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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1263**

William Marcus Daniel Edwards, petitioner
Appellant

vs.

State of Minnesota,
Respondent.

**Filed June 24, 2019
Affirmed
Bratvold, Judge**

Blue Earth County District Court
File No. 07-CR-12-4272

Cathryn Middlebrook, Chief Appellate Public Defender, Chang Y. Lau, Assistant Public Defender, Maria Mulvihill (certified student attorney), St. Paul, Minnesota (for appellant)

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

Patrick R. McDermott, Blue Earth County Attorney, Mankato, Minnesota; and

Scott A. Hersey, Special Assistant County Attorney, Minnesota County Attorneys Association, St. Paul, Minnesota (for respondent)

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

UNPUBLISHED OPINION

BRATVOLD, Judge

Appellant challenges the postconviction court's denial of his motion to correct his sentence, arguing that the sentencing court erred when it imposed a lifetime conditional-release term. Because the sentencing court convicted appellant of two sex offenses at the same hearing, one immediately after the other, appellant had a prior sex-offense conviction when he was convicted of the second sex offense. Therefore, the sentencing court lawfully ordered a lifetime conditional-release term, and we affirm.

FACTS

In October 2012, appellant William Marcus Daniel Edwards assaulted a 13-year-old victim in the playground area of a park (October 2012 sex offense). In November 2012, he assaulted a 12-year-old victim at his home (November 2012 sex offense). A police officer spoke with the second victim, who stated that she had been raped at an apartment complex in Lake Crystal by a 21-year-old male she only knew as "William." The officer determined that Edwards was the likely suspect and located him. Edwards confessed to having intercourse with the victim five times on the night of November 13, 2012.

For the November 2012 sex offense, the state charged Edwards with five counts of first-degree criminal sexual conduct under Minn. Stat. § 609.342, subd. 1(a) (2012). Approximately two months later, the state charged Edwards with six counts for the October 2012 sex offense, including two counts of first-degree criminal sexual conduct

under Minn. Stat. § 609.342, subd. 1(e) (2012), one count of second-degree criminal sexual conduct under Minn. Stat. § 609.343, subd. 1(e) (2012), and three counts of third-degree criminal sexual conduct under Minn. Stat. § 609.344, subd. 1 (2012).

Edwards, his counsel, and the state appeared for a plea hearing involving both complaints. The parties agreed that Edwards would plead guilty to one count of third-degree criminal sexual conduct for the October 2012 sex offense, and one amended count of third-degree criminal sexual conduct for the November 2012 sex offense. All other charges would be dismissed, and the state would recommend an executed sentence of 60 months for the November 2012 sex offense, and concurrent sentencing. Edwards's attorney stated that "[i]t's anticipated that Mr. Edwards will be subjected to the mandatory and lifetime conditional release provisions, but that's to be determined." Edwards signed and filed a rule 15 petition to enter a guilty plea. The petition, in relevant part, stated that the period of conditional release is "LIFE (expected)."¹

Under oath, Edwards pleaded guilty to count four (third-degree criminal sexual conduct) for the October 2012 sex offense and amended count six (third-degree criminal sexual conduct) for the November 2012 sex offense. Edwards also testified to a factual basis for each offense. At the end of the plea hearing, the sentencing court "conditionally accept[ed]" the plea petition, ordered a presentence investigation (PSI), and scheduled the sentencing hearing.

¹ Edwards's rule 15 petition also stated that he anticipated being "subjected to the mandatory lifetime conditional release provisions."

The PSI report stated that Edwards’s presumptive sentence for the October 2012 sex offense was a 36-month stay of execution, and his presumptive sentence for the November 2012 sex offense was 62 months in prison.

The parties appeared for a sentencing hearing in March 2013; unfortunately, no transcript is available.² The limited record of the March hearing suggests that it included some argument by both the state and defense counsel on the appropriate sentence and a victim-impact statement, but then was rescheduled because of errors in the sentencing guidelines worksheet.

