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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0084**

Amy Jeanne Flaherty, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed September 9, 2019
Affirmed
Reilly, Judge**

Chisago County District Court
File No. 13-CR-15-269

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

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

Janet Reiter, Chisago County Attorney, David Hemming, Assistant County Attorney, Center City, Minnesota (for respondent)

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

UNPUBLISHED OPINION

REILLY, Judge

Appellant challenges the district court's determination that her motion to correct her sentence pursuant to Minnesota Rule of Criminal Procedure 27.03, subdivision 9 (rule 27 motion), was improper. Because the district court did not abuse its discretion, we affirm.

FACTS

In April 2015, City of Wyoming police officers executed a search warrant on appellant Amy Flaherty's home. During the search, police discovered a trash bag containing 365 grams of marijuana, a 50-gallon drum of an unknown liquid, multiple locked safes, scales, lights, and other items commonly used to grow marijuana plants. Based upon the recommendation from a Chemical Assessment Team (CAT), the City of Wyoming paid \$1,413.45 to Bay West Corporation, a third-party vendor, to dispose of the contents of the 50-gallon drum. Thereafter the state, respondent in this case, charged appellant with fifth-degree possession of a controlled substance in violation of Minn. Stat. § 152.025, subd. 2(a)(1) (2014).

In October 2015, the state and appellant entered into a plea agreement in which appellant agreed to plead guilty to fifth-degree possession and pay restitution—subject to a challenge at a restitution hearing—in exchange for a stay of adjudication with a five year probation period. The plea petition reflected this agreement, which appellant signed. At sentencing, in accordance with the plea agreement, the district court ordered a stay of adjudication, placed appellant on probation for five years, imposed a fine, and ordered restitution of \$1,413.45 subject to a challenge by appellant.

Appellant filed a timely challenge to the restitution. At the restitution hearing, the district court heard testimony from the City of Wyoming Chief of Police and appellant. The Chief testified that: (1) officers found a large drum during the search warrant on appellant's home; (2) a CAT recommended removal of the drum, which contained "potassium sulfate"; (3) the City of Wyoming contacted Bay West Corporation for removal of the drum; and (4) Bay West Corporation sent the City of Wyoming an invoice for \$1,413.45. Appellant testified that the CAT report showed the drum contained "potassium oleate," which she asserted is a commercial cleaning product called "Heat 'n Kleen" used by her partner to clean popcorn machines as a part of his business. Appellant produced the CAT report and a receipt of her purchase of the cleaning product. In July 2016, the district court issued an order upholding its prior restitution order of \$1,413.45 to the City of Wyoming.

In July 2018—nearly two years later—appellant filed a rule 27 motion, arguing that the restitution order must be reversed because the state failed to prove that the City of Wyoming suffered an economic loss that was directly caused by her crime and that the court failed to consider her ability to pay restitution. The district court determined that: (1) appellant's rule 27 motion was unavailable because the restitution award was a material term of the plea agreement; and (2) a petition for post-conviction relief under Minn. Stat. § 590.01, subd. 1 (2016) was unavailable because appellant received a stay of adjudication.

This appeal follows.

DECISION

The question presented in this case is whether the district court abused its discretion when it denied appellant's challenge to the court-ordered restitution because it determined that neither a rule 27 motion nor a petition for post-conviction relief was appropriate in this case.

I. The district court did not abuse its discretion when it denied appellant's rule 27 motion.

Minnesota Rule of Criminal Procedure 27.03, subdivision 9, provides that a district court "may at any time correct a sentence not authorized by law." A criminal offender may utilize the procedure in rule 27.03, subdivision 9, to challenge a restitution award. *Evans v. State*, 880 N.W.2d 357, 359-60 (Minn. 2016). We review a district court's denial of a motion to correct sentence under the abuse-of-discretion standard. *State v. Amundson*, 828 N.W.2d 747, 752 (Minn. App. 2013). A district court abuses its discretion by upholding a sentence that is unauthorized by law. *Id.*

Here, the district court determined that appellant could not properly bring her challenge in a rule 27 motion because restitution was a material part of her plea agreement. A district court should not alter the terms of restitution that is negotiated as part of a plea agreement if it materially changes the expectations of the parties to the bargain. *State v. Meredyk*, 754 N.W.2d 596, 604 (Minn. App. 2008); *see also Evans*, 880 N.W.2d at 357 (holding that a rule 27 motion is not the proper method to challenge a restitution award if payment of restitution is a material part of the negotiation). Because a plea agreement is considered similar to a contract between the state and a defendant, the alteration of one

term may alter the nature of the entire agreement. *Meredyk*, 754 N.W.2d at 603-04 (determining that district court's modification to restitution was an abuse of discretion because it materially altered the negotiated plea agreement); *see also State v. Noreen*, 354 N.W.2d 77, 78-79 (Minn. App. 1984) (stating that imposition of a restitution obligation of \$2,000 materially altered the expectations of the parties).

