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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1318
A18-1513**

Jeremy John Queen, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed April 22, 2019
Affirmed
Florey, Judge**

Hennepin County District Court
File No. 27-CR-09-16293

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer L. Lauermann, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Bjorkman, Presiding Judge; Connolly, Judge; and
Florey, Judge.

UNPUBLISHED OPINION

FLOREY, Judge

In this consolidated appeal, appellant argues that the district court lacked jurisdiction to reimpose a ten-year conditional-release term, and if reimposed, the

conditional-release term invalidates appellant's guilty plea. Because the district court retained jurisdiction and appellant's plea is valid, we affirm.

FACTS

In 2009, the state charged appellant Jeremy John Queen with failing to register as a predatory offender, a violation of Minn. Stat. § 243.166 (2008). The probable-cause portion of the complaint indicated that appellant was a risk-level-three offender at the time of his offense.

On June 4, 2009, appellant pleaded guilty to the charge and was sentenced to a year and a day in prison. Although a ten-year conditional-release term was discussed at the plea hearing, it was not officially imposed. On June 24, 2009, the district court modified appellant's sentence and added a ten-year conditional-release term. The modification order noted that, because appellant was a risk-level-three predatory offender, he "must be placed on conditional release for [ten] years." See Minn. Stat. § 243.166, subd. 5a.

In November 2015, appellant moved, under Minn. R. Crim. P. 27.03, subd. 9, to remove the conditional-release term. He acknowledged that risk-level-three offenders who violate the registration requirements of section 243.166 are subject to a ten-year conditional-release term, but argued that such a term was improper because he did not admit to being a risk-level-three offender at the plea hearing, and no finding by a jury was made on that question. See *State v. Her*, 862 N.W.2d 692, 693 (Minn. 2015) (holding that whether a defendant is a risk-level-three offender is a fact that must be admitted by the defendant or found by a jury before a court may impose a ten-year conditional-release term under section 243.166, subdivision 5a).

The district court granted, in part, appellant's motion. The court found that appellant pleaded guilty to failing to register as a predatory offender, as prohibited under section 243.166, subdivision 5(a), but he was not asked whether he was a risk-level-three offender at the time of the offense, and no finding was made on that question. The court concluded that the proper remedy was to submit the question to a sentencing jury, or, with a proper waiver, to the district court.

In October 2016, appellant moved to deny the district court's proposed remedy, arguing that the proper remedy was to vacate the conditional-release term. Appellant also argued that imposing a ten-year conditional-release term would render his plea invalid because he "was not informed about conditional release during his plea or sentencing hearing," and he "was not informed that he could serve more than a maximum sentence of five years." The district court denied appellant's motion. The court affirmed its previously ordered remedy concerning the conditional-release term and concluded that the plea was valid.

In December 2016, the parties proceeded via a stipulated evidence court trial, under Minn. R. Crim. P. 26.01, subd. 4, to determine appellant's risk level. However, the district court did not issue a final written order on the matter until June 2018.¹ Prior to that, in March 2018, appellant again moved, under Minn. R. Crim. P. 27.03, subd. 9, to correct his sentence. He argued that the district court should vacate the ten-year conditional-release

¹ In the June 2018 order, the district court acknowledged that it "failed to issue a written order" following the stipulated evidence court trial.

term because the district court did not have jurisdiction to impose conditional release after his sentence expired.

In June 2018, the district court filed its order from the stipulated-evidence court trial. The court found that appellant was a risk-level-three offender at the time of his 2009 registration offense and that appellant is subject to a ten-year conditional-release term. Appellant appealed the order in case number A18-1318.

The district court issued a separate order granting a postconviction hearing on the issue of jurisdiction. In July 2018, a postconviction hearing was held, and in September 2018, the district court filed an order denying appellant's requested relief. The court concluded that it "did not vacate [appellant's] conditional release in its order on November 24, 2015." And because appellant's conditional-release term was never vacated, the district court concluded that it retained jurisdiction. Appellant appealed the order in case number A18-1513, and we consolidated the two appeals.

D E C I S I O N

I.

Appellant first argues that the district court lacked jurisdiction to reimpose his ten-year conditional-release term because his sentence expired. The parties agree that this jurisdictional issue is subject to de novo review. *See State v. Pflepsen*, 590 N.W.2d 759, 763 (Minn. 1999) ("Questions concerning the authority and jurisdiction of the lower courts are legal issues subject to de novo review.").

Under section 243.166, subdivision 5a, a district court must impose a ten-year period of conditional release for any person who commits a failure-to-register violation

while assigned a risk-level three. In April 2015, the supreme court held that a district court may not impose such a term unless the defendant admits that he was a risk-level three at the time of the offense, or a jury makes that finding. *Her*, 862 N.W.2d at 695-96. In *Her*, the district court imposed a 16-month prison term and a ten-year conditional-release term. *Id.* at 694. Five years after sentencing, the defendant challenged the imposition of the conditional-release term, arguing that his risk level was never proved to a jury. *Id.* The supreme court vacated the conditional-release term and remanded to the district court for further proceedings, but expressed no opinion as to the proper remedy on remand. *Id.* at 700 n.4.

