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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A17-0932**

State of Minnesota,  
Respondent,

vs.

Reynaldo NMN Espino,  
Appellant.

**Filed January 16, 2018  
Affirmed  
Rodenberg, Judge**

Aitkin County District Court  
File No. 01-CR-16-176

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

James P. Ratz, Aitkin County Attorney, Nathan Benusa, Assistant County Attorney,  
Aitkin, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rachel F. Bond, Assistant Public  
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Worke, Judge; and Rodenberg,  
Judge.

**UNPUBLISHED OPINION**

**RODENBERG, Judge**

Appellant Reynaldo Espino challenges the \$500 fine included in his sentence after  
he was convicted of fifth-degree possession of a controlled substance in violation of Minn.

Stat. § 152.025, subd. 2(a)(1) (2014). He argues that the district court should have imposed the minimum fine of \$50, because he qualified for public-defender services. Because the sentence was within the district court's discretion, we affirm.

### **FACTS**

On February 26, 2016, law enforcement responded to a report regarding an assault and robbery at a hotel. Officers made contact with appellant as someone involved in the incident. The officers spoke with him, frisked him, and secured appellant in a squad car. Appellant was asked to empty his pockets. When appellant did so, one of the things he removed from his pockets was a bottle of prescription methadone not prescribed to him. A second bottle of methadone was located by law enforcement following a search of the hotel room involved in the incident. Appellant was charged with fifth-degree possession of a controlled substance in violation of Minn. Stat. § 152.025, subd. 2(a)(1).

A public defender was appointed to represent appellant because appellant was unable to pay for a private attorney. Appellant pleaded guilty to the charged offense. There was no plea agreement. Appellant admitted to possessing the methadone. He testified that he took it away from his significant other because she was using alcohol and abusing the methadone, for which she had a prescription. At sentencing, defense counsel argued for the imposition of the statutory minimum fine of \$50 because appellant qualified for a public defender and, because he had been in jail, he had lost his housing, his personal belongings, his car, and his job. The district court sentenced appellant to 24 months in prison, but stayed the execution of the sentence and placed appellant on probation for five years. The district court also ordered appellant to pay a fine of \$500 along with other applicable

charges that increased his total financial obligation to \$587. The district court further ordered that appellant had the option of satisfying the \$500 fine through community service and could also pay on a payment plan. Appellant's sentence was a downward dispositional departure from the presumptive guidelines sentence of 21 months in prison. The district court found the departure appropriate because appellant was amenable to probation and chemically dependent.

This appeal followed.

### **D E C I S I O N**

Appellant argues that the district court erred by failing, without explanation, to impose the minimum fine of \$50 available for defendants who qualify for the services of a public defender, pursuant to Minn. Stat. § 609.101, subd. 5(b) (2014).

While the legislature has the power “to fix the limits of punishment for criminal acts[,]” “the imposition of [a] sentence within the limits set by the legislature is purely a judicial function.” *State v. Lambert*, 392 N.W.2d 242, 243 (Minn. 1986). “The [district] court exercises its discretion when it imposes a sentence.” *State v. Martinson*, 460 N.W.2d 342, 343 (Minn. App. 1990), *review denied* (Minn. Oct. 25, 1990). We review a sentence imposed by the district court for abuse of this discretion. *State v. Franklin*, 604 N.W.2d 79, 82 (Minn. 2000). “The district court has broad discretion to impose significantly lower fines if it makes specific findings that immediate payment of the fine would create undue hardship for the convicted person.” *State v. Rewitzer*, 617 N.W.2d 407, 412 (Minn. 2000). But, “a sentencing judge need not specifically find that a defendant has the ability to pay a

fine before imposing the fine as part of the defendant's sentence." *Perkins v. State*, 559 N.W.2d 678, 693 (Minn. 1997).

The minimum fines for controlled substance offenses may not be less than 30% of the maximum fine. Minn. Stat. § 609.101, subd. 3(a) (2014). The maximum fine for appellant's fifth-degree controlled substance conviction is \$10,000. Minn. Stat. § 152.025, subd. 1(a) (2014). The 30% minimum would therefore be \$3,000. However, Minn. Stat. § 609.101, subd. 5(b), also provides that

[i]f the defendant qualifies for the services of a public defender or the court finds on the record that the convicted person is indigent or that immediate payment of the fine would create undue hardship for the convicted person . . . , the court may reduce the amount of the minimum fine to not less than \$50.

And, "the court may permit the defendant to perform community work service in lieu of a fine. . . . The court also may authorize payment of the fine in installments." Minn. Stat. § 609.101, subd. 5(b)-(c) (2014). Appellant points to no statutory requirement that a district court must reduce an indigent defendant's fine to \$50. The statutory language is permissive.

Here, appellant's defense counsel argued at his sentencing hearing that the district court should impose a minimum fine because appellant had no income or assets from which to pay a fine, due to his incarceration. Appellant qualified for a public defender, which would have permitted the district court to reduce his fine to a minimum amount of \$50 pursuant to Minn. Stat. § 609.101, subd. 5(b). The district court did not address appellant's minimum-fine argument on the record during sentencing and imposed a \$500 fine, which appellant now argues was error. It did, however, impose a fine of less than 30% of the

statutory maximum, based apparently on appellant's indigence. The district court also provided in its sentence that appellant could satisfy his \$500 fine through community service work and informed appellant about the availability of a payment plan. As stated above, the district court "need not specifically find that a defendant has the ability to pay a fine before imposing the fine." *Perkins*, 559 N.W.2d at 693. The district court was under no obligation to make additional findings regarding appellant's ability to pay. The district court acted well within its discretion when it imposed a fine of \$500 as part of appellant's sentence.

**Affirmed.**