evidence.¹ Robbins assigns error to this ruling.

Under Minn. R. Evid. 609(a)(1):

For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall be admitted only if the crime . . . was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and the court determines that the probative value of admitting this evidence outweighs its prejudicial effect[.]

When balancing the probative value and prejudicial effect, courts consider five factors:

(1) the impeachment value of the prior crime, (2) the date of the conviction and the defendant’s subsequent history, (3) the similarity of the past crime with the charged crime (the greater the similarity, the greater the reason for not permitting use of the prior crime to impeach), (4) the importance of [the] defendant’s testimony, and (5) the centrality of the credibility issue.

State v. Jones, 271 N.W.2d 534, 537-38 (Minn. 1978).

“[A] district court should demonstrate on the record that it has considered and weighed the *Jones* factors.” *State v. Swanson*, 707 N.W.2d 645, 655 (Minn. 2006). A district court’s ruling regarding impeachment of a testifying defendant by prior conviction is reviewed for a clear abuse of discretion. *State v. Ihnot*, 575 N.W.2d 581, 584 (Minn. 1998).

¹ The district court also ruled that a 2002 second-degree-burglary conviction would be admissible for impeachment purposes if the state could “demonstrate that the date of discharge occurred sometime after November 4, 2005.”

The district court considered each of the *Jones* factors before ruling that Robbins could be impeached with her prior convictions. Robbins concedes that factors 2, 3, and 5 “might have weighed in favor of admission,” but she argues that the district court abused its discretion because “the impeachment value was minimal, at best, and [her] testimony was important to her defense.”

As to the first *Jones* factor, the district court followed the whole-person approach, which recognizes that “impeachment by prior crime aids the jury by allowing it to see the ‘whole person’ and thus to judge better the truth of [her] testimony.” *State v. Brouillette*, 286 N.W.2d 702, 707 (Minn. 1979) (quotation omitted). Robbins complains that under this approach, “any crime could be relevant to veracity” and argues that her “prior felony convictions were not related to her veracity.” Robbins’s position is inconsistent with the Minnesota Supreme Court’s continued reliance on the whole-person approach as explained in *State v. Hill*:

Under both our approach to Rule 609(a) and the common law tradition, it is the general lack of respect for the law, rather than the specific nature of the conviction, that informs the fact-finder about a witness’s credibility, at least with respect to convictions other than those involving dishonesty or false statements. *In other words, any felony conviction is probative of a witness’s credibility, and the mere fact that a witness is a convicted felon holds impeachment value.*

801 N.W.2d 646, 652 (Minn. 2011) (emphasis added).

As to the fourth *Jones* factor, the importance of the defendant’s testimony, the district court noted that it was “unknown what [Robbins’s] likely testimony could be.” “It is, of course, the responsibility of the defendant to make an offer of proof as to what would

have been the substance of the testimony, had it been provided.” *Ihnot*, 575 N.W.2d at 587 n.3. But Robbins did not make an offer of proof to enable the district court to assess the importance of her testimony. Unsurprisingly, the district court did not indicate whether the fourth factor weighed for or against admission. Instead, it considered the fourth and fifth factors together and reasoned that “if [Robbins] decides to testify and offers testimony that conflicts with the State’s witnesses, her credibility would certainly be central to her case.” See *Swanson*, 707 N.W.2d at 655 (analyzing the fourth and fifth *Jones* factors together); *State v. Gassler*, 505 N.W.2d 62, 67 (Minn. 1993) (considering the fourth and fifth *Jones* factors simultaneously).

Robbins argues that “because [her] testimony was critical [the fourth *Jones*] factor also weighed against admission.” But as was the case in the district court, Robbins does not describe her proposed testimony. We are hard-pressed to conclude that Robbins’s testimony was “critical,” and that it therefore weighed against admission of the impeachment evidence, when Robbins has not provided any insight regarding the substance of her proposed testimony. Robbins’s failure to make an offer of proof—in district court and in this court—weighs against her assertion of error. See *Gassler*, 505 N.W.2d at 67 (stating that “no offer of proof was made as to any additional testimony appellant would have added if he had taken the stand,” which “support[s] the [district] court’s decision to admit the evidence for impeachment”).

We conclude that the district court did not abuse its discretion by ruling that the state could impeach Robbins with the designated convictions if she testified. Even if the district court had abused its discretion, we would not reverse if the error were harmless.