The parties again appeared for a sentencing hearing in April 2013. The state recommended a 60-month executed sentence for the November 2012 sex offense and the guidelines sentence for the October 2012 sex offense. Edwards’s attorney relied on her March 2013 argument and written memorandum, which requested a 60-month executed sentence and a mandatory “10 year period of conditional release.” After Edwards made a statement, the following exchange occurred:

The Court: Very well. Thank you sir. I think we covered this at the last hearing, but I want to make sure that we look at it again. Um, the—I’ll—*my inclination is go along with the agreement which would be at the sixty month range on [the November 2012 sex offense] rather than the sixty-two—that’s the middle of the—the middle of the grid.*

On the [October 2012 sex offense], the thirty-six month stay would be eaten up by the forty months [of custody] in the other file if you want to execute that sentence. My minutes

² Edwards’s appellate counsel attempted to order a transcript of the sentencing hearing, but his request was returned by the court reporter with the comment, “no audio to transcribe[]—[d]efective CD—unable to restore.” The sentencing court, prosecutor, and defense counsel briefly discussed the March 2013 hearing at the beginning of the April 2013 sentencing hearing.

from the last hearing indicated that you did want to execute that but I just wanted to confirm that.

Edwards: That is correct.

The Court: Anything you want to put on the record?

The State: No, Your Honor.

(Emphasis added).

The sentencing court then stated the file number for the October 2012 sex offense and imposed an executed sentence of 36 months. The court said to Edwards: “[t]he fact that you are executing [the October 2012] sentence provides that the conditional release statute would apply.” The sentencing court then ordered ten years of conditional release. The sentencing court next stated the file number for the November 2012 sex offense, imposed an executed sentence of 60 months concurrent with the October 2012 sex offense, and ordered a “lifetime conditional release requirement.”

Almost five years later, Edwards moved to correct his sentence pursuant to Minn. R. Crim. P. 27.03, subd. 9. Edwards specifically requested that “the [postconviction] court issue an order vacating [his] lifetime term of conditional release and resentence him to ten years of conditional release pursuant to Minn. Stat. § 609.3455, subd. 6.” Edwards argued that he was “simultaneously adjudicated guilty of two counts of third-degree criminal sexual conduct” and therefore he did not have a “previous or prior sex offense conviction” as required for lifetime conditional release.

On June 7, 2018, the postconviction court denied Edwards’s motion. Edwards appeals.

DECISION

Minnesota Rule of Criminal Procedure 27.03, subdivision 9, provides that a district court “may at any time correct a sentence not authorized by law.” Minn. R. Crim. P. 27.03, subd. 9. “For a sentence to be unauthorized, it must be contrary to law or applicable statutes.” *Evans v. State*, 880 N.W.2d 357, 359 (Minn. 2016). This court reviews a district court’s denial of a motion to correct a sentence for an abuse of discretion. *Id.*

The legislature has mandated that a district court place some dangerous sex offenders on conditional release after release from prison. *See* Minn. Stat. § 609.3455 (2012).³ Relevant to Edwards’s sentences, when an offender is convicted of third-degree criminal sexual conduct and is committed to the custody of the commissioner of corrections, “the court shall provide that, after the offender has completed the sentence imposed, the commissioner shall place the offender on conditional release for ten years.” *Id.*, subd. 6. When “the offender has a previous or prior sex offense conviction,” he is to be placed “on conditional release for the remainder of [his] life” after being released from prison. *Id.*, subd. 7(b). A “prior sex offense conviction” has occurred if the offender “was convicted of committing a sex offense before the offender has been convicted of the present offense, regardless of whether the offender was convicted for the first offense before the

³ Conditional release is defined by statute. *See id.*, subd. 8(a). The commissioner of corrections is authorized to determine appropriate conditions of conditional release, including completion of treatment and aftercare. If the offender fails to meet any condition of release, the commissioner may revoke the offender’s conditional release and order that the offender “serve all or a part of the remaining portion of the conditional release term in prison.” *Id.*, subd. 8(b) (2012). Finally, the commissioner cannot dismiss an offender from supervision before the offender’s conditional-release term expires. *Id.*, subd. 8(a).

commission of the present offense, and the convictions involved separate behavioral incidents.” *Id.*, subd. 1(g).

