

*This opinion will be unpublished and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
A18-2134**

State of Minnesota,
Respondent,

vs.

Wendy Kristine Abbott,
Appellant.

**Filed September 16, 2019
Affirmed
Schellhas, Judge**

Beltrami County District Court
File No. 04-CR-18-2085

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

David Hanson, Beltrami County Attorney, Ashley A. Nelson, Assistant County Attorney,
Bemidji, Minnesota (for respondent)

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

Considered and decided by Schellhas, Presiding Judge; Rodenberg, Judge; and
Kirk, Judge.*

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

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges her conviction of fifth-degree possession of a controlled substance, arguing that the district court abused its discretion by declining to stay adjudication. We affirm.

FACTS

On June 30, 2017, law enforcement responded “to a report of suspicious activity possibly involving drugs.” Officer Matthew Thorsheim made contact with two individuals in a parked vehicle and observed both occupants to be under the influence of a controlled substance. Through further investigation, Officer Thorsheim discovered that one of the vehicle’s occupants, appellant Wendy Abbott, possessed two Oxycodone pills.

A few months later, on November 25, 2017, law enforcement arrested Abbott for storing methamphetamine paraphernalia in the presence of a child. In March 2018, Abbott pleaded guilty to that offense, and a district court stayed imposition of sentence.

In June 2018, respondent State of Minnesota charged Abbott with felony fifth-degree possession of a controlled substance arising from the incident in June 2017. Abbott pleaded guilty, admitting that she possessed two Oxycodone pills without a prescription. Abbott argued at sentencing that the district court should stay adjudication of her guilt because, at the time she committed the offense, she “had no prior felonies or drug convictions.” The district court rejected the argument, adjudicated Abbott guilty, and stayed imposition of sentence.

This appeal follows.

DECISION

Abbott challenges the district court's denial of her request for a stay of adjudication. District courts are generally afforded "great discretion in the imposition of sentences" and we will reverse a sentencing decision only when a district court abuses its discretion. *State v. Soto*, 855 N.W.2d 303, 307–08 (Minn. 2014) (footnote and quotation omitted). But whether a sentence is authorized by a Minnesota statute is a question of law that is reviewed de novo. *State v. Mouelle*, 922 N.W.2d 706, 719 (Minn. 2019).

A stay of adjudication "is a procedure whereby the district court, upon a defendant's guilty plea or a fact-finder's determination of guilt, does not adjudicate the defendant guilty but imposes conditions of probation." *State v. Martin*, 849 N.W.2d 99, 102 (Minn. App. 2014) (quotation omitted), *review denied* (Minn. Sept. 24, 2014). Generally, district courts may stay adjudication only with the prosecutor's consent. *Id.* But the legislature has created narrow exceptions to this rule, including the exception contained in Minn. Stat. § 152.18 (2016), which, after the enactment of the Drug Sentencing Reform Act (DSRA), requires a district court to stay adjudication for some offenders. Specifically, the statute provides that a district court "must defer prosecution" for any person found guilty of fifth-degree possession who, among other things "has not previously been convicted of a felony offense under any state or federal law." Minn. Stat. § 152.18, subd. 1(b).

Abbott acknowledges that after she committed the fifth-degree possession offense, she pleaded guilty to possession of methamphetamine paraphernalia in the presence of a child and received a stay of imposition. But Abbott asserts that *at the time she committed* the fifth-degree possession offense, she did not have a previous felony conviction. Abbott

contends that because she did not have a felony conviction *at the time she committed* the fifth-degree possession offense, the district court was required to stay adjudication under Minn. Stat. § 152.18, subd. 1(b).

Abbott’s argument presents a question of statutory interpretation. “The objective of statutory interpretation is to ascertain and effectuate the Legislature’s intent.” *State v. Struzyk*, 869 N.W.2d 280, 284 (Minn. 2015). When interpreting a statute, words and phrases are “construed according to the rules of grammar and according to their common and approved usage.” *State v. Pakhnyuk*, 926 N.W.2d 914, 920 (Minn. 2019) (quotation omitted). A statute is ambiguous only when the statutory language is subject to more than one reasonable interpretation, and if the statute is unambiguous, this court applies the statute’s plain meaning. *State v. Fleck*, 810 N.W.2d 303, 307 (Minn. 2012).

The statute at issue here is unambiguous. *See State v. Overweg*, 922 N.W.2d 179, 184 (Minn. 2019) (concluding that the phrase “has previously been convicted” is not ambiguous). The statute provides that a district court “must defer prosecution . . . for any person found guilty of” fifth-degree possession of a controlled substance “who . . . has not previously been convicted of a felony offense under any state or federal law.” Minn. Stat. § 152.18, subd. 1(b). The statute does not state that prosecution must be deferred for any person found guilty of fifth-degree possession of a controlled substance who has not previously been convicted of a felony offense *at the time the possession offense occurred*. *See id.* Such an interpretation would require us to read additional language into the statute, a practice that is prohibited by the rules of statutory construction. *See State v. Noggle*, 881 N.W.2d 545, 550–51 (Minn. 2016) (stating that appellate courts “cannot read in additional

language [to a statute], but rather must apply the plain language of the statute as written”). At the time Abbott pleaded guilty to fifth-degree possession of a controlled substance, she had a felony conviction for possession of methamphetamine paraphernalia in the presence of a child. Under the plain language of the statute, the district court therefore, was not required to stay adjudication of Abbott’s fifth-degree possession-of-a-controlled-substance offense.

Abbott also contends that “[e]ven if the district court [was] not required to stay adjudication, it abused its discretion in declining to impose the permissible stay of adjudication because it unfairly exaggerated the criminality of the [her] conduct.” But Abbott cites no authority that provides the district court with the discretion to stay adjudication. Although Minn. Stat. § 518.18, subd. 1(a) provides that a district court “may defer prosecution” for any person found guilty of fifth-degree possession of a controlled substance, such discretion may be exercised only if, among other things, the person “has not been convicted of a felony violation of this chapter.” Abbott was convicted of storing methamphetamine paraphernalia in the presence of a child under Minn. Stat. § 152.137 (2016). Abbott therefore had been convicted of a felony violation of chapter 152 at the time she pleaded guilty to fifth-degree possession of a controlled substance. As a result, the district court did not have discretion to stay adjudication of Abbott’s fifth-degree controlled-substance offense under Minn. Stat. § 518.18, subd. 1(a), at the time she pleaded guilty to it. Moreover, district courts may generally only stay adjudication with the prosecutor’s consent. *Martin*, 849 N.W.2d at 102. The record reflects that the prosecutor did not consent to a stay of adjudication. Accordingly, the district court did not abuse its

discretion by declining to stay adjudication for Abbott's fifth-degree-controlled-substance offense.

Affirmed.