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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1654**

Ryan David Avalon, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed May 13, 2019
Affirmed
Smith, John, Judge***

Hennepin County District Court
File No. 27-CR-11-13681

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

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

Michael O. Freeman, Hennepin County Attorney, Brittany D. Lawonn, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Smith, Tracy M., Presiding Judge; Larkin, Judge; and
Smith, John, Judge.

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

U N P U B L I S H E D O P I N I O N

SMITH, JOHN, Judge

We affirm the district court's order denying appellant Ryan David Avalon's motion to correct his sentence under the Drug Sentencing Reform Act (DSRA) because Avalon's final judgment was entered four years before the DSRA went into effect.

F A C T S

In 2011, Avalon was caught possessing nearly 200 grams of hallucinogenic mushrooms. The state charged him with second-degree possession of a controlled substance under Minn. Stat. § 152.022, subd. 2(3) (2010). On January 4, 2012, Avalon pleaded guilty and was sentenced to 48 months, with execution stayed for five years, and was placed on probation.

By 2016, Avalon had violated the terms of probation a number of times. On April 26, 2016, the district court revoked his probation and ordered execution of the 48-month sentence.

In 2018, Avalon petitioned for postconviction relief to correct his sentence in accordance with the (DSRA), which went into effect in May 2016. The district court denied his petition.

D E C I S I O N

Avalon argues that the postconviction court abused its discretion by failing to resentence him in accordance with the DSRA. We review postconviction decisions for an abuse of discretion. *Lussier v. State*, 821 N.W.2d 581, 588 (Minn. 2012). “Specifically,

we review the district court’s legal conclusions de novo and its factual findings under the clearly erroneous standard.” *Townsend v. State*, 834 N.W.2d 736, 738 (Minn. 2013).

The DSRA, in part, modified statutory provisions of the sentencing guidelines to make certain presumptive sentences less severe. *See* 2016 Minn. Laws ch. 160, § 18(b), at 591. Section 18 of the DSRA provides that the section “is effective the day following final enactment.” 2016 Minn. Laws ch. 160, § 18, at 591. The governor signed the DSRA into law on May 22, 2016, and section 18 became effective on May 23, 2016. *See* 2016 Minn. Laws ch. 160, at 591-92.

In *State v. Kirby*, the supreme court held that section 18 of the DSRA applies to crimes committed before May 23, 2016, so long as three requirements are satisfied: (1) there is no statement of legislative intent “to abrogate the amelioration doctrine; (2) the amendment mitigates punishment; and (3) final judgment has not been entered as of the date the amendment takes effect.” 899 N.W.2d 485, 490 (Minn. 2017). Resentencing is therefore required, based on the amelioration doctrine, when a person’s “conviction was not yet final on the effective date of section 18(b) of the [DSRA].” *Id.* at 487.

A judgment is final in a criminal case “when the district court enters a judgment of conviction and imposes or stays a sentence.” Minn. R. Crim. P. 28.02, subd. 2(1). Here, Avalon’s judgment was final on January 4, 2012, when he pleaded guilty to and was convicted of second-degree possession of a controlled substance, and was sentenced. Avalon did not appeal his conviction. Avalon’s conviction was therefore final four years before section 18 of the DSRA became effective, and he is thus not entitled to resentencing under the DSRA. *See Luna-Pliego v. State*, 904 N.W.2d 916, 917 (Minn. App. 2017)

(concluding that a defendant is not entitled to resentencing because his conviction was final before the DSRA became effective).

A review of Avalon's probation-revocation order, which executed Avalon's sentence of 48 months in prison, shows that the postconviction court determined that Avalon was eligible for resentencing under the DSRA because the probation-revocation order was entered in April 2016 and the time for appeal had not passed when the DSRA went into effect the next month. But Minn. Stat. § 609.14, subd. 3(2) (2018) provides that if the district court finds grounds for revoking a stay, the district court may, "if [the] sentence was previously imposed and execution thereof stayed . . . order execution of the sentence previously imposed." When the district court revoked Avalon's sentence in April 2016, it was not imposing a new sentence but was revoking the stay of execution that had been imposed in January 2012. The postconviction court incorrectly analyzed the date of final judgment in Avalon's case. Because Avalon's sentence was final in 2012, he is not eligible for resentencing under the DSRA and the revocation of his probation in 2016 does not change the date of final judgment.

Because final judgment was entered before the DSRA went into effect, Avalon is not entitled to resentencing and the district court properly denied his motion to correct sentence. For that reason, we need not address Avalon's arguments requesting a downward departure upon resentencing.

Affirmed.