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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0950**

State of Minnesota,
Respondent,

vs.

Victor Manuel Artola,
Appellant.

**Filed June 22, 2020
Reversed and remanded
Florey, Judge**

Hennepin County District Court
File No. 27-CR-17-5346

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

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

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer K.W. Jesness, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bryan, Presiding Judge; Florey, Judge; and John Smith,
Judge.*

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

UNPUBLISHED OPINION

FLOREY, Judge

In this direct appeal from judgments of conviction for criminal sexual conduct, appellant argues that the district court erred in imposing lifetime terms of conditional release because the multiple adjudications were entered simultaneously in the same proceeding, and appellant had no other criminal-sexual-conduct convictions. We reverse and remand.

FACTS

Appellant Victor Manuel Artola was charged by complaint with two counts of first-degree criminal sexual conduct and two counts of second-degree criminal sexual conduct. On January 10, 2019, the parties agreed to a stipulated-evidence trial. On January 29, 2019, the district court found Artola guilty of all four counts of criminal sexual conduct, stating, “so having adjudicated you and found you guilty as to Counts 1, 2, 3, and 4, the judgment of the Court is you are guilty and convicted of those offenses.” The district court sentenced Artola to 144 months in prison on count one, 70 months in prison, concurrent, on count two, and imposed a lifetime conditional-release term on each count. Artola appeals.

DECISION

Artola asserts that he was impermissibly sentenced to terms of lifetime conditional release because his convictions occurred simultaneously, rather than sequentially. A court “may at any time correct a sentence not authorized by law.” Minn. R. Crim. P. 27.03, subd. 9.

Minn. Stat. § 609.3455, subds. 3-4, 7 (2018), provides that an offender may be sentenced to a lifetime conditional-release term if he has a prior sex-offense conviction. In 2016, the supreme court held that lifetime conditional release applies when convictions are entered separately, even if they occur “in rapid succession.” *State v. Nodes*, 863 N.W.2d 77, 82 (Minn. 2015). The supreme court reasoned that

[a]s long as one conviction is entered before the second it is a “prior conviction” under the plain language of the statute. Therefore . . . the definition of “prior sex offense conviction” . . . unambiguously includes a conviction for a separate behavioral incident entered before a second conviction, whether at different hearings or during the same hearing.

Id. at 82. Applying the reasoning from *Nodes*, this court recently held that lifetime conditional-release terms may not be imposed when convictions are entered simultaneously. *State v. Brown*, 937 N.W.2d 146, 157 (Minn. App. 2019), *review denied* (Minn. Feb. 18, 2020). In *Brown*, we stated that