Appellant argues that restitution was not a material part of her plea agreement because the agreement recognized restitution would be further litigated at a restitution hearing. However, appellant fails to cite any relevant legal authority supporting her argument that because the parties agreed to a restitution hearing, the restitution amount was not a material part of the plea agreement. And contrary to appellant's argument, a review of the record supports the materiality of the restitution to the plea agreement. At the restitution hearing, appellant's counsel indicated that the state refused to negotiate without restitution included, so appellant "had to say she would agree to restitution, understanding she had the right to challenge the amount" in order to plead guilty. And "Restitution of \$1400 J&S but can have a restitution hrg" is written directly on the plea petition. Because we see no abuse of discretion in the district court's determination that restitution was a material part of appellant's plea agreement, and therefore a rule 27 motion is inappropriate in this case, we affirm.

II. The district court did not abuse its discretion when it denied appellant's petition for postconviction relief.

Minnesota's postconviction statute allows a person convicted of a crime to petition the court to correct a sentence when the sentence "violate[s] the person's rights under the

Constitution or laws of the United States or of the state.” Minn. Stat. § 590.01, subd. 1 (2016). The statute imposes a two-year time limit on petitions for postconviction relief from “the entry of judgment of conviction or sentence if no direct appeal is filed.” *Id.*, subd. 4(a)(1) (2016). We review a postconviction court’s denial of a petition for postconviction relief for an abuse of discretion. *Andersen v. State*, 913 N.W.2d 417, 422 (Minn. 2018). “A postconviction court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record, or exercises its discretion in an arbitrary or capricious manner.” *Crow v. State*, 923 N.W.2d 2, 9 (Minn. 2019) (quotation omitted).

Minnesota law permits a district court to stay adjudication of guilt for first-time offenders who are found guilty of, or plead guilty to, certain controlled-substance offenses. Minn. Stat. § 152.18, subd. 1 (2016). If the defendant and the offense meet the specified criteria, the statute authorizes the court to:

without entering a judgment of guilty and with the consent of the person, defer further proceedings and place the person on probation upon such reasonable conditions as it may require and for a period, not to exceed the maximum sentence provided for the violation Upon violation of a condition of the probation, the court may enter an adjudication of guilt and proceed as otherwise provided.

Id. In this case, the district court construed appellant’s motion as a petition for postconviction relief and denied relief, concluding that appellant’s request was impermissible because there was no entry of judgment of conviction for purposes of Minn. Stat. § 590.01, subd. 4(a)(1). The district court reasoned that because it stayed adjudication pursuant to section 152.18, there was “by definition no adjudication of guilt.”

Appellant concedes that recent caselaw has held that a postconviction petition may not be used to challenge a stay of adjudication. *See Dupey v. State*, 868 N.W.2d 36, 41 (Minn. 2015) (“When an offender receives a stay of adjudication under Minn. Stat. § 152.18, subd. 1, there is no judgment of conviction or sentence under Minn. Stat. § 590.01, subd. 4(a)(1).”); *see also Lunzer v. State*, 874 N.W.2d 819, 823 (Minn. App. 2016) (“Because appellant was not convicted of a crime for purposes of Minn. Stat. § 590.01, subd. 1, the district court lacked jurisdiction to consider her petition for postconviction relief and properly denied it without an evidentiary hearing.”). But appellant argues that because the court did not stay her payment of restitution, she should be able to challenge the court-imposed restitution. However, appellant does not cite any relevant legal authority to support her position, and we can find none.

Here, appellant did not file a direct appeal from the district court’s decision to award restitution, but instead waited almost two years to file a rule 27 motion (and alternatively a postconviction petition). Neither a rule 27 motion nor a postconviction petition are available remedies in this case, and so accordingly, we affirm the district court’s denial of appellant’s motion and petition.

Affirmed.