Both parties agree that the sentencing court convicted Edwards of two sex offenses at the sentencing hearing, but they disagree about when, during the sentencing hearing, he was convicted. Edwards primarily argues that he was “simultaneously adjudicated guilty of multiple sex offenses during his sentencing hearing,” therefore, he “does not qualify for lifetime conditional release” because he did not have a “prior or previous sex offense conviction.”⁴ The state contends that “the [sentencing] court did not simultaneously accept and adjudicate [Edwards] guilty of both . . . offenses.”

Minnesota statutes provide that a “[c]onviction” occurs when the district court accepts and records “(1) a plea of guilty; or (2) a verdict of guilty by a jury or a finding of guilty by the court.” Minn. Stat. § 609.02, subd. 5 (2018). In *State v. Nodes*, the Minnesota Supreme Court applied and clarified this definition in the context of the mandatory conditional-release term. *See* 863 N.W.2d 77, 82 (Minn. 2015). Specifically, the supreme court considered whether the first of two convictions entered at the same hearing, but

⁴ Edwards also argues in his brief to this court that if the sentencing court did not accept and record his guilty pleas prior to sentencing, then the sentencing court “violated rule 15.04 by failing to otherwise accept or reject on the record the parties’ agreement,” and as a result, Edwards was not convicted. But Edwards appeals on a motion to correct a sentence, which does not now allow challenges to the underlying conviction. *See Washington v. State*, 845 N.W.2d 205, 213 (Minn. App. 2014) (“[R]ule 27.03, subdivision 9, authorizes relief only if a party challenges a sentence, as opposed to a conviction, and only if a party does so by asserting that a sentence is ‘unauthorized by law’ . . .”). Moreover, Edwards did not present this issue to the postconviction court. Generally, we do not consider issues that are raised for the first time on appeal. *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996). Therefore, to the extent that Edwards argues his underlying conviction was unauthorized, this issue is not properly before us and we do not consider it.

arising from separate behavioral incidents, was a “prior sex offense,” triggering lifetime conditional release. *Id.* The two convictions involved different victims on different days and led to two counts charged in a single complaint. *Id.* at 78. At the plea hearing, the district court expressly accepted the defendant’s guilty pleas on two counts of criminal sexual conduct, but rejected the state’s position that the defendant was subject to lifetime conditional release. *Id.* at 79. The district court reasoned that being sentenced on two convictions “on the same day doesn’t get you the lifetime.” *Id.* Thus, the district court set the conditional-release period at ten years for each conviction. *Id.* The state appealed, and this court affirmed the district court, concluding that the two convictions were “simultaneous.” *Id.*

The supreme court granted review and reversed. *Id.* First, the supreme court found that the district court expressly accepted and recorded the defendant’s guilty plea. *Id.* at 81. Thus, the defendant was convicted of the first offense “at the moment the acceptance was recorded.” *Id.* Second, the supreme court determined that the defendant’s first conviction occurred before his second conviction. *Id.* at 82. When the district court announced on the record that it had adjudicated the defendant guilty, “in that instant [the defendant] was convicted of that [first] offense, and in the next instant, it was no longer a present offense, but was now a past conviction.” *Id.* The supreme court held that section 609.3455 does not require “a particular temporal gap between the convictions” and there is no reason why “a conviction entered at the same hearing as a subsequent conviction cannot function as a ‘prior sex offense conviction.’” *Id.* Accordingly, the supreme court concluded that the defendant was subject to lifetime conditional release. *Id.*

In denying Edwards’s motion to correct his sentence, the postconviction court determined that “after conviction and sentencing were complete on the [October 2012 sex offense],” the sentencing court convicted and sentenced Edwards on the November 2012 sex offense. The postconviction court concluded that Edwards “had a ‘prior sex offense conviction’ at the time he was convicted of the [November 2012 sex offense] and the lifetime conditional release requirement applie[d].”

