

*This opinion will be unpublished and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
A17-0632**

State of Minnesota,
Respondent,

vs.

Steven Roger Jones,
Appellant.

**Filed March 5, 2018
Reversed
Kirk, Judge**

Dakota County District Court
File No. 19HA-CR-12-2353

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

James C. Backstrom, Dakota County Attorney, Deanna N. Natoli, Jessica A. Bierwerth,
Assistant County Attorneys, Hastings, Minnesota (for respondent)

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

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

UNPUBLISHED OPINION

KIRK, Judge

In this appeal from an amended sentencing order, appellant challenges the district
court's jurisdiction to reinstate a ten-year conditional-release term to his sentence for

failure to register as a predatory offender after his original sentence had expired. Because we conclude that the district court lacked jurisdiction to resentence appellant after it vacated the conditional-release term following the expiration of appellant's sentence, we reverse the court's order reinstating the conditional-release term.

D E C I S I O N

On August 7, 2012, appellant Steven Roger Jones pleaded guilty to and was convicted of failing to register as a predatory offender from July 4 to July 6, 2012, under Minn. Stat. § 243.166, subd. 5(a) (2010). There was no plea agreement for sentencing, but appellant was told that at most he would receive the top-of-the-box guidelines sentence of 24 months in prison. The district court scheduled the matter for sentencing and ordered a presentence investigation (PSI). The PSI did not indicate that appellant was a risk-level III predatory offender and stated that “[t]here is no conditional release for this offense.” On October 10, 2012, the district court sentenced appellant to 24 months, with eight of those months to be served on supervised release. Conditional release was not discussed at appellant's sentencing hearing, and no conditional-release term was imposed by the district court. Approximately two weeks later, on October 25, 2012, the district court filed an amended sentencing order adding a ten-year conditional-release term to appellant's sentence, and notice was served on appellant.

Under Minn. Stat. § 243.166, subd. 5a (2010), the district court must impose a ten-year conditional-release term in addition to any prison commitment for a predatory offender who commits a failure-to-register violation while assigned a risk-level III. “Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond

the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.” *Blakely v. Washington*, 542 U.S. 296, 301, 124 S. Ct. 2531, 2536 (2004) (quoting *Apprendi v. New Jersey*, 530 U.S. 466, 490, 120 S. Ct. 2348, 2363-64 (2000)). In *State v. Her*, the supreme court held that a district court may not impose a conditional-release term unless the defendant admits that he was a risk-level III predatory offender at the time of the offense or a jury makes that finding beyond a reasonable doubt at a *Blakely* hearing. 862 N.W.2d 692, 695-96 (Minn. 2015); see, e.g., *Reynolds v. State*, 874 N.W.2d 257, 263 (Minn. App. 2016) (reversing imposition of conditional-release term because defendant did not admit, and a jury did not find, that the defendant was a risk-level III offender at the time of the offense), *aff’d*, 888 N.W.2d 125 (Minn. 2016).

Here, shortly after appellant’s sentencing hearing, the district court imposed the ten-year conditional-release term required under Minn. Stat. § 243.166, subd. 5a, but did so absent an admission, or a jury finding, that appellant was a risk-level III predatory offender at the time of the offense, and no separate hearing was held. Appellant’s 24-month sentence, including supervised release, expired on July 4, 2014. In December 2015, in light of the *Her* decision, appellant moved the district court to vacate his conditional-release term pursuant to Minn. R. Crim. P. 27.03, subd. 9. On February 29, 2016, the district court vacated appellant’s conditional-release term and authorized the state to empanel a sentencing jury. On August 24, 2017, after appellant challenged the district court’s jurisdiction to empanel a sentencing jury to determine whether the conditional-release term could be re-imposed, the district court concluded that it had jurisdiction to empanel a sentencing jury and ordered the parties to appear for a hearing.

