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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1119**

State of Minnesota,
Respondent,

vs.

Chad Timothy Anderson,
Appellant

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

Dakota County District Court
File No. 19HA-CR-15-411

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

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

Cathryn Middlebrook, Chief Appellate Public Defender, Andrea Barts, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Halbrooks, Judge; and Worke,
Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant argues that he is entitled to be resentenced under changes to controlled-substance statutes and the Minnesota Sentencing Guidelines that went into effect after he was sentenced. We affirm.

FACTS

In January 2015, police arranged a controlled buy through a confidential informant. During the controlled buy, appellant Chad Timothy Anderson sold 27.68 grams of methamphetamine.

Anderson was charged with first-degree sale of a controlled substance, in violation of Minn. Stat. § 152.021, subd. 1(1) (2014) (ten grams or more of methamphetamine) and first-degree possession of a controlled substance, in violation of Minn. Stat. § 152.021, subd. 2(a)(1) (2014) (25 grams or more of methamphetamine). After a court trial, the district court found Anderson guilty of both offenses.

Before sentencing, Anderson moved for a downward durational departure, based in part on proposed amendments to the Minnesota Sentencing Guidelines that, if enacted, would reduce presumptive sentences for first-degree controlled-substance crimes. In April 2016, the district court denied Anderson's motion. The district court sentenced Anderson to 138 months in prison on the possession count. The sentence was at the bottom of the guidelines presumptive range of 138 to 192 months.

After Anderson was sentenced, the legislature enacted the 2016 Minnesota drug sentencing reform act. *See* 2016 Minn. Laws ch. 160, §§ 1-22, at 576-92. The act amended

Minn. Stat. § 152.021 by, inter alia, raising the threshold weight for first-degree sale of a controlled substance from 10 grams to 17 grams of methamphetamine and the threshold weight for first-degree possession of a controlled substance from 25 grams to 50 grams of methamphetamine. *Id.*, § 3, at 577-578. The act rejected some of the Minnesota Sentencing Guidelines Commission's proposed amendments and directed the commission to modify the presumptive sentences for certain controlled-substance crimes. *Id.*, § 18, at 590-91. The act and subsequent amendments to the sentencing guidelines reduce presumptive sentences for first-degree controlled-substance crimes and other drug-related offenses. *Compare* Minn. Sent. Guidelines 4.C (2016) *with* Minn. Sent. Guidelines 4.A (2014). This appeal followed.

D E C I S I O N

Anderson argues that he is entitled to be resentenced under the act, claiming that he is entitled to the benefits of the act because his conviction was not final when the act took effect.

If applied to Anderson, the act's changes to threshold weights would reduce his first-degree possession of a controlled-substance conviction to second-degree possession of a controlled substance, resulting in a presumptive sentencing range of 95 to 132 months. *See* Minn. Stat. § 152.021, subd. 2(a)(1) (2016) (first-degree possession now 50 grams or more); Minn. Stat. § 152.022, subd. 2(a)(1) (2016) (second-degree possession now 25 grams or more); Minn. Sent. Guidelines 2.B.2.c, 4.C (2016) (sentencing guidelines drug-offender grid and description of custody-status point). Even if the act does not apply to reduce his conviction, Anderson claims that reduced presumptive sentences for first-degree

controlled-substance crimes must be applied. This would result in a presumptive sentencing range of 110 to 153 months. See Minn. Sent. Guidelines 2.B.2.c, 4.C.

As a general rule, “[n]o law shall be construed to be retroactive unless clearly and manifestly so intended by the legislature.” Minn. Stat. § 645.21 (2016). When a law is amended, “the new provisions shall be construed as effective only from the date when the amendment became effective.” Minn. Stat. § 645.31 (2016). Accordingly, for a statute to be applied to conduct committed before its effective date, the legislature must provide clear evidence that it intended that application, “such as mention of the word ‘retroactive.’” *State v. Traczyk*, 421 N.W.2d 299, 301 (Minn. 1988) (quotation omitted). “The retroactivity of a statute is a matter of statutory interpretation, which we review de novo.” *State v. Basal*, 763 N.W.2d 328, 335 (Minn. App. 2009). Interpretation of the sentencing guidelines is also subject to de novo review. *State v. Campbell*, 814 N.W.2d 1, 4 (Minn. 2012).

