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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0062**

State of Minnesota,
Appellant,

vs.

Brent Scott Darling,
Respondent.

**Filed July 1, 2019
Reversed and remanded
Bratvold, Judge**

Dakota County District Court
File No. 19HA-CR-17-1251

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

James C. Backstrom, Dakota County Attorney, Chip Granger, III, Assistant Attorney,
Hastings, Minnesota (for appellant)

Cathryn Middlebrook, Chief Appellate Public Defender, Christen Chapman, Assistant
Public Defender, St. Paul, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Larkin, Judge; and Bratvold,
Judge.

UNPUBLISHED OPINION

BRATVOLD, Judge

The state appeals the district court's decision to stay adjudication of respondent's
second-degree possession of a controlled substance charge when it found him guilty after

a stipulated-evidence trial. The state argues that the district court did not have statutory or inherent judicial authority to stay adjudication of his conviction over the state's objection. We reverse and remand for resentencing consistent with this opinion.

FACTS

On July 10, 2016, Burnsville Police Officers responded to a gas station where they found appellant Brent Scott Darling in his car and in need of medical attention. After officers placed Darling in the care of paramedics, Darling consented to a vehicle search. On the passenger seat, the officers found a bag that contained a baggie with a chemical substance and a digital scale. The substance in the baggie was later tested and found to be 6.96 grams of methamphetamine.

In March 2017, the state charged Darling with one count of second-degree possession of a controlled substance under Minn. Stat. § 152.022, subd. 2(a)(1) (2014). Darling pleaded not guilty and filed motions to suppress the drug evidence. After an evidentiary hearing, the district court denied Darling's motions.

The state and Darling then agreed to stipulate to evidence for a court trial under Minn. R. Crim. P. 26.01, subd. 3.¹ In October 2018, the district court issued a written decision and found Darling guilty of second-degree possession. The district court also ordered a presentence investigation (PSI).

¹ The district court's written findings of fact, conclusions of law, and order describe the parties' stipulation as a "stipulated facts trial" under Minn. R. Crim. P. 26.03, subd. 3. This appears to be a clerical error and the district court intended to cite Minn. R. Crim. P. 26.01, subd. 3, which is a trial on stipulated facts or evidence, and allows a defendant to "raise issues on appeal as from any trial to the court." Minn. R. Crim. P. 26.01, subd. 3(f). Darling did not appeal the district court's pretrial order.

The PSI report stated that “[t]he 2015/2016 Minnesota Sentencing Guidelines recommend a [prison commitment] for a period of 58 (50-69 range) months.” But the report also stated that the court could consider the new guidelines in the recently adopted Drug Sentencing Reform Act (DSRA), which “reduced the offender’s presumptive sentencing range” and “calls for a stay of 58 months.” The PSI recommended a stay of imposition and 10 years of probation.

At the sentencing hearing, the district court asked whether the parties had any additions or corrections to the PSI report; both parties said they did not. The district court then stated it would hear from the state, Darling’s attorney, and Darling, before imposing a sentence.

The state “strongly disagree[d]” with the PSI and urged the district court to stay execution of a 58-month sentence. The state argued that, at the time Darling committed his offense, the sentencing guidelines recommended “a presumptive commit to prison of 58 months.” The state agreed with the PSI report that the sentencing guidelines had changed under the DSRA and, currently, the guidelines recommendation for Darling’s offense was “a presumptive stay . . . and no longer [a] presumptive commit.”

Initially, Darling’s counsel asked the district court to follow the PSI recommendation and stay imposition of sentence, arguing that “it’s appropriate to treat this [offense] as we would treat it if it had occurred now after that change in policy was identified [by the legislature in the DSRA].”

Darling’s counsel then argued, apparently in the alternative, that “under the new sentencing statu[t]es that we have,” Darling “would actually be entitled to [a stay under

section] 152.18,” which authorizes a district court to defer prosecution for some drug offenses. Darling’s counsel stated that section 152.18 applied because Darling’s only prior offense was a paraphernalia conviction from Missouri. The district court disagreed and stated: “I don’t think [Darling is] eligible for a stay of adjudication.” The state argued that section 152.18 did not apply to Darling, in part, because the statute authorizes a stay of adjudication for persons found guilty of drug possession in the third, fourth, and fifth degrees and does not apply to second-degree drug possession. Darling’s counsel stated “[t]hat is accurate,” but added that, if Darling committed the same offense today, it would be charged as a third-degree offense or less. After the court held an off-the-record discussion with the parties, Darling’s counsel concluded his remarks by stating that, under the DSRA, the state would have charged Darling with fifth-degree controlled-substance possession, and Darling is “entitled [to] and the Court is required to impose a 152.18.” The district court then heard from Darling, who discussed his sobriety and treatment, along with his concern that he would have a hard time finding a new job with a felony record.