Edwards makes two challenges to the postconviction court’s reasoning, which we discuss in turn. First, Edwards contends that a district court can only impose a sentence “[u]pon conviction” under Minn. Stat. § 609.10, subd. 1(a) (2018). Edwards asserts that sentencing cannot be a conviction because there must be a conviction before there is a sentence. Edwards then argues that, although the sentencing court did not “expressly state” that it was simultaneously accepting the plea agreement when it stated its inclination to do so, “this does not mean the court did not implicitly do so.” The state appears to respond, without citing relevant legal authority, that the sentencing court implicitly accepted the pleas and convicted Edwards “of each offense when [it] separately and sequentially sentenced him on each of the two counts.”

We are not persuaded by Edwards’s argument. Preliminarily, we observe that, at the plea hearing, the sentencing court initially deferred acceptance of Edwards’s guilty pleas, as a district court is permitted to do under Minn. R. Crim. P. 15.04, subd. 3 (providing a court may postpone acceptance of a plea agreement until it has received a presentence investigation). Importantly, our analysis of the sentencing court’s proceedings is governed by Minnesota caselaw, which has held that “magic words” are not required to convict a

defendant. *See State v. Jeffries*, 806 N.W.2d 56, 63 (Minn. 2011). Our caselaw has recognized that whether a conviction has occurred depends on the entire context of the hearing. *See, e.g., id.* (limiting its holding to the facts of the case, and recognizing that specific words, such as “convicted” or “I accept your plea,” will not “always result in a conviction”).⁵

Here, the complete context of Edwards’s sentencing hearing shows that the sentencing court accepted each guilty plea just before it imposed each sentence. The sentencing court first told the parties that it had an “inclination” to accept the pleas. The court then inquired whether Edwards elected to execute the sentence on the October 2012 offense and asked the state if there was anything else to put on the record. The sentencing court next imposed an executed sentence for each offense separately and sequentially, and, for the November 2012 offense, imposed a lifetime conditional-release term. The full context of the sentencing proceedings demonstrates that the district court convicted Edwards in the “instant” before it imposed each sentence. *See Nodes*, 863 N.W.2d at 82.

⁵ Additionally, we are persuaded by federal appellate opinions, which have interpreted the Federal Rules of Criminal Procedure and held that, “[a] guilty plea may be explicitly or implicitly accepted by a district court.” *United States v. Arafat*, 789 F.3d 839, 844 (8th Cir. 2015). “[W]hat matters ultimately is the language of the trial court and the context in which it is used.” *Id.* (quoting *United States v. Tyerman*, 641 F.3d 936, 943 (8th Cir. 2011)). Where our rules of procedure parallel federal rules, “federal cases interpreting the federal rule are helpful and instructive but not necessarily controlling.” *Patterson v. Wu Family Corp.*, 608 N.W.2d 863, 867 n.4 (Minn. 2000). The Minnesota Supreme Court has determined that judicial consideration of plea agreements under Fed. R. Crim. P. 11(c)(3) is “comparable” to judicial consideration of plea agreements under the Minnesota Rules of Criminal Procedure. *Wheeler v. State*, 909 N.W.2d 558, 568 n.7 (Minn. 2018).

Second, Edwards argues that here, unlike in *Nodes*, the sentencing court simultaneously convicted Edwards of both sex offenses when it stated that its “inclination is [to] go along with the agreement.” Edwards relies on five unpublished cases from this court where we determined there was a simultaneous conviction. “Unpublished opinions are not precedential, but they may have persuasive value.” *State v. Ellis-Strong*, 899 N.W.2d 531, 537 (Minn. App. 2017) (citing Minn. Stat. § 480A.08, subd. 3 (2016)).

