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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1509
A17-1510**

State of Minnesota,
Respondent,

vs.

Heather Marie Krumrie,
Appellant.

**Filed June 18, 2018
Affirmed in part, reversed in part, and remanded
Connolly, Judge**

Freeborn County District Court
File No. 24-CR-17-110

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

David J. Walker, Freeborn County Attorney, Albert Lea, Minnesota (for respondent)

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

Considered and decided by Connolly, Presiding Judge; Worke, Judge; and Smith,
John, Judge.*

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

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant challenges her conviction and sentence, arguing that her guilty plea was invalid because it lacked an accurate factual basis and her criminal-history score (CHS) was incorrectly calculated because the offense leading to her 2010 conviction has been reduced to a misdemeanor by the Drug Sentencing Reform Act (DSRA). Because a sufficient factual basis supports appellant's conviction, we affirm it; because the record does not include sufficient information on the offense leading to appellant's 2010 conviction, we reverse her sentence and remand for the state to further develop the record.

FACTS

In January 2017, appellant Heather Krumrie was charged in file 24-CR-17-110 (file 110) with fifth-degree possession of a controlled substance, fourth-degree assault, and introducing contraband into jail. She also received a trespass notice from a store.

In February 2017, appellant violated the trespass notice and returned to the store, where she was seen removing socks from her purse and trying to put them on a shelf. Police informed her that she was under arrest for shoplifting. She struggled with the police when they tried to handcuff her and was taken to jail. As a result of this incident, appellant was charged in file 24-CR-17-306 (file 306) with fifth-degree possession of a controlled substance, third-degree burglary, and obstruction of legal process.

The two files were combined for resolution. Appellant pleaded guilty to fifth-degree possession of a controlled substance and introducing contraband into jail in file 110 and to

fifth-degree possession of a controlled substance, amended fourth-degree burglary, and obstruction of legal process in file 306.

Appellant's sentencing worksheet showed one point for misdemeanor/gross misdemeanor offenses from 2008 through 2017 and two and a half points for felonies: half a point for fifth-degree controlled-substance crime in 2010, one and a half points for third-degree controlled-substance sale in 2013, and half a point for "Drugs –5th Degree – Possess Schedule 1,2,3,4 – Not Small Amount Marijuana" in 2017. A felony-point total is rounded down to the nearest whole number, making appellant's felony CHS two points.¹ Thus, she had a CHS of three (one misdemeanor/gross misdemeanor point and two felony points).

Based on the CHS of three, the district court sentenced appellant in file 110 to a stay of imposition on fifth-degree controlled-substance crime and to time served on introducing contraband; in file 306, she was sentenced to 15 months, stayed for five years, on fifth-degree controlled-substance crime and to time served on fourth-degree burglary and obstructing legal process.

Following a probation violation, the stay of imposition in file 110 was vacated and appellant was sentenced to 13 months, stayed for five years; an intermediate sanction of 60 days in jail was added to the sentence in file 306.

The appeals for the two files were consolidated. Appellant challenges her conviction of fourth-degree burglary on the ground that her guilty plea lacked a sufficient factual basis and her sentence on the ground that her CHS was two, not three, because the

¹ Minn. Sent. Guidelines, 2.B.1.i. (2016).

fifth-degree controlled-substance offense committed in 2010 may have been reduced to a gross misdemeanor by the DSRA.

DECISION

1. Guilty Plea

“Assessing the validity of a plea presents a question of law that we review de novo.”

State v. Raleigh, 778 N.W.2d 90, 94 (Minn. 2010).

Appellant pleaded guilty to fourth-degree burglary with an underlying crime of misdemeanor disorderly conduct. The district court asked appellant if she understood that, because of her previous offense in the store, she would commit trespass if she entered it, and that, if she committed another crime in the store, “that could even bump it up to a burglary.” Appellant answered “Yes.” The court then questioned her:

Q. And so while you were in there [i.e., in the store], do you agree that your conduct was disorderly?

A. Yes, I do.

Q. Sufficiently to be charged as Disorderly Conduct . . . ?

A. Yes.

Q. You fought with them? You argued with them?

A. Yes.

Q. You didn’t cooperate with them?

A. Yes.

Q. They tried to cuff you. You wrestled, fought. You were thrown to the floor. They had to roll you over and put cuffs on you and drag you out [of the store]?

A. Yes.

Q. And you would agree that that was probably disruptive and alarming and probably frightened some folks in the store itself?

A. Yes.

....

Q. [W]hile you were there, when law enforcement showed up, they were . . . trying to get you out of the store, trying to arrest you?

A. Yes.

....

Q. Did they say, "You're under arrest?"

A. Yes.

Q. Did they say, "You're coming with me"?

A. Yes.

Q. Did you refuse to do so?

A. Yes.

Q. What'd you do?

A. I fought with them.

Q. Tell me exactly what happened.

A. I pushed them away. Kept pushing them.

....

