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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0019**

State of Minnesota,
Respondent,

vs.

Michael John Nelles,
Appellant.

**Filed October 9, 2017
Affirmed in part, reversed in part, and remanded
Connolly, Judge**

Hennepin County District Court
File No. 27-CR-15-15289

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

Michael O. Freeman, Hennepin County Attorney, Linda K. Jenny, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Steven P. Russett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Ross, Judge; and Schellhas,
Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant argues that he is entitled to a reversal of his conviction and to resentencing under the 2016 Drug Sentencing Reform Act (DSRA), 2016 Minn. Laws, ch. 160. Because appellant was convicted of a controlled-substance offense for which the controlled-substance weight threshold was increased by section 3 of the DSRA before his conviction was final, he is not entitled to have the conviction reversed, and we affirm it; because 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, he is entitled to be resentenced, and we reverse and remand his sentence.

FACTS

In February 2015, police found 26.9 grams of methamphetamine in a drawer at the residence of appellant Michael Nelles and his girlfriend. Appellant told police the methamphetamine belonged to him. In June 2015, he was charged with first-degree possession of methamphetamine in violation of Minn. Stat. § 152.021, subd. 2(a)(1) (2014) (providing that possession of 25 or more grams of methamphetamine is a first-degree controlled-substance crime). In September 2015, he pleaded not guilty. He waived his right to a jury trial, and, in June 2016, he was found guilty after a bench trial. In October 2016, he was sentenced to prison for 114 months, the low end of the box for first-degree controlled-substance crime committed by a person with a criminal-history score (CHS) of four under the 2014 Sentencing Guidelines.

On appeal, appellant argues that he is entitled to have his conviction reversed and reduced under section 3 of the DSRA, providing in relevant part that, on or after August 1, 2016, possession of 25 or more grams of methamphetamine is a second-degree controlled-substance crime, and that he is entitled to be resentenced under section 18(b) of the DSRA, providing in relevant part that, as of May 23, 2016, the sentencing range for first-degree controlled-substance crimes committed by persons with a CHS of four is 75 to 105 months.

D E C I S I O N

“Statutory construction and interpretation of the sentencing guidelines are subject to de novo review.” *State v. Campbell*, 814 N.W.2d 1, 4 (Minn. 2012). The rules of statutory interpretation and construction are applied when interpreting the sentencing guidelines. *Id.*

1. The effect of the DSRA on appellant’s conviction

“A person convicted of a controlled substance offense for which the controlled substance weight threshold was increased by section 3 of the [DSRA] before his conviction was final is not entitled to have the conviction reversed.” *State v. Otto*, 899 N.W.2d 501, 502 (Minn. 2017). *Otto*, like this case, concerned a conviction for first-degree possession of methamphetamine prior to August 1, 2016. *Id.* “Because Otto committed his offense before the DSRA took effect, he is not entitled to have his conviction of first-degree possession reversed.” *Id.* at 504. *Otto* rejected the argument that the effective-date language should not apply to the portions of the DSRA that mitigate punishment, i.e. sections 3 and 4 (increasing the weight threshold for first- and second-degree possession

from 25 to 50 grams and 6 to 25 grams. *Id.* Under *Otto*, appellant is not entitled to have his conviction of first-degree possession reversed.

2. The effect of the DSRA on appellant's sentence

Under the DSRA amendments to the sentencing grid, a defendant is required to be resentenced “only if: (1) the Legislature made no statement that clearly establishes the Legislature’s intent to abrogate the amelioration doctrine; (2) the amendment mitigated punishment; and (3) final judgment had not been entered as of the date the amendment took effect.” *State v. Kirby*, 899 N.W.2d 485, 490 (Minn. 2017). Here, as in *Kirby*, final judgment had not been entered by August 1, 2016, so the third requirement is satisfied. *See id.*

As to the first requirement, *Kirby* concluded that “the Legislature made no statement that clearly establishes its intent to abrogate the amelioration doctrine with respect to DSRA § 18 [(reducing sentencing range for those convicted of first-degree possession)].” *Id.* at 495. Thus, the first requirement is met.

As to the second requirement, the issue is “whether the Legislature reduced the presumptive sentences from those in the sentencing grid under which [the defendant] was sentenced.” *Id.* Here, appellant’s CHS of four meant that the applicable sentence range was 114-160 months. Under the DSRA, the applicable sentence range for first-degree possession committed by those with a CHS of four is 90-126 months. Thus, the Legislature, in the DSRA, did reduce appellant’s presumptive sentence, and the second requirement is met. *See id.* at 496 (“The [DSRA] plainly mitigates punishment” for offender whose sentencing range was reduced “from 138 to 192 months to 110 to 153

months”); *see also Otto*, 899 N.W.2d at 504 (“For the reasons discussed in *Kirby*, we conclude that the amelioration doctrine requires that Otto be resentenced.”). Under *Otto* and *Kirby*, appellant is not entitled to have his first-degree conviction reversed and replaced with a second-degree conviction, but he is entitled to have his sentence reversed and to be resentenced under the DSRA.

Affirmed in part, reversed in part, and remanded.