See *State v. Vanhouse*, 634 N.W.2d 715, 721 (Minn. App. 2001) (indicating that we review an erroneous ruling under rule 609 under the harmless-error standard), *review denied* (Minn. Dec. 11, 2011). “An error is harmless when there is no reasonable possibility that the wrongfully admitted evidence significantly affected the verdict.” *Id.*

Robbins argues that “[h]ad [she] been able to testify in her own defense without the fear of impeachment, it is reasonably likely that the jury would have reached a different conclusion.” We are not persuaded. As described in the previous section of this opinion, the evidence against Robbins was strong. Robbins does not explain how her undescribed testimony could have created a reasonable doubt in the mind of a juror despite the strong evidence against her. In sum, Robbins has not established that the district court’s impeachment ruling constitutes reversible error.

III. The postconviction court did not err by denying Robbins’s request for relief under the Minnesota Drug Sentencing Reform Act.

This court reviews a postconviction court’s denial of postconviction relief for an abuse of discretion. *Wayne v. State*, 870 N.W.2d 389, 392 (Minn. 2015). “A postconviction court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record.” *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012) (quotation omitted). “The retroactivity of a statute is a matter of statutory interpretation, which [this court] review[s] de novo.” *State v. Basal*, 763 N.W.2d 328, 335 (Minn. App. 2009).

Robbins contends that she should have been resentenced under the Minnesota Drug Sentencing Reform Act. The postconviction court concluded that the “2016 statutory

amendments to Minn. Stat. [§] 152 do not apply to [Robbins] because the offense occurred prior to August 1, 2016,” that the “Sentencing Guidelines that should have been and were applied to [Robbins’s] sentence were those that were in effect at the time of the offense,” and that “[t]here are no substantial and compelling reasons to depart durationally or dispositionally from the Minnesota Sentencing Guidelines.”

Robbins argues that the Minnesota Drug Sentencing Reform Act

impacts [her] sentence in two ways. First, because the goal of this legislation is to focus on rehabilitation and treatment of drug offenders, and [she] is eligible for treatment, this court should resentence [her] and impose a downward dispositional departure. Second, even if this Court does not resentence [her] to a probationary term, she is entitled to a reduction in her sentence to a term of 92 months, which represents the “bottom-of-the-box” term under the new guidelines.

The Minnesota Drug Sentencing Reform Act included amendments changing the quantity thresholds for certain controlled-substance crimes and directed reductions in some presumptive sentences for controlled-substance crimes. 2016 Minn. Laws ch. 160, § 3, at 577-82; § 18, at 590-91. The Act provides that it is “effective August 1, 2016, and applies to crimes committed on or after that date.” *Id.* at §§ 1-10, at 576-86.

“No law shall be construed to be retroactive unless clearly and manifestly so intended by the legislature.” Minn. Stat. § 645.21 (2016). Robbins relies on an exception to this principle, which was established in *State v. Coolidge*, 282 N.W.2d 511, 514 (Minn. 1979), arguing that “[n]otwithstanding the stated effective date, the Drug Sentencing Reform Act applies to pending cases under the common law amelioration doctrine.”

In *Coolidge*, the Minnesota Supreme Court stated that “a statute mitigating punishment is applied to acts committed before its effective date, as long as no final judgment has been reached. The rationale for such a rule is that the legislature has manifested its belief that the prior punishment is too severe and a lighter sentence is sufficient.” *Id.* (citation omitted). But in *Edstrom v. State*, the supreme court clarified that the *Coolidge* rule applies “absent a contrary statement of intent by the legislature” and did not apply the rule because “the legislature ha[d] clearly indicated its intent that the [mitigating statutes at issue] have no effect on crimes committed before [their] effective date[s].” 326 N.W.2d 10, 10 (Minn. 1982). *Id.* The relevant statutory language in *Edstrom* provided that “crimes committed prior to [a certain date] are not affected” by the relevant amending act’s provisions. Minn. Stat. § 609.351 (1980); *see also Edstrom*, 326 N.W.2d at 10.