Q. . . . Was it totally passive?

A. It wasn't passive.

Q. What was it?

A. It was aggressive.

....

Q. Did you hit?

A. Maybe.

Q. Did you kick?

A. I'm sure.

....

Q. So it was a pretty good struggle?

A. Yes.

Q. It – it could be fairly described as a fight?

A. It could.

Appellant's attorney also questioned her.

Q. . . . [S]pecifically, when you were in the store . . . your conduct in the store, is it true that . . . officers, first of all, had confronted you within the . . . store?

A. Yes.

....

Q. And is it true that you told the officers . . . basically, that you didn't give a f---, five times . . . in the store?

A. Yes.

Q. And you were – you were saying that loudly?

A. Yes.

Q. And there was some other language that you used, as well?

A. Yes.

Q. And you weren't being cooperative with the officers' request that you exit the store?

A. No.

Q. And under the circumstances, given what you were doing, your presence in the store having been subject to a trespass notice, your language toward the officer, that was something that was conduct that reasonably would have aroused alarm or resentment in others. Is that –is that true?

A. Yes.

A person is guilty of disorderly conduct who “(1) engages in brawling or fighting; or . . . (3) engages in offensive, obscene, abusive, boisterous, or noisy conduct or in offensive, obscene, or abusive language tending reasonably to arouse alarm, anger, or resentment in others.” Minn. Stat. § 609.72, subd. 1 (2016). Appellant's answers to the questions asked by the district court and by her attorney provide an ample factual basis for her guilty plea to fourth-degree burglary with an underlying crime of misdemeanor disorderly conduct.

Appellant claims that “[t]he complete record, including the complaint and [appellant's] statements at the plea hearing, suggests that any criminal disorderly conduct occurred after the police escorted her from the store.” But the record before the district court at the time it found appellant guilty included her testimony at the hearing, and that testimony makes it clear that appellant committed disorderly conduct while in the store by refusing to leave until dragged out, fighting and arguing with the police, and using loud, alarming language.

The fact that the complaint notes that appellant also engaged in disorderly conduct after she was taken outside the store does not invalidate appellant's guilty plea to fourth-degree burglary, which is supported by sufficient evidence.

II. Sentencing

The district court's determination of a defendant's CHS will not be reversed absent an abuse of discretion. *State v. Stillday*, 646 N.W.2d 557, 561 (Minn. App. 2002), *review denied* (Minn. Aug. 20, 2002).

At the sentencing hearing, the district court said

I have a sentencing worksheet indicating . . . that you are here for sentencing on another fifth-degree possession charge. . . . And in this one, your criminal history score [(CHS)] is three, meaning the presumptive disposition in this case is a stay, or a probationary term, and the presumptive duration is 15 months in prison, should you execute this.

Do both counsel agree with the worksheet?

Both counsel answered, "Yes." The presumptive sentence for fifth-degree controlled-substance crime for an individual with a CHS of three is 15 months, stayed; the presumptive sentence for an individual with a CHS of two is 13 months, stayed.

Appellant now argues that her CHS was actually two, not three, because, under the DSRA, a fifth-degree controlled-substance offense is now "generally a gross-misdemeanor offense," not a felony offense. But appellant's 2017 fifth-degree possession offense was a felony and demonstrates that the DSRA did not convert *all* fifth-degree possession offenses to gross misdemeanors. Appellant is aware of this; she argues that the DSRA "reduced the severity of *most* fifth-degree controlled-substance possession offenses." (Emphasis added.)

Fifth-degree controlled-substance crimes can be either sale or possession. The DSRA did not change the sentence for sale crimes, and it changed the sentence for possession of nonheroin controlled substances only if the amount was "less than 0.25 grams

or one dosage unit or less if the controlled substance was possessed in dosage units.” See Minn. Stat. § 152.025, subd. 4(a) (2016).

It is not known whether appellant’s 2010 conviction for fifth-degree controlled-substance crime was for sale, in which case the DSRA would not have reclassified the felony as a gross misdemeanor, or for possession, in which case the DSRA might have reclassified it as a gross misdemeanor, depending on what the substance was and what amount of it was possessed.

When “the record [did] not indicate that the state ha[d] proved that at least five of [a defendant’s] prior [out-of-state] convictions [were] felonies under Minnesota law,” the sentence based on a determination that the prior convictions *were* felonies was reversed and remanded. *State v. Outlaw*, 748 N.W.2d 349, 355 (Minn. App. 2008), *review denied* (Minn. July 15, 2008). On remand, because the defendant “did not object to the district court’s determination that his out-of-state convictions were felonies[,]” the state was “permitted to further develop the sentencing record so that the district court [could] appropriately make its determination.” *Id.* at 356. Thus, the appropriate remedy here is reversing the sentence and remanding it to the district court so the state can provide factual details of appellant’s 2010 fifth-degree controlled-substance offense relevant to determining whether it would now be classified as a felony or as a gross misdemeanor.

Affirmed in part, reversed in part, and remanded.