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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1790**

State of Minnesota,
Respondent,

vs.

Jawaun Tyrell Taylor,
Appellant.

**Filed August 28, 2017
Reversed and remanded
Bjorkman, Judge**

Blue Earth County District Court
File No. 07-CR-16-93

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

Patrick R. McDermott, Blue Earth County Attorney, Susan B. DeVos, Assistant County Attorney, Mankato, Minnesota (for respondent)

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

Considered and decided by Bjorkman, Presiding Judge; Hooten, Judge; and Randall,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges his sentence of first-degree aggravated robbery, arguing that the criminal-history score on which the sentence was based improperly included an out-of-state juvenile conviction. Because Taylor's sentence was based on an incorrect criminal-history score, we reverse and remand for resentencing.

FACTS

On June 9, 2016, appellant Jawaun Tyreell Taylor pleaded guilty to first-degree aggravated robbery in connection with an incident that occurred on January 7, 2016. Taylor's sentencing worksheet indicated a criminal-history score of 3, which included .5 points for a felony possession-of-stolen-property offense Taylor committed in Illinois when he was a juvenile. Respondent State of Minnesota did not present evidence regarding the nature of the Illinois offense or whether Taylor would have been certified as an adult if he had committed the offense in Minnesota. The district court imposed a 67-month, bottom-of-the-box, prison sentence based on a criminal-history score of 3. Taylor appeals.¹

DECISION

We review a district court's determination of a defendant's criminal-history score for abuse of discretion. *State v. Stillday*, 646 N.W.2d 557, 561 (Minn. App. 2002), review

¹ Taylor did not challenge his criminal-history score in the district court. But a sentence based on an incorrect criminal-history score is an illegal sentence that a defendant may challenge at any time. *State v. Maurstad*, 733 N.W.2d 141, 147 (Minn. 2007).

denied (Minn. Aug. 20, 2002). But interpretation of the sentencing guidelines presents a legal issue that we review de novo. *State v. Campbell*, 814 N.W.2d 1, 6 (Minn. 2012).

In calculating a defendant's criminal-history score, a district court assigns points for every felony conviction for which a felony sentence was stayed or imposed before the current sentencing, according to the current severity-level ranking of the prior offense. Minn. Sent. Guidelines 2.B.1 (Supp. 2015). Juvenile offenses committed in other jurisdictions "can be included in the adult history section only if the factfinder determines that it is an offense for which the offender would have been certified to adult court if it had occurred in Minnesota." Minn. Sent. Guidelines 2.B.5.e (Supp. 2015). The state has the burden of proving that the defendant would have been prosecuted as an adult if he committed a similar offense in Minnesota. *State v. Marquetti*, 322 N.W.2d 316, 319 (Minn. 1982); *State v. Thomas*, 374 N.W.2d 586, 588 (Minn. App. 1985).

The state concedes that Taylor's 2009 Illinois offense was improperly treated as an adult felony conviction because Taylor would not have been certified as an adult had he committed the offense in Minnesota. But the state argues that Taylor's criminal-history score was nonetheless correct because Taylor also has a 2006 Minnesota juvenile offense, which, when combined with the 2009 offense, supports assignment of one criminal-history point. The state's argument fails for two reasons. First, the Minnesota Sentencing Guidelines provide that one point is assigned for every two juvenile adjudications only if the adjudications result from "offenses committed after the offender's fourteenth birthday." Minn. Sent. Guidelines 2.B.4.a.(2) (Supp. 2015). Taylor was only 13 years old when he committed the 2006 offense. Second, the state did not meet its burden of proving by a

preponderance of the evidence the facts necessary to otherwise determine how Taylor's Illinois juvenile adjudication would be classified under Minnesota law. *State v. Outlaw*, 748 N.W.2d 349, 355 (Minn. App. 2008), *review denied* (Minn. July 15, 2008). In sum, the district court abused its discretion in assigning Taylor .5 points based on his 2009 Illinois juvenile offense.

Because we conclude that Taylor's sentence was based on an incorrect criminal-history score, we must decide a remedy. Taylor urges us to either reduce his sentence to 58 months' imprisonment or remand the issue to the district court for resentencing. We reverse and remand for the district court to resentence Taylor based on a criminal-history score of 2. *See Maurstad*, 733 N.W.2d at 151 (remanding to the district court for resentencing with the correct criminal-history score when the district court erred in its calculation).

Reversed and remanded.