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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1537**

State of Minnesota,
Respondent,

vs.

Nur Idor Elmi,
Appellant.

**Filed August 27, 2018
Affirmed
Reilly, Judge**

Stearns County District Court
File No. 73-CR-16-4822

Lori Swanson, Attorney General, Edwin W. Stockmeyer, Assistant Attorney General, St. Paul, Minnesota; and

Janelle Kendall, Stearns County Attorney, St. Cloud, Minnesota (for respondent)

Eric L. Newmark, Newmark Storms Law Office LLC, Minneapolis, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Larkin, Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

REILLY, Judge

Appellant Nur Idor Elmi challenges his conviction for third-degree criminal sexual conduct on the ground that Minn. Stat. § 609.344, subd. 1(b) (2016), violates his equal-

protection and substantive-due-process rights by limiting the mistake-of-age defense to defendants no more than 120 months older than their victims. We affirm.

D E C I S I O N

Appellant challenges the constitutionality of Minn. Stat. § 609.344, subd. 1(b), on equal-protection and substantive-due-process grounds. The equal protection clause of the United States Constitution “requires the state to treat similarly situated individuals alike,” while “[d]ue process demands that a statute not be an unreasonable, arbitrary or capricious interference and requires at minimum that the statute bear a rational relation to the public purpose sought to be served.” *Studor, Inc. v. State*, 781 N.W.2d 403, 408, 410 (Minn. App. 2010) (quotations and citations omitted). The constitutionality of a statute presents a question of law subject to de novo review. *State v. Melde*, 725 N.W.2d 99, 102 (Minn. 2006). A reviewing court presumes that “Minnesota statutes are constitutional and will strike down a statute as unconstitutional only if absolutely necessary.” *State v. Cox*, 798 N.W.2d 517, 519 (Minn. 2011) (citation omitted). “To prevail, a party challenging the constitutionality of a statute must demonstrate beyond a reasonable doubt that the statute violates a constitutional provision.” *Id.*

Appellant does not satisfy that burden here. In May 2016, appellant, who was 26 years old, had sexual intercourse with a 15-year-old child. The state charged appellant with third-degree criminal sexual conduct in violation of Minn. Stat. § 609.344, which provides:

A person who engages in sexual penetration with another person is guilty of criminal sexual conduct in the third degree if . . . the complainant is at least 13 but less than 16 years of age and the actor is more than 24 months older than the complainant. In any such case if the actor is no more than 120

months older than the complainant, it shall be an affirmative defense, which must be proved by a preponderance of the evidence, that the actor reasonably believes the complainant to be 16 years of age or older. In all other cases, mistake as to the complainant's age shall not be a defense.

Id., subd. 1(b).

Appellant waived his right to a jury trial and filed a motion seeking to present a mistake-of-age defense. Following a court trial, the district court found appellant guilty beyond a reasonable doubt. The court found that a preponderance of the evidence supported a determination that appellant, who was born in January 1990, was 131 months older than the victim, who was born in December 2000. Based on that finding, the district court rejected appellant's motion to assert a mistake-of-age defense, reasoning that because appellant was 131 months older than the victim, the mistake-of-age defense was unavailable to him under a plain reading of the statute. Appellant does not challenge the district court's factual findings on appeal, but instead argues that the statute denies him due process and equal protection of the law.

Appellant's argument is unavailing. A recent Minnesota Supreme Court decision holds unequivocally that section 609.344, subdivision 1(b), does not violate a defendant's substantive-due-process or equal-protection rights by limiting the mistake-of-age defense to defendants who are less than 120 months older than their child-victims. *State v. Holloway*, ___ N.W.2d ___, ___, 2018 WL 3637371, at *5-7 (Minn. 2018). The 44-year-old defendant in *Holloway* was charged with third- and fourth-degree criminal sexual conduct for engaging in sexual acts with a 14-year-old child. *Id.* at ___, 2018 WL 3637371, at *2. The defendant challenged his conviction on the ground that the statutes violated his

substantive-due-process and equal-protection rights. *Id.* at ___, 2018 WL 3637371, at *3. The supreme court rejected his argument and concluded that the statutes did not violate Holloway's substantive-due-process or equal-protection rights. *Id.* at ___, 2018 WL 3637371, at *5-7. In light of the *Holloway* decision, we conclude that Minn. Stat. § 609.344, subd. 1(b), does not violate appellant's substantive-due-process or equal-protection rights, and we therefore affirm his conviction.

Affirmed.