Edwards argues that the most persuasive unpublished case is *State v. Broehl*. See No. A16-0966, 2017 WL 2535681 (Minn. App. June 12, 2017). In *Broehl*, the defendant pleaded guilty to eight counts of criminal sexual conduct. *Id.* at *1. The district court did not accept the guilty pleas until the sentencing hearing, when the district court stated, “I am going to . . . adopt the recommendations here.” *Id.* The district court proceeded to sentence the defendant on each offense, and imposed lifetime conditional-release terms for two offenses. *Id.* On appeal, we determined that the district court erred because it accepted all of “the pleas in total when the district court judge stated” that it was “going to . . . adopt the recommendations.” *Id.* at *3. Because the convictions were all “accepted and entered” simultaneously, there was never a “prior sex offense conviction,” and therefore no basis to impose lifetime conditional release. *Id.*

Broehl and Edwards’s other unpublished cases are inapposite and not persuasive because, in each of these cases, the district court expressly accepted the plea agreement or expressly adjudicated the defendant guilty.⁶ Here, the sentencing court did not expressly

⁶ In three other cases that Edwards cites, the district court used clear language to simultaneously adjudicate the defendant guilty of multiple offenses. See *State v. Ingalls*,

accept Edwards's guilty pleas or expressly adjudicate his guilt. While this is *not* best practice, it clearly differentiates Edwards's sentencing from the sentencing considered in *Broehl*.⁷

The sentencing court only stated that it had an "inclination" to go along with Edwards's plea agreement. An "inclination" is tentative and equivocal and suggests only a *disposition* towards acceptance, not actual acceptance. See *The American Heritage Dictionary of the English Language* 888 (5th ed. 2011) (defining "inclined" as "[h]aving a preference, disposition or tendency"). After stating its inclination, the sentencing court asked Edwards whether he wanted to execute the sentence on the October 2012 sex offense instead of receiving the presumptive stayed sentence. Edwards responded affirmatively. Only then did the sentencing court proceed to impose the sentences for each sex offense, one after the other.

No. A16-1803, 2017 WL 5560033, at *7 (Minn. App. Nov. 20, 2017) ("You're adjudicated guilty."); *State v. Klanderud*, No. A15-1897, 2016 WL 6395252, at *5 (Minn. App. Oct. 31, 2016) ("Pleas are accepted."), *review denied* (Minn. Jan. 17, 2017); *State v. Rekdal*, No. A14-1364, 2015 WL 7199866, at *1 (Minn. App. Nov. 16, 2015) ("I'm going to accept your pleas of guilty on those offenses."). In the fourth case, *State v. Davidson*, the parties agreed that the district court entered convictions simultaneously. A17-0149, 2018 WL 1370569, at *7 (Minn. App. Mar. 19, 2018).

⁷ The Minnesota Rules of Criminal Procedure establish the correct procedure for a district court to accept or reject a guilty plea. Under rule 15.04, once a defendant enters a plea, a district court "must reject or accept the plea of guilty on the terms of the plea agreement." Minn. R. Crim. P. 15.04, subd. 3. Additionally, "[i]f the court rejects the plea agreement, it must advise the parties in open court and then call upon the defendant to either affirm or withdraw the plea." *Id.*; see also *State v. Thompson*, 754 N.W.2d 352, 356 (Minn. 2008) holding that the language of rule 15.04 "indicates the rule is mandatory").

Because Edwards was convicted of the October 2012 sex offense before he was convicted of the November 2012 sex offense, and the convictions involved separate behavioral incidents, Edwards is subject to a lifetime conditional-release term. Thus, the district court did not abuse its discretion by denying Edwards's motion to correct his sentence.

Affirmed.