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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1983**

Chad Domonique Johnson, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed August 26, 2019
Reversed and remanded
Reilly, Judge**

Polk County District Court
File No. 60-CR-16-1071

Cathryn Middlebrook, Chief Appellate Public Defender, Chelsie M. Willett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Greg Widseth, Polk County Attorney, Scott A. Buhler, Assistant County Attorney, Crookston, Minnesota (for respondent)

Considered and decided by Cleary, Presiding Chief Judge; Reilly, Judge; and Slieter, Judge.

UNPUBLISHED OPINION

REILLY, Judge

Appellant argues that he is entitled to resentencing under the new sentencing grid created by the Drug Sentencing Reform Act (the DSRA). Because appellant is entitled to

resentencing in accordance with the DSRA, we reverse and remand for further proceedings in accordance with this opinion.

FACTS

In June 2016, appellant Chad Domonique Johnson sold cocaine to a confidential informant during a series of controlled drug buys. Officers discovered over 18 grams of cocaine in appellant's residence, and appellant admitted to a police investigator that he sold cocaine to the informant. The state issued a seven-count complaint charging appellant with one count of first-degree sale; one count of second-degree possession; one count of controlled substance sale—no affixed stamps; three counts of third-degree sale; and one count of misdemeanor impaired driving. In December 2016, appellant entered a plea of guilty to first-degree sale, controlled substance sale—no affixed stamps, and impaired driving, pursuant to a negotiated plea agreement. In exchange for appellant's plea, the state dismissed the remaining charges and agreed to request a sentence at “the low end of the [sentencing range], which is 94 months” for the first-degree-sale offense. The district court adopted the terms of the plea agreement and imposed concurrent sentences of 94 months for first-degree sale, 45 months for controlled substance sale—no affixed stamps, and 90 days for impaired driving. The remaining charges were dismissed.

In April 2018, appellant moved to correct his sentence from 94 months to 73 months under the new sentencing grid created by the DSRA and in light of the Minnesota Supreme Court's decision in *State v. Kirby*, 899 N.W.2d 485 (Minn. 2017). Appellant argued that he was entitled to an automatic correction of his sentence because his conviction was not final when the new sentencing guidelines went into effect on May 23, 2016, and his 94-

month sentence was not authorized by law at the time of sentencing. The district court denied appellant's motion on the ground that "[a]lthough the 'low end of the box' is referenced regarding the plea, all parties believed that term to be 94 months." This appeal follows.

D E C I S I O N

We review a district court's sentencing decision for an abuse of discretion. *State v. Ford*, 539 N.W.2d 214, 229 (Minn. 1995). The Minnesota Sentencing Guidelines limit a district court's sentencing discretion by prescribing a sentencing range that is presumed to be appropriate. *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014). Any sentence within that range is a presumptive sentence under the guidelines. *State v. Delk*, 781 N.W.2d 426, 428 (Minn. App. 2010), *review denied* (Minn. July 20, 2010). The presumptive sentence "is determined by the Sentencing Guidelines in effect on the date of the conviction offense . . . to ensure that the Guidelines abide by the federal and state Ex Post Facto Clauses." *Kirby*, 899 N.W.2d at 493 (quotation omitted). Construction of the sentencing guidelines is a question of law subject to de novo review on appeal. *State v. Zeimet*, 696 N.W.2d 791, 793 (Minn. 2005).

In May 2016, the legislature enacted the DSRA and reduced the presumptive sentencing range for a number of offenses, including appellant's first-degree-sale offense. 2016 Minn. Laws ch. 160, §§ 1-22, at 576-592; Minn. Sent Guidelines 4.C (Supp. 2018). In *Kirby*, the Minnesota Supreme Court ruled that the DSRA applied to any defendant whose conviction was not final at the time the DSRA went into effect on May 23, 2016. 899 N.W.2d at 487. *Kirby* held that the "amelioration doctrine requires the resentencing

of a person whose conviction was not yet final on the effective date of section 18(b) of the Drug Sentencing Reform Act.” *Id.* at 485. A defendant is entitled to resentencing under the DSRA-amended sentencing grid “only if: (1) the Legislature made no statement that clearly establishes the Legislature’s intent to abrogate the amelioration doctrine; (2) the amendment mitigated punishment; and (3) final judgment had not been entered as of the date the amendment took effect.” *Id.* at 490.

The three-part *Kirby* test is satisfied in this case. First, the legislature has not made a statement clearly establishing its “intent to abrogate the amelioration doctrine” with respect to the drug crimes for which appellant was sentenced. *Id.* Second, the amendment mitigated appellant’s punishment. *Id.* at 495-96. Prior to enactment of the DSRA, the presumptive sentencing range for first-degree sale for an individual with appellant’s criminal-history score was 94 to 132 months. Minn. Sent. Guidelines 4.C (2016). Under the DSRA-amended sentencing guidelines grid, the presumptive range for appellant’s first-degree-sale offense was 73 to 103 months. Minn. Sent. Guidelines 4.C (Supp. 2018). Third, because the district court did not impose sentence until December 2016, appellant’s conviction was not yet final when the DSRA became effective in May 2016.¹ *Kirby*, 899 N.W.2d at 490. We therefore determine that appellant is entitled to resentencing in light of the DSRA and *Kirby*.

Appellant urges this court to reduce his sentence from 94 to 73 months to reflect his understanding that he would receive a bottom-of-the-box sentence in exchange for his

¹ We note that the DSRA became effective in May 2016—one month *before* appellant’s offense date.

guilty plea. We decline to do so. Appellant is correct that “the sentencing guidelines serve as the anchor for a district court’s discretion at sentencing,” and “when a [g]uidelines range moves up or down, offenders’ sentences tend to move with it.” *State v. Provost*, 901 N.W.2d 199, 202 (Minn. App. 2017) (quotation omitted). However, as we have previously recognized, “not every defendant who receives a sentence at the top or bottom end of the presumptive range when sentenced [incorrectly] . . . need necessarily receive a similarly situated sentence within the presumptive range” upon resentencing. *Id.* Instead, the district court is in the best position to determine the appropriate sentence, taking into account the parties’ understanding of the plea agreement, within the presumptive range of the DSRA-amended sentencing grid on remand. *See State v. Hough*, 585 N.W.2d 393, 397 (Minn. 1998) (noting that the district court “is in the best position to evaluate the offender’s conduct and weigh sentencing options”). We reverse and remand to the district court for resentencing consistent with the DSRA-amended sentencing grid.

Reversed and remanded.