Anderson’s argument centers on *State v. Coolidge*, which outlines an exception to the general rule stated above. 282 N.W.2d 511, 514-15 (Minn. 1979). *Coolidge* states that when a “criminal law in effect is repealed, absent a savings clause, all prosecutions are barred where not reduced to a final judgment.” *Id.* at 514. It also states that “a statute mitigating punishment is applied to acts committed before its effective date, as long as no final judgment has been reached.” *Id.* The rationale for this rule is that “the legislature has manifested its belief that the prior punishment is too severe and a lighter sentence is sufficient.” *Id.*

Coolidge was convicted of sodomy. *Id.* at 513. After he was convicted but before his conviction became final,¹ the legislature repealed the sodomy statute and reduced the maximum punishment for Coolidge’s conduct from ten years to one year.² *Id.* at 512, 514-15. The supreme court determined that Coolidge “should have been sentenced under the present law.” *Id.* at 515. As Coolidge had served over two years in prison, the supreme court reduced his sentence to time served. *Id.*

Coolidge was narrowed by *State v. Edstrom*. 326 N.W.2d 10, 10 (Minn. 1982). In *Edstrom*, the supreme court explained that *Coolidge*’s common-law rule applies only “absent a contrary statement of intent by the legislature.” *Id.* Because “the legislature ha[d] clearly indicated its intent” that the new statute “have no effect on crimes committed before the effective date of the act,” the supreme court refused to apply a statute enacted after Edstrom’s crime that would have reduced his sentence. *Id.* Edstrom committed the crime in March 1975, and the effective date of the act was August 1, 1975. *Id.* The new statute provided, “crimes committed prior to the effective date of this act are not affected by its provisions.” 1975 Minn. Laws ch. 374, § 12, at 1251.

We have addressed *Coolidge* and *Edstrom* in two published opinions. In *State v. McDonnell*, we determined that *Coolidge*’s common-law rule did not apply because the legislature clearly indicated its intent that a statutory amendment not apply to crimes committed before the amendment’s effective date. 686 N.W.2d 841, 846 (Minn. App.

¹ A conviction becomes final when direct appeals are exhausted or the time for filing a direct appeal has expired. *State v. Losh*, 721 N.W.2d 886, 893-94 (Minn. 2006).

² The legislature provided that the act reducing the maximum sentence for Coolidge’s crime was “effective the day after final enactment.” 1977 Minn. Laws ch. 131, § 11, at 223.

2004), *review denied* (Minn. Nov. 16, 2004). The legislature provided that the amendment “is effective August 1, 2003, and applies to violations committed on or after that date.” *Id.* (quoting 2003 Minn. Laws 1st Spec. Sess. ch. 2, art. 9, § 1, at 1446). In *Basal*, we again determined that *Coolidge* did not apply. 763 N.W.2d at 336. The legislature expressly provided that the relevant amendment “would become effective January 1, 2008.” *Id.* (citing 2007 Minn. Laws ch. 147, art. 2, § 64, at 1901). We concluded that “[b]ecause the legislature provided for a specific effective date . . . , the legislature did not intend for the amendment to apply to conduct occurring before the effective date.” *Id.*

Amendments to first- and second-degree controlled-substance-crime statutes

Anderson first argues that he is entitled to have his conviction reduced and to be resentenced for second-degree possession of a controlled substance because his conduct no longer fits the definition of first-degree possession of a controlled substance. But, in amending the first-degree controlled-substance-crime statute, the legislature clearly indicated that it did not intend to apply the amendments to conduct occurring before the effective date. *See Edstrom*, 326 N.W.2d at 10. The act states, “This section is effective August 1, 2016, and applies to crimes committed on or after that date.” 2016 Minn. Laws ch. 160, § 3, at 579. In amending the second-degree controlled-substance-crime statute, the legislature used identical effective-date language. *Id.*, § 4, at 581. Because Anderson committed his offense in January 2015, he is not entitled to application of the amendments.