In September 2017, the supreme court issued *State v. Meger*, which held that the rule announced in *Her* does not apply retroactively to sentences that became final prior to *Her*. 901 N.W.2d 418, 419 (Minn. 2017). The supreme court concluded that, “[b]ecause *Her* does not apply retroactively to [the defendant’s] amended sentence,” the defendant’s period of conditional release, which was neither supported by a jury finding nor an admission by the defendant, was “not unlawful at the time it was imposed.” *Id.* at 425. The supreme court remanded to the district court for reinstatement of the defendant’s conditional-release term. *Id.*

In December 2018, this court issued *State v. Franson*, in which we held that “[a] district court has jurisdiction to reimpose a mandatory conditional-release term if it was authorized by law at the time the district court removed it from the sentence and the defendant had not developed a crystallized expectation as to the finality of his sentence.” 921 N.W.2d 783, 784 (Minn. App. 2018), *review denied* (Minn. Feb. 27, 2019). We stated

that “the supreme court’s remand instructions in *Meger* and *Her* imply that a district court retains jurisdiction to correct a sentence that contains a particular conditional-release term or lacks a statutorily mandated conditional-release term.” *Id.* at 786. We also stated that there were no due-process concerns because the defendant was on notice that the conditional-release term was part of his sentence. *Id.*

With this backdrop in mind, we conclude that, for two reasons, the district court retained jurisdiction to affirm appellant’s ten-year conditional-release term. First, *Franson* is on point. Appellant’s conditional-release term was authorized when it was imposed, and he did not have a crystallized expectation of finality in a sentence that did not include a conditional-release term. Appellant’s case became final in 2009, prior to *Her*, and therefore his ten-year conditional-release term was lawfully imposed. *See Meger*, 901 N.W.2d at 425. The supreme court’s remand instructions in *Meger* indicate that a district court retains jurisdiction to reinstate a conditional-release term that was lawfully imposed, even if the district court vacated the conditional-release term and the underlying sentence expired. *Id.* at 420, 425. In addition to the lawfulness of the ten-year conditional-release term, there are no due-process concerns because appellant had no crystallized expectation as to the finality of his sentence. Appellant’s ten-year conditional-release term was imposed less than a month after his plea. Like in *Franson*, appellant was on notice prior to the expiration of his sentence that he was subject to a ten-year conditional-release period. 921 N.W.2d at 788-89.

Second, the district court never vacated appellant’s conditional-release term. Appellant relies on two unpublished opinions, *State v. Jones*, No. A17-0632, 2018 WL

1145861, at *1 (Minn. App. Mar. 5, 2018), and *State v. Carlson*, No. A18-0144, 2018 WL 4391101, at *2 (Minn. App. Sept. 17, 2018), in which we concluded that the district court lost jurisdiction to reimpose a conditional-release term. In both cases, the defendant's sentence expired, and the district court then vacated the defendant's conditional-release term. *Jones*, 2018 WL 1145861, at *1; *Carlson*, 2018 WL 4391101, at *1. Here, unlike in *Jones* and *Carlson*, the district court did not vacate appellant's conditional-release term. The district court merely determined that appellant was entitled to proper fact finding on the *Her* issue. The district court therefore retained jurisdiction.

II.

Appellant next argues that he is entitled to a plea withdrawal because his plea was neither voluntary nor intelligent. In the alternative, he asserts that his conditional-release term should not exceed three years and 364 days (five years minus one year and one day) because he was told, prior to entering his plea, that the maximum sentence he faced was five years. The district court concluded that appellant's plea was voluntary and intelligent and found that there was acknowledgment of the ten-year conditional-release term during appellant's plea hearing.

After sentencing, withdrawal of a guilty plea is permitted if the defendant proves that withdrawal is necessary to correct a manifest injustice. Minn. R. Crim. P. 15.05, subd. 1. A manifest injustice occurs if a guilty plea is not valid. *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). "A valid guilty plea must be accurate, voluntary, and intelligent." *State v. Jumping Eagle*, 620 N.W.2d 42, 43 (Minn. 2000). Determining the validity of a guilty

plea presents a question of law, which we review de novo. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). “A defendant bears the burden of showing his plea was invalid.” *Id.*

In determining whether a plea was voluntary, a reviewing court considers the relevant circumstances and “examines what the parties reasonably understood to be the terms of the plea agreement.” *Id.* at 96. In determining whether a plea was intelligent, a reviewing court must determine whether the defendant understood the charges, the rights being waived, and the consequences of the plea. *Id.* Modification of the sentence is an option if a plea is based on an unfulfilled promise or agreement. *See State v. Brown*, 606 N.W.2d 670, 674 (Minn. 2000).

Here, the record indicates that appellant’s plea was voluntary and intelligent. Appellant was told that he would face a ten-year conditional-release term, and his plea was not based on a promise or agreement. Appellant signed a plea petition which noted that “the maximum penalty the court could impose for this crime . . . is imprisonment for 5 years.” The plea petition also noted that it was a “straight plea,” and there were no promises from, or agreements with, the state.

At the plea hearing, the prosecutor stated that the plea was a “straight plea,” and that sentencing would be left “to the discretion of the [c]ourt.” Appellant indicated that this was his understanding as well. Appellant’s attorney asked appellant if he was aware that “there are very severe consequences to an executed sentence on this case as a felony and that is that a ten-year conditional release term[] attaches to it,” and appellant responded that he understood. Subsequently, after some discussions about registration requirements and conditional-release terms, appellant stated that he needed to be placed “on the

conditional here” rather than in the county where he had other matters pending. The following exchange then occurred:

Attorney: So [appellant], what you’re saying is that you would—you’re asking me to ask the judge for a year and a day rather than a gross misdemeanor sentence?

Appellant: Yes.

Attorney: So that the conditional release comes out of Hennepin County?

Appellant: Yes.

Attorney: Are you sure about that?

Appellant: 100 percent sure.

The district court later stated, “It appears from what everyone is telling me that you have a lifetime registration here. You have a ten-year conditional release period.”

The plea hearing and petition indicate that appellant did not plead guilty based on any promises that went unfulfilled, and appellant understood that a ten-year conditional-release term was applicable. The plea was voluntary and intelligent.

Affirmed.