

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1084**

State of Minnesota,
Respondent,

vs.

Victor Arden Barnard,
Appellant.

**Filed January 22, 2019
Reversed and remanded
Klaphake, Judge***

Pine County District Court
File No. 58-CR-14-283

Keith M. Ellison, Attorney General, St. Paul, Minnesota; and

Reese Frederickson, Pine County Attorney, Pine City, Minnesota (for respondent)

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

Considered and decided by Worke, Presiding Judge; Bjorkman, Judge; and
Klaphake, Judge.

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

UNPUBLISHED OPINION

KLAPHAKE, Judge

Appellant Victor Arden Barnard challenges his sentence, arguing that the district court erred by increasing the amount of his fines on remand. Because a district court may not impose a greater sentence on remand than the sentence originally imposed, we reverse and remand for imposition of fines in an amount equal to the fines imposed in Barnard's original sentence.

DECISION

The supreme court has held that, as a matter of judicial policy, Minnesota courts may not impose a more severe sentence after a case has been remanded for a new trial. *State v. Holmes*, 161 N.W.2d 650, 652 (Minn. 1968).¹ The supreme court adopted the view “that any increase in penalty upon a retrial inevitably discourages a convicted defendant from exercising his legal rights and is contrary to public policy.” *Id.* at 653. In *State v. Prudhomme*, the supreme court extended this rule to resentencing on remand after an appeal. The court found this difference “insignificant” and held that to allow the imposition of a greater sentence than that originally imposed would “violate the spirit of the *Holmes* case,” 228 N.W.2d 243, 245-46 (Minn. 1975).

¹ We note that in *State v. Vang*, Justice Stras argued in a concurring opinion that the supreme court should overrule *Holmes* and follow federal precedent, which allows imposing a greater sentence on remand under certain circumstances. 847 N.W.2d 248, 269 (Minn. 2014) (Stras, J. concurring). However, the majority opinion declined to reach that issue, and *Holmes* remains binding precedent in Minnesota. *Id.*

In this case, Barnard pleaded guilty to two counts of criminal sexual conduct. The district court originally sentenced Barnard to consecutive 180-month prison terms for each count, an upward durational departure, and a \$50 fine for each count. Barnard appealed the length of his sentence, and we reversed his sentence and remanded for imposition of a guideline sentence. *State v. Barnard*, A17-0116, 2017 WL 5559905, at *3 (Minn. App. Nov. 20, 2017), *review denied* (Minn. Jan. 24, 2018). On remand, the district court sentenced Barnard to consecutive 144-month prison terms for each count and increased his fines to \$12,000 on each count. This increase in Barnard's fines is not permitted under *Holmes and Prudhomme*. Accordingly, we reverse and remand for the district court to impose a \$50 fine for each count, in accordance with the fines imposed in appellant's original sentence.

Reversed and remanded.