Anderson claims that because the amendments not only mitigate punishment but also increase punishment for certain conduct, the effective-date language is meant only to prevent ex post facto application of increased punishments. *See Jones v. State*, 883 N.W.2d

596, 600 (Minn. 2016) (explaining that the legislature is prohibited from passing a retroactive law that disadvantages an offender). But the effective-date language clearly states that amendments to the first- and second-degree controlled-substance-crime statutes apply only to crimes committed on or after August 1, 2016. This court may not “read into a statute a requirement that the [l]egislature by its plain language has left out.” *State v. Vue*, 797 N.W.2d 5, 17 (Minn. 2011). Had the legislature intended to apply increased punishments prospectively and mitigated punishments prospectively and to crimes committed before the effective date, it would have said so.

Anderson also argues that in order to prevent the mitigating aspects of the amendments from being applied to non-final cases, the legislature needed to use the same language used in the statute at issue in *Edstrom*. But *Edstrom* does not require specific language. 326 N.W.2d at 10. In the statute analyzed in *Edstrom*, the legislature provided that “crimes committed prior to the effective date of this act are not affected by its provisions.” 1975 Minn. Laws ch. 374, § 12, at 1251. The effective-date provisions at issue here use different language to accomplish the same result. Moreover, the language of the effective-date provisions at issue here is virtually identical to the effective-date provision at issue in *McDonnell*. Compare 2016 Minn. Laws ch. 160, §§ 3, at 579; 4, at 581 with 686 N.W.2d at 846 (quoting 2003 Minn. Laws 1st Spec. Sess. ch. 2, art. 9, § 1, at 1446). The language is also more specific and clearer than the effective-date provision involved in *Basal*, which said only that the act would be effective on a specific date. See 763 N.W.2d at 336 (citing 2007 Minn. Laws ch. 147, art. 2, § 64, at 1901). In both

McDonnell and *Basal*, we determined that the amendments applied only to crimes committed on or after the effective date. *Id.*; *McDonnell*, 686 N.W.2d at 846.

The legislature clearly indicated its intent to apply the amendments to the first- and second-degree controlled-substance-crime statutes only to crimes committed on or after August 1, 2016. Anderson committed his crime well before that date and is not entitled to have his conviction reduced from first- to second-degree possession of a controlled substance.

Amendments to sentencing guidelines

Anderson claims that even if the amendments to the statutes do not apply to him, the modifications to the sentencing guidelines do. The effective-date provision of the portion of the act dealing with the sentencing guidelines provides that it is effective “the day following final enactment.” 2016 Minn. Laws ch. 160, § 18, at 591. This is virtually identical to the effective-date provision at issue in *Coolidge*. Compare *id.* with 1977 Minn. Laws ch. 131, § 11, at 223. Nevertheless, for several reasons outlined below, the *Coolidge* rule does not make the changes to the sentencing guidelines apply to non-final cases.

First, it is not clear that *Coolidge* even applies to the sentencing guidelines. *Coolidge* addressed a change to the statutory maximum sentence, not a change to the guidelines. 282 N.W.2d at 513-14. In 1979 when *Coolidge* was decided, the guidelines did not yet exist. See *State v. Shattuck*, 704 N.W.2d 131, 138 (Minn. 2005) (stating that the first edition of the sentencing guidelines was not effective until May 1, 1980).

Second, the legislature and the commission have clearly indicated that changes to the guidelines do not apply to conduct committed prior to the modification’s effective date.

