

*This opinion will be unpublished and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**

A16-1553

A17-0040

State of Minnesota,
Respondent,

vs.

Gila Angela Robertson,
Appellant.

Filed September 5, 2017

Affirmed

Reyes, Judge

Chippewa County District Court
File No. 12-CR-14-258

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

David Gilbertson, Chippewa County Attorney, Scott A. Hersey, Special Assistant County Attorney, St. Paul, Minnesota (for respondent)

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

Considered and decided by Reilly, Presiding Judge; Reyes, Judge; and Jesson,
Judge.

UNPUBLISHED OPINION

REYES, Judge

In this combined probation-revocation and postconviction appeal, appellant argues that the common-law amelioration doctrine applies and that her conviction should be

reduced from fifth-degree felony controlled-substance possession to a gross misdemeanor in accordance with the 2016 Drug Sentencing Reform Act (DSRA). We affirm.

FACTS

After a traffic stop in April 2014, during which appellant Gila Angela Robertson was a passenger in the vehicle, respondent State of Minnesota charged appellant with fifth-degree felony controlled-substance possession, misdemeanor possession of an open bottle in a motor vehicle, and possession of drug paraphernalia. Appellant entered an *Alford* plea and pleaded guilty to the fifth-degree felony possession charge. In exchange for appellant's plea, the parties agreed that appellant would receive a stay of adjudication, and the state would dismiss the remaining charges. On November 20, 2014, the district court stayed adjudication and placed appellant on probation. Appellant did not file a direct appeal.

Appellant subsequently committed multiple violations of her probation. At the probation-violation hearing in July 2016, the district court determined that appellant had violated the conditions of her probation and adjudicated appellant guilty of fifth-degree possession of a controlled substance. The district court executed appellant's sentence of one year and one day in prison.

Prior to execution of appellant's sentence, the legislature passed, and the governor signed, the DSRA. See 2016 Minn. Laws ch. 160, §§ 1-22, at 576-92. If applicable, the DSRA would reduce appellant's crime from fifth-degree felony drug possession to a gross misdemeanor. Compare 2016 Minn. Laws ch. 160, § 7, at 584, with Minn. Stat. § 152.025, subd. 2(a)(1) (2014).

In September 2016, appellant filed a direct appeal from the probation-revocation order. One month later, appellant filed a motion to stay her appeal for postconviction proceedings, which this court granted. Appellant then filed a petition for postconviction relief with the district court, arguing that the DSRA applies to her case and that her conviction offense should be reduced. The district court denied appellant's petition.

After the postconviction proceedings, appellant filed a motion in this court to reinstate her appeal of the probation-revocation order, a notice of appeal from the postconviction court's decision, and a motion to consolidate the two appeals. This court granted appellant's motions, and the consolidated appeals follow.

D E C I S I O N

While appellant does not challenge the district court's probation-revocation decision, appellant argues that she is entitled to a reduction in her conviction offense in accordance with the DSRA. We disagree.

This court reviews a district court's probation-revocation and postconviction decisions for an abuse of discretion. *State v. Austin*, 295 N.W.2d 246, 249-50 (Minn. 1980) (probation revocation); *Lussier v. State*, 821 N.W.2d 581, 588 (Minn. 2012) (quotation omitted) (postconviction). We review issues of statutory interpretation de novo. *Rushton v. State*, 889 N.W.2d 561, 563 (Minn. 2017).

In *State v. Coolidge*, the Minnesota Supreme Court stated that, under the common-law amelioration doctrine, "a statute mitigating punishment is applied to acts committed before its effective date, as long as no final judgment has been reached." 282 N.W.2d 511, 514 (Minn. 1979). The supreme court recently stated that, under the amelioration doctrine,

an amended statute applies to crimes committed before its effective date if: (1) there is no statement by the Legislature that clearly establishes the Legislature's intent to abrogate the amelioration doctrine; (2) the amendment mitigates punishment; and (3) final judgment has not been entered as of the date the amendment takes effect.

State v. Kirby, ___ N.W.2d ___, ___, 2017 WL 3161079, at *4 (Minn. July 26, 2017) (applying *Edstrom v. State*, 326 N.W.2d 10 (Minn. 1982), and *Coolidge*, 282 N.W.2d 511).

The supreme court concluded that “the amelioration doctrine requires the resentencing of a person whose conviction was not yet final on the effective date of section 18(b) of the [DSRA].” *Id.* at ___, 2017 WL 3161079, at *1. The supreme court also concluded that the legislature clearly intended to abrogate the amelioration doctrine where the applicable DSRA provisions became “effective August 1, 2016, and appl[y] to crimes committed on or after that date.” *State v. Otto*, ___ N.W.2d ___, ___, 2017 WL 3161109, at *2 (Minn. July 26, 2017) (quotation omitted).

Appellant asserts that the DSRA applies to reduce her conviction offense because no final judgment had been entered on her case when the DSRA took effect. We are not persuaded.

A felony stay of adjudication is treated as a sentence for appeal purposes, and a defendant may appeal a stay of adjudication as of right. *See State v. Allinder*, 746 N.W.2d 923, 924-26 (Minn. App. 2008) (citing Minn. R. Crim. P. 28.02, subd. 2(3)). As such, a direct appeal must be filed within 90 days of the imposition of the stay. Minn. R. Crim. P. 28.05, subd. 1 (providing time for taking sentencing appeal). A case is pending until the

time that direct appeals are exhausted or the time for filing a direct appeal has elapsed. *State v. Losh*, 721 N.W.2d 886, 893-94 (Minn. 2006).

Here, the district court stayed adjudication in November 2014. Appellant's case became final 90 days after the district court entered the stay of adjudication, and appellant did not appeal within this period. Accordingly, appellant's case was not pending on direct review when the DSRA went into effect, and the amelioration doctrine does not apply.

Appellant further asserts that the language of the DSRA does not expressly prohibit "retroactive" application of its provisions. We disagree.

As the Minnesota Supreme Court recently highlighted, a change in a law is retroactive when it applies to cases that have become final. *Kirby*, ___ N.W.2d at ___, 2017 WL 3161079, at *2. "No law shall be construed to be retroactive unless clearly and manifestly so intended by the legislature." Minn. Stat. § 645.21 (2016); *see also State v. Traczyk*, 421 N.W.2d 299, 300 (Minn. 1988), *as amended* (Minn. Mar. 4, 1988). "When a section or part of 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, subd. 1 (2016). We review the retroactivity of a statute de novo. *State v. Basal*, 763 N.W.2d 328, 335 (Minn. App. 2009).

Here, section 7 of the DSRA states that the amendments to fifth-degree controlled-substance crimes became "effective August 1, 2016, and appl[y] to crimes committed on or after that date." 2016 Minn. Laws ch. 160, § 7, at 585. The state asserts that the DSRA is unambiguous, and we agree. The legislature clearly established its intent to make this provision of the DSRA prospectively applicable to crimes committed on or after August 1,

2016. Accordingly, section 7 of the DSRA does not apply to reduce appellant's conviction offense when appellant committed her crime in April 2014.

Finally, appellant is not entitled to resentencing under section 18 of the DSRA. First, appellant's case was final on the effective date of section 18. *See Kirby*, ___ N.W.2d at ___, 2017 WL 3161079, at *2. Second, the guideline sentence for fifth-degree felony possession did not change under the DSRA. *Compare* Minn. Sent. Guidelines 4.C (2016), *with* Minn. Sent. Guidelines 4.A (2014).

Affirmed.