

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1104**

State of Minnesota,
Appellant,

vs.

Shane Douglas Lynch,
Respondent.

**Filed March 20, 2017
Reversed and remanded
Schellhas, Judge**

Dakota County District Court
File No. 19HA-CR-15-1975

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

James C. Backstrom, Dakota County Attorney, G. Paul Beaumaster, Assistant County Attorney, Hastings, Minnesota (for appellant)

Cathryn Middlebrook, Chief Appellate Public Defender, Chang Y. Lau, Assistant Public Defender, St. Paul, Minnesota (for respondent)

Considered and decided by Schellhas, Presiding Judge; Kirk, Judge; and Bratvold,
Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges the district court's grant of a downward dispositional sentencing departure, arguing that the district court erred by failing to impose a statutorily mandated two-year minimum sentence. We reverse and remand.

FACTS

In June 2015, police executed a search warrant at A.R.'s home in Apple Valley, where respondent Shane Lynch was living. Police officers discovered 1,020.61 grams of methamphetamine in A.R.'s bedroom and 6.85 grams of methamphetamine in the garage. In the home's master bedroom, police found an additional 8.93 grams of methamphetamine. Lynch's personal belongings were found in the master bedroom along with drug paraphernalia and other controlled substances. A.R. told police that the methamphetamine found in his bedroom and the garage was his, but he stated that he had previously given Lynch nine grams of methamphetamine.

The state charged Lynch with second-degree controlled substance crime in violation of Minn. Stat. § 152.022, subd. 2(a)(1) (2014) (possession). In November 2015, Lynch pleaded guilty to an amended charge of third-degree controlled substance crime in violation of Minn. Stat. § 152.023, subd. 2(a)(1) (2014) (possession).

At Lynch's sentencing hearing, the state requested the district court sentence him to the presumptive guidelines sentence of 57 months in prison. Because Lynch had a prior controlled-substance conviction, he was required by statute to be "committed to the commissioner of corrections for not less than two years." Minn. Stat. § 152.023, subd. 3(b)

(2014). Despite the statutory minimum, Lynch’s counsel moved the district court for a downward dispositional departure. Finding that Lynch is particularly amenable to probation, the district court sentenced him to a presumptive durational 66-month prison sentence and stayed execution for ten years.

The state now appeals.

D E C I S I O N

The state argues that the district court erred by staying execution of Lynch’s sentence under section 152.023, subdivision 3(b). Whether a statute “requires a mandatory minimum term of incarceration is a question of statutory construction which [appellate courts] review[] de novo.” *State v. Bluhm*, 676 N.W.2d 649, 651 (Minn. 2004). “The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature.” Minn. Stat. § 645.16 (2016). When a statute is unambiguous, we must apply its plain meaning. *State v. Hayes*, 826 N.W.2d 799, 804 (Minn. 2013).

At the time Lynch was sentenced, section 152.023, subdivision 3(b), stated: “If the conviction is a subsequent controlled substance conviction, a person convicted under subdivision 1 or 2 shall be committed to the commissioner of corrections for not less than two years nor more than 30 years.” And section 152.026 provided that “[a] defendant convicted and sentenced to a mandatory sentence under [section 152.023] is not eligible for probation, parole, discharge or supervised release until that person has served the full term of imprisonment as provided by law.” Minn. Stat. § 152.026 (2014). We have previously held that a district court lacks discretion to stay execution of the mandatory minimum sentence for repeat offenders under section 152.023, subdivision 3(b), and

section 152.026. *State v. Turck*, 728 N.W.2d 544, 548 (Minn. App. 2007), *review denied* (Minn. May 30, 2007); *see also Bluhm*, 676 N.W.2d at 654 (holding that the penalty provision for fifth-degree controlled substance crime in Minn. Stat. § 152.025, subd. 3(b) (2002), required a mandatory minimum six-month jail term be imposed and served for repeat offenders); *State v. Adams*, 791 N.W.2d 757, 759 (Minn. App. 2010) (holding that the district court may not stay execution of the mandatory minimum sentence under Minn. Stat. § 152.022, subd. 3(b) (2006), for repeat offenders who commit second-degree controlled substance crime), *review denied* (Minn. Mar. 15, 2011).

