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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0725**

State of Minnesota,
Respondent,

vs.

Karissa Marie Lash,
Appellant.

**Filed March 12, 2018
Reversed and remanded
Bjorkman, Judge**

Hennepin County District Court
File No. 27-CR-15-31764

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

Michael O. Freeman, Hennepin County Attorney, Brittany D. Lawonn, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Rodenberg, Presiding Judge; Bjorkman, Judge; and
Smith, Tracy M., Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges her sentence for third-degree possession of a controlled substance, arguing that the district court erred by imposing a sentence that was contrary to her plea agreement. We reverse and remand.

FACTS

On November 4, 2015, airport police notified Minneapolis police officers that they had intercepted a package containing over 50 grams of cocaine. The package was addressed to the Minneapolis residence of appellant Karissa Marie Lash. Police allowed the package to be delivered, and obtained and executed a search warrant the next day. They recovered 20 grams of cocaine in the freezer, the original packaging, and a white powdery residue in and around the toilet in an area where a male occupant fled when he observed police approaching the house. Lash was charged with first-degree sale of ten grams or more of a controlled substance in violation of Minn. Stat. § 152.021, subd. 1(1) (2014).

Pursuant to an agreement with the state, Lash pleaded guilty to an amended third-degree-possession charge. At her guilty plea hearing, the parties described the agreement as follows: in exchange for pleading guilty to the reduced charge, Lash would be sentenced to “a stay of imposition with five years of probation,” contingent upon her being “accepted into Model Drug Court.”¹ If she was not accepted into Model Drug Court, Lash would “be sentenced to a 21-month stay of execution and three years of probation.”

¹ The Model Drug Court is now referred to as a Treatment Court. Minn. Jud. Branch, *Treatment Courts*, <http://www.mncourts.gov/Help-Topics/Treatment-Courts.aspx> (last

Before accepting the plea, the district court inquired whether, in addition to a chemical-dependency assessment and interview with the Model Drug Court, Lash should be referred for a presentence investigation (PSI). The prosecutor responded, “Your Honor, I don’t believe that’s necessary under the terms of our negotiation,” to which the court replied, “Okay. Then I would assume you’re waiving that to take part in the Drug Court assessment, and then . . . you’ll be back . . . for sentencing.” The district court referred Lash to probation for a chemical-health assessment and for a “RANT (Risk and Needs Triage).” The PSI box on the referral form was not marked.

Lash was later determined ineligible for Model Drug Court. A new probation referral form was issued that required her to participate in a PSI. At the time of her sentencing on February 9, 2017, Lash had not done so.² During the sentencing hearing before a different judge, the prosecutor emphasized the severity of Lash’s original charge and underlying conduct, and her failure to comply with the PSI referral. Citing both of the prosecutor’s arguments, the district court imposed a 21-month stayed sentence and five years of probation—two years longer than the agreed-to period. Lash appeals.

visited Feb. 23, 2018). Disposition options available to a Treatment Court “include extended probation, frequent appearances before a judge, frequent meetings with probation officers, staggered sentencing . . . , and regular alcohol and other drug testing.” *Id.*

² Lash asserts that she did not personally receive a copy of the PSI referral form. But shortly before sentencing, Lash’s probation officer notified the district court that Lash “failed to contact Probation to schedule a meeting for the PSI until February 2, 2017.”

DECISION

“It is well settled that an unqualified promise which is part of a plea arrangement must be honored” *Kochevar v. State*, 281 N.W.2d 680, 687 (Minn. 1979). When such a promise is breached, a court “‘may allow withdrawal of the plea, order specific performance, or alter the sentence if appropriate.’” *James v. State*, 699 N.W.2d 723, 728-29 (Minn. 2005) (quoting *State v. Brown*, 606 N.W.2d 670, 674 (Minn. 2000)). The interpretation and enforcement of plea agreements are issues of law that we review de novo. *State v. Montez*, 899 N.W.2d 200, 203 (Minn. App. 2017) (citing *State v. Rhodes*, 675 N.W.2d 323, 326 (Minn. 2004)).

Lash argues that the district court erred by imposing a sentence that was contrary to her plea agreement by basing the sentence in part on her failure to participate in a PSI, which the state had waived. Because the plea agreement was breached, we agree with Lash.

In exchange for Lash’s guilty plea, the state made an unqualified promise regarding her sentence. If eligible for Model Drug Court, Lash would receive a stay of imposition and be placed on probation for five years. If she was not eligible for Model Drug Court, the district court would impose a 21-month stayed sentence and place Lash on probation for three years. The district court accepted the plea agreement. Lash received neither of the agreed-to sentences. The disjunctive aspect of the plea did not alter its unqualified nature: Lash was to receive one of two mutually exclusive sentences; the agreement did not include any other sentencing option. When Lash was not accepted into Model Drug Court, the district court’s only sentencing option was to impose a 21-month stayed sentence

with three years of probation. Accordingly, we reverse and remand for resentencing in conformity with Lash's plea agreement.

Reversed and remanded.