The guidelines explicitly provide that modifications “apply to offenders whose date of offense is on or after the specified modification effective date.” Minn. Sent. Guidelines 3.G.1 (2016). In adopting the act’s changes to the guidelines, the commission specified an effective date of August 1, 2016. Minn. Sent. Guidelines Comm., *Adopted Modifications to the Sentencing Guidelines and Commentary Effective Date: August 1, 2016* (Aug. 2016), <http://mn.gov/msgc-stat/documents/2016%20Guidelines/August%202016%20Adopted%20Modifications.pdf>. The first page of the 2016 guidelines also states that the guidelines are “effective August 1, 2016, and determine the presumptive sentence for felony offenses committed on or after the effective date.”

The effective date of the portion of the act addressing the sentencing guidelines does not dictate the effective date of the actual modifications to the guidelines. Pursuant to statute, the commission must submit proposed modifications of the guidelines to the legislature by January 15. Minn. Stat. § 244.09, subd. 11 (2014). The proposed modifications are effective August 1 of the year they are submitted, “unless the legislature by law provides otherwise”. *Id.* All other modifications take effect according to the rules of the commission. *Id.* The rules of the commission provide that “amendments to the sentencing guidelines that do not have to be submitted to the legislature are effective on the date ordered by the commission.” Minn. R. 3000.0600, subp. 3 (2015). The act itself does not modify the guidelines; it rejects certain amendments proposed by the commission and orders the commission to make other modifications. 2016 Minn. Laws ch. 160, § 18, at 590-91. The act was passed and signed by the governor on May 22, 2016. *Id.*, at 592. The portion of the act dealing with the guidelines was likely made effective “the day

following final enactment” to allow the commission time to modify the guidelines before August 1, 2016. *Id.*, § 18, at 591. Under section 244.09, subdivision 11, any proposed modifications that the legislature did not reject took effect on August 1, 2016. The modifications that were mandated by the legislature or related to a crime created or amended by the legislature in the act did not need to be submitted to the legislature and thus took effect on the date ordered by the commission, August 1, 2016. *See* Minn. Stat. § 244.09, subd. 11; Minn. R. 3000.0600, subp. 3. Accordingly, the effective date of the changes to the guidelines is not governed by the act but by the commission and Minn. Stat. § 244.09, subd. 11. Both the commission and the statute indicate that the modifications took effect on August 1, 2016, and the guidelines themselves provide that the modifications do not apply to crimes committed before that date.

At one time, pursuant to statute, any modification to the guidelines that reduced the presumptive sentence duration was retroactive. Minn. Stat. § 244.09, subd. 11 (Supp. 1983). Later, that statute was amended to allow an offender serving a sentence to petition for a retroactive reduction of his sentence only when there was a “modification of the numbers in the cells of the guidelines grid.” 1984 Minn. Laws ch. 590, § 5, at 1237. In 1997, this portion of the statute was repealed. 1997 Minn. Laws ch. 239, art. 3, § 25, at 2786. The repeal of this subdivision further indicates that the legislature generally does not intend modifications to the guidelines to apply to conduct committed prior to the effective date of the modification.

Finally, the act is a comprehensive piece of legislation that creates new crimes, such as aggravated-controlled-substance crime in the first degree, and makes numerous changes

that affect the definitions of various other controlled-substance crimes. 2016 Minn. Laws ch. 160, at 576-92. The legislature specifically provided that these offense changes were “effective August 1, 2016, and appl[y] to crimes committed on or after that date.” *Id.*, §§ 2-9, at 576-85. The sentencing guidelines were amended to correspond to these changes and thus should also apply only to crimes committed on or after August 1, 2016. *See* Minn. Sent. Guidelines 4.C.

The commission and the legislature clearly indicated that the 2016 changes to the guidelines do not apply to crimes committed before August 1, 2016. Accordingly, Anderson is not entitled to be resentenced under the new guidelines.

Affirmed.