The district court then stayed adjudication, stating:

[B]ased on the fact that probation also recommended a probationary sentence and talked about, to some extent, the change in law, although, not as extensively as would have been helpful for the Court, and the fact that this offense, had it been a week later, as defense counsel stated, would have been charged as a controlled substance crime in the 5th degree, the Court will grant the defense request for a stay of adjudication under Minnesota statute 152.18.

Under that stay of adjudication, though, I am going to put you on probation for the next five years and require you to be on probation

After stating the terms of the stay, the district court acknowledged that it was “[t]rue” that Darling was not convicted of an offense because the court had stayed adjudication. The district court then spoke to Darling and stated:

I’m . . . sort of cutting you a break here. I do agree that you really sort of fell in that little abyss before the drug laws changed, and I am giving you the benefit of the doubt for that. Since it’s not a departure, the Court doesn’t have to make any other additional findings.

When asked if it had anything further, the state remarked that section 152.18 “does not apply by its terms to the [second] degree, which [Darling] was convicted of.” The district court then stated that it “will make a departure” and stay adjudication “based on the fact that the guidelines changed.” Finally, the district court found “substantial and compelling grounds to depart from the guidelines because Darling is “amendable to probation supervision,” “had been fully cooperative,” and “expressed remorse and done an acceptance of responsibility as of the sentencing.”² The state appeals.

D E C I S I O N

When a district court stays adjudication, the defendant pleads guilty or is found guilty, but the court “does not adjudicate the defendant guilty [and instead] imposes conditions of probation.” *State v. Martin*, 849 N.W.2d 99, 102 (Minn. App. 2014), *review denied* (Minn. Sept. 24, 2014). If the defendant successfully completes probation, he avoids

² Following the hearing, the district court’s departure report stated that section 152.18 was the basis for the departure in addition to “compelling reasons.” The warrant of commitment stated that Darling’s disposition is a “[s]tatutory stay of adjudication.”

a criminal conviction. *See id.* Whether a district court exceeds its authority by imposing a stay of adjudication raises a question of law, which we review de novo. *See id.* at 105.³

The state argues that the sentencing court exceeded its authority “when it stayed adjudication of [Darling’s] sentence” for controlled-substance possession in the second degree. Darling contends that the district court acted within its inherent authority when it imposed a stay of adjudication. To decide this issue, we first examine the district court’s statutory authority to stay adjudication and then analyze the district court’s inherent authority to stay adjudication.

The state contends, and Darling concedes on appeal, that the sentencing court did not have statutory authority to stay adjudication. Minn. Stat. § 609.095(b) (2014) provides that, unless an enumerated exception applies, “a court may *not* refuse to adjudicate the guilt of a defendant . . . who has been found guilty by a court or jury following a trial.” (Emphasis added). There are three enumerated exceptions, one of which is the exception for first-time drug offenders that was discussed during Darling’s sentencing hearing. *See* Minn. Stat. § 609.095(b). But controlled-substance possession in the second degree is not mentioned in section 152.18. *See* Minn. Stat. § 152.18, subd. 1 (2014). Consequently,

³ The parties contend that an abuse-of-discretion standard of review applies to this appeal. It is true that some earlier caselaw regarding stays of adjudication applied an abuse-of-discretion standard of review. *See, e.g., State v. Angotti*, 633 N.W.2d 554, 556 (Minn. App. 2001). More recent caselaw, however, has held that a de novo standard of review applies when the issue is whether the district court has authority to impose a stay of adjudication. *See Martin*, 849 N.W.2d at 105. Because the district court’s authority to stay adjudication is at issue in this appeal, we apply a de novo standard of review.

we conclude that the district court lacked statutory authority to stay adjudication of Darling's case.

Darling contends that the district court exercised its inherent authority when it stayed adjudication of his case. Minnesota district courts have limited inherent judicial authority to stay adjudication over a prosecutor's objection to serve the administration of justice. *See State v. Foss*, 556 N.W.2d 540, 540-41 (Minn. 1996). A district court should exercise this power "only for the purpose of avoiding an injustice resulting from the prosecutor's *clear abuse of discretion* in the exercise of the charging function." *State v. Lee*, 706 N.W.2d 491, 496 (Minn. 2005) (quoting *Foss*, 556 N.W.2d at 541). A district court's "mere disagreement" with the prosecutor's exercise of charging discretion does not rise to the level of a prosecutorial abuse of discretion. *Foss*, 556 N.W.2d at 541.

If a district court stays adjudication over the prosecutor's objection, "whether in writing or on the record," the district court must state its reasons for doing so. *State v. Ohrt*, 619 N.W.2d 790, 792 (Minn. App. 2000). These reasons must include a finding that "special circumstances" apply and, specifically include a finding that injustice would otherwise result from the prosecutor's clear abuse of charging discretion. *Lee*, 706 N.W.2d at 495-96 (citing *Foss*, 556 N.W.2d at 541).