In *Basal*, this court noted that *Edstrom* “substantially narrowed *Coolidge*’s scope.” 763 N.W.2d at 336. This court applied *Edstrom* and concluded that “[b]ecause the legislature provided for a specific effective date for the . . . amendment, the legislature did not intend for the amendment to apply to conduct occurring before the effective date.” *Id.* The relevant statutory language in *Basal* “expressly provided that the 2007 amendment . . . would become effective January 1, 2008.” *Id.*

Robbins argues that *Basal* “cannot be squared with *Coolidge*” because *Basal* did not contain the statutory language in *Edstrom* that expressly prohibited retroactive application. She refers to Minn. Stat. § 609.351, which provides that certain “crimes committed prior to [a certain date] are not affected” by a particular amending act’s

provisions. Robbins’s argument is unavailing because in *Basal*, this court said that language setting forth the effective date of an amendment “is equivalent to the language that was at issue in *Edstrom*.” *Basal*, 763 N.W.2d at 336.

Once again, the relevant portions of the Minnesota Drug Sentencing Reform Act are “effective August 1, 2016, and appl[y] to crimes committed on or after that date.” 2016 Minn. Laws ch. 160, § 3, at 577-79. This language, like the effective-date language in *Basal*, indicates that the legislature did not intend the Act to apply retroactively. In fact, we have previously held that nearly identical language did not result in retroactive application. In *State v. McDonnell*, we held that a 2003 amendment did not apply to an offense that occurred before August 1, 2003, because the statute’s effective-date provision provided that the amendment “is effective August 1, 2003, and applies to violations committed on or after that date.” 686 N.W.2d 841, 846 (Minn. App. 2004) (quotation omitted), *review denied* (Minn. Nov. 16, 2004).

Because the legislature has clearly indicated its intent that the relevant portions of the Minnesota Drug Sentencing Reform Act do not apply retroactively and because Robbins committed her offense before the effective date of the Act, the postconviction court did not err by denying her request for relief under the Act.

Robbins also argues that the district court “did not have the benefit of considering [her downward dispositional departure] request in light of the Drug Sentencing Reform Act, which prioritizes treatment as a more effective response than prison for convicted drug offenders” and “favors treatment over excessively harsh terms of incarceration.” Essentially, Robbins argues that she should have received a downward dispositional

departure based on the policies underlying the Minnesota Drug Sentencing Reform Act.

We disagree. As explained by the postconviction court:

The Court, having reviewed the record in this matter and the current arguments of counsel, concludes, as it did at the time of sentencing, that there are no substantial and compelling reasons to support either a durational or dispositional departure from the Guidelines. The Court noted at the time of sentencing that it did not consider [Robbins] particularly amenable to treatment or to probation based upon the fact that [she] had not complied with probation supervision in the past, had not complied with her conditions of release, and had left inpatient treatment (which had been a condition of release). The preference for treatment over incarceration for drug offenders does not equate to a presumptive basis for a departure from the Guidelines. For example, there may be violent drug offenders for whom treatment may be beneficial and less costly than a commitment to prison; however, incarceration may be necessary for protection of the public and appropriate based upon the circumstances of the offense. In this case, the Court considered the benefits of treatment over incarceration. Here, [Robbins's] history did not support the proposition that she was serious about complying with treatment or probation. Certainly, [Robbins] voiced a desire for treatment. [She] had done so in the past in this case when arrested on a warrant issued for failure to appear at a hearing and for violating her conditions of release by using methamphetamine. The Court, giving credence to [Robbins's] expressed desire for treatment, released [her] so she could enter treatment. Mere days later, [she] walked out of treatment and was on warrant status for approximately two months. The Court remains unconvinced that [Robbins], based upon her conduct, is amenable to probation or to treatment. The Court also concludes that there is nothing about the circumstances of this offense that makes it less onerous than the typical controlled substance offense. The Court further concludes that [Robbins] did not play a minor or passive role in the commission of the offense. After careful consideration of [Robbins's] arguments and the record, there simply are no substantial and compelling reasons to depart from the Guidelines in this matter.

“Only in a rare case will a reviewing court reverse a district court’s imposition of [a] presumptive sentence.” *State v. Olson*, 765 N.W.2d 662, 664 (Minn. App. 2009) (quotation omitted). Whatever the policy goals of the Minnesota Drug Sentencing Reform Act may be, they do not surpass the district court’s sound rejection of Robbins’s request for a downward dispositional departure.

Affirmed.