At the March 20, 2017 sentencing hearing, appellant waived his right to a jury, an evidentiary hearing was held, and the district court found that appellant was a risk-level III predatory offender when he violated his predatory-offender registration in July 2012. In the April 5, 2017 order, which appellant now challenges, the district court reinstated appellant's ten-year conditional-release term as of February 29, 2016, the date the previous conditional-release term was vacated. Neither the February 2016 order vacating the conditional-release term, nor the August 2017 order finding that the district court had jurisdiction, is before this court on appeal, but we may review them as justice requires and because they are orders affecting the judgment from which this appeal is taken. Minn. R. Civ. App. P. 103.04; Minn. R. Crim. P. 28.02, subd. 11.

On appeal, appellant challenges the procedure by which the district court reinstated the conditional-release term. Appellant argues that the district court lacked jurisdiction to reinstate the provision after vacating it in February 2016 because his sentence had already expired. The state argues that the district court had the authority to empanel a sentencing jury and that Minn. R. Crim. P. 27.03, subd. 9, allowed the district court to reinstate the conditional-release term mandated by Minn. Stat. § 243.166, subd. 5a.

“Questions concerning the authority and jurisdiction of the lower courts are legal issues subject to de novo review.” *State v. Pflepsen*, 590 N.W.2d 759, 763 (Minn. 1999). “The court may at any time correct a sentence not authorized by law.” Minn. R. Crim. P. 27.03, subd. 9. A district court may correct an unauthorized sentence without violating due process, where a defendant has notice that a correction is required and has not developed a crystallized expectation as to the finality of his or her sentence. *See State v.*

Calmes, 632 N.W.2d 641, 648 (Minn. 2001) (upholding the reinstatement of a statutorily required conditional-release term after the appellant’s prison sentence expired but while the appellant remained on supervised release). However, “[t]he expiration of a sentence operates as a discharge that bars further sanctions for a criminal conviction.” *State v. Purdy*, 589 N.W.2d 496, 498 (Minn. App. 1999). “Once a sentence has expired, the court no longer has jurisdiction to modify even what may be an unauthorized sentence.” *Martinek v. State*, 678 N.W.2d 714, 718 (Minn. App. 2004) (citing *Purdy*, 589 N.W.2d at 498-99).

Appellant’s prison term, including supervised release, terminated on July 4, 2014, and his ten-year conditional-release term commenced at that time. Accordingly, appellant was on conditional release, albeit improperly, when the district court granted his request to vacate his conditional-release term in February 2016 following the *Her* decision. By vacating appellant’s conditional-release term, appellant’s sentence for his failure-to-register conviction became complete, and appellant was effectively discharged. “[I]f appellant had not been discharged from his sentence, an amended sentencing order could be entered imposing a conditional-release term.” *Id.* But because appellant was discharged, the district court no longer had jurisdiction to resentence him or to reinstate his conditional-release term in its April 5, 2017 order.

The district court’s April 5 resentencing order purported to deny appellant’s motion to vacate his ten-year conditional-release term, but that language is misguided because the district court had already granted appellant’s motion to vacate the conditional-release term in its February 2016 order. Had the district court denied appellant’s motion to vacate the

conditional-release term, then held a separate hearing to address whether appellant was a risk-level III predatory offender when he committed the failure-to-register offense, perhaps the district court may have retained its jurisdiction. *See Hankerson v. State*, 723 N.W.2d 232, 233, 236, 240-41 (Minn. 2006) (holding that the district court had the authority to empanel a sentencing jury to evaluate the aggravated-sentencing factors, where the district court initially denied a motion to vacate an aggravated sentence and the appellant's underlying sentence had not expired, and that this procedure was constitutional, provided that the necessary findings were made and a longer sentence was not ultimately imposed); *see also Her*, 862 N.W.2d at 695 (noting that a conditional-release term is a component of a defendant's sentence and is subject to a similar rule as an aggravated sentence).

Instead, the district court vacated the conditional-release term before resentencing appellant, and thereby discharged appellant's sentence because his underlying sentence had already expired. By doing so, the district court divested itself of its jurisdiction to resentence appellant. Based on this record, the district court's lack of jurisdiction is dispositive, and we need not address the other arguments raised by appellant.

Reversed.