We begin by addressing the district court's stated reasons for staying adjudication in Darling's case. Here, the district court did not state it was exercising its inherent authority to stay adjudication, nor did it find an abuse of the prosecutor's charging discretion, nor did it identify special circumstances warranting a stay of adjudication. Rather, the district court stated it was departing from the sentencing guidelines because

“there are substantial and compelling grounds” for departure.⁴ The district court identified specific reasons for departure because Darling is “fully cooperative,” “amenable to probation,” and “expressed remorse and [had] done an acceptance of responsibility as of the sentencing.”

Even if we assume, without deciding, that the district court implicitly identified these reasons for departure as special circumstances that supported a stay of adjudication, we would reject each reason because none of them relate to a prosecutor’s charging discretion. As *Lee* clarified, even if a “special circumstance” exists, the district court still must determine a clear abuse of a prosecutor’s charging discretion. 706 N.W.2d at 496. Additionally, existing caselaw has rejected the district court’s specific reasons and held they are not special circumstances. *See, e.g., State v. Leming*, 617 N.W.2d 587, 589-90 (Minn. App. 2000) (“Remorse and cooperation with authorities are also not special circumstances.”); *Ohrt*, 619 N.W.2d at 792 (holding “amenability to probation” is not a special circumstance).⁵

⁴A stay of adjudication is not a sentencing departure. If there is a stay of adjudication, there is no conviction. *See Martin*, 849 N.W.2d at 102. And if there is no conviction, there cannot be a sentence under the guidelines from which to depart. *See* Minn. Stat. § 609.10, subd. 1(a) (2018) (providing that a sentence can only be imposed “[u]pon conviction”); *see also State v. Greenough*, 915 N.W.2d 915, 918 (Minn. App. 2018) (“A stay of adjudication is not a sentence under the guidelines because when a district court orders a stay of adjudication, no conviction is entered or sentence imposed.”).

⁵ Darling also argues that a felony conviction would negatively affect his ability to find employment, and that this is an injustice. But the supreme court previously has determined that a potential loss of employment is not a “special circumstance.” *See State v. Twiss*, 570 N.W.2d 487, 487 (Minn. 1997) (“The possibility that a defendant may lose her job . . . as a result of a conviction . . . is not a special circumstance allowing the trial court to stay an adjudication of guilt over the prosecutor’s objection.”).

Darling also argues that the district court made an “implicit finding” that the prosecutor committed a clear abuse of charging discretion because the prosecutor “charged Darling under the pre-DSRA law” and “ignored the policy reasons behind” DSRA amendments that reduced weight thresholds for drug-possession offenses. Darling is correct that the DSRA amended the threshold weight requirements for certain drug-possession offenses, including second-degree possession of a controlled substance. Importantly, at the time of Darling’s July 2016 offense, this section of DSRA was *enacted* but was not yet *effective*. See 2016 Minn. Laws ch. 160, § 4 (providing that this section is effective on August 1, 2016). In *State v. Otto*, the Minnesota Supreme Court held that the DSRA provisions that amended the weight requirements for drug-possession offenses applied to crimes committed on or after August 1, 2016. 899 N.W.2d 501, 503 (Minn. 2017) (citing 2016 Minn. Laws ch. 160, §§ 3-4). Darling’s offense was committed on July 10, 2016. Relying on *Otto*, the state argues that the prosecutor did not commit a clear abuse of discretion in exercising the charging function in Darling’s case. We agree because the state charged Darling with second-degree possession based on the criminal statute in effect at the time Darling committed his offense.⁶

⁶ The state also contends that it followed *State v. Kirby* in the sentencing recommendation it made for Darling. 899 N.W.2d 485, 488 (Minn. 2017). Darling does not dispute this point in his brief to this court. We briefly address the issue to provide guidance upon remand. Initially, the DSRA’s revisions to the sentencing guidelines provide that, for a person with a criminal history score of one, such as Darling, a controlled-substance crime in the second degree has a 58-month presumptive stayed sentence instead of a 58-month presumptive prison sentence. Compare Minn. Sent. Guidelines 4.A (2015), with Minn. Sent. Guidelines 4.C (2016). The DSRA’s changes in the sentencing guidelines became effective “the day following final enactment.” 2016 Minn. Laws ch. 160, § 18. See also *Kirby*, 899 N.W.2d at 496.

In short, none of Darling's public-policy arguments suffice to demonstrate that the prosecutor violated existing law nor does he establish that the district court found a clear abuse of the prosecutor's discretion in exercising the charging function. Accordingly, we conclude that the prosecutor acted within the "considerable discretion" prosecutors have in charging Darling. *See State v. Herme*, 298 N.W.2d 454, 455 (Minn. 1980).

We conclude that the district court erred in staying adjudication of Darling's offense for second-degree possession of a controlled substance. Thus, we reverse and remand for sentencing consistent with this opinion.

Reversed and remanded.