Lynch concedes on appeal that the district court did not have discretion to stay execution of his sentence under the 2014 version of the third-degree controlled substance statute. But he argues that he is entitled to the benefit of the 2016 Minnesota drug sentencing reform act, which amended section 152.023, subdivision 3, to eliminate the mandatory two-year minimum sentence. *See* 2016 Minn. Laws ch. 160, § 5, at 582; *see also* 2016 Minn. Laws ch. 160, § 8, at 585 (amending Minn. Stat. § 152.026). Lynch cites *State v. Coolidge* in support of his argument. 282 N.W.2d 511 (Minn. 1979). In *Coolidge*, a defendant appealed his conviction and ten-year sentence for sodomy. *Id.* at 512. Because the legislature had repealed the statute under which the defendant was convicted and changed the maximum punishment for his act to one year in prison, the supreme court held that he was entitled to the benefit of the more recent statute, noting that “a statute mitigating punishment is applied to acts committed before its effective date, as long as no final judgment has been reached.” *Id.* at 514. The supreme court revisited the principle articulated in *Coolidge* in *Edstrom v. State*, in which a petitioner serving a 30-year sentence

for aggravated rape sought postconviction relief on the grounds that he was entitled to resentencing under an amended statute that provided for a maximum sentence of 20 years. 326 N.W.2d 10, 10 (Minn. 1982). In affirming the denial of his postconviction petition, the supreme court clarified that the *Coolidge* principle does not apply when it is contrary to the legislature's intent:

In *Coolidge*, we ruled that a statute mitigating punishment is to be applied to acts committed before its effective date, as long as no final judgment has been reached, at least absent a contrary statement of intent by the legislature. In this case the legislature has clearly indicated its intent that the criminal sexual conduct statutes have no effect on crimes committed before the effective date of the act, August 1, 1975. Minn. Stat. § 609.351 (1980).

Id.

Lynch maintains that this case is more like *Coolidge* than *Edstrom* because the Minnesota drug sentencing reform act “does not expressly prohibit retroactive application of the statute, as did the statute in *Edstrom*.” Lynch’s argument is unconvincing because it ignores the explicit language of the act, which provides that the amendment eliminating the mandatory minimum sentence in section 152.023, subdivision 3(b), “is effective August 1, 2016, and applies to crimes committed on or after that date.” 2016 Minn. Laws ch. 160, § 5, at 582; *see also* 2016 Minn. Laws ch. 160, § 8, at 585 (using the same language with respect to the effective date for the amendment to section 152.026). We have previously found similar language sufficient to indicate that the legislature did not intend an amendment to apply retroactively. In *State v. McDonnell*, we held that the 2003 amendment to Minn. Stat. § 169A.03, subd. 21, did not apply to an offense that occurred

before August 1, 2003, because the statute’s effective-date provision explicitly stated that the amendment “is effective August 1, 2003, and applies to violations committed on or after that date.” 686 N.W.2d 841, 845–46 (Minn. App. 2004), *review denied* (Minn. Nov. 16, 2004). This language directly mirrors the effective-date provision at issue in this case. Similarly, in *State v. Basal*, we held that the 2007 amendment to Minn. Stat. § 256J.20, subd. 3(1), did not apply retroactively because the legislature stated it was “effective January 1, 2008.” 763 N.W.2d 328, 336 (Minn. App. 2009) (citing 2007 Minn. Laws ch. 147, art. 2, § 64, at 1901).

Against the weight of this authority, Lynch suggests that we should apply the effective-date provision found in 2016 Minn. Laws ch. 160, § 14, at 588, which concerns the act’s establishment of a community justice reinvestment account and “is effective the day following final enactment.” But that effective date, by its very terms, is limited to that particular section. *See* 2016 Minn. Laws ch. 160, § 14, at 588 (“*This section* is effective the day following final enactment.” (emphasis added)). The relevant effective dates for the purpose of this case are those relating to the amendments to the penalty provision for third-degree controlled substance crime (section 152.023, subdivision 3) and mandatory sentences (section 152.026). And those amendments both explicitly provide that they are “effective August 1, 2016, and appl[y] to crimes committed on or after that date.” 2016 Minn. Laws ch. 160, §§ 5, 8, at 582, 585.

Because the legislature has clearly indicated its intent that the amendments to sections 152.023, subdivision 3, and 152.026 do not apply retroactively, and because Lynch committed his offense over a year before August 1, 2016, he is not entitled to the benefit

of the revised statutes. The district court therefore erred by not imposing the mandatory two-year minimum sentence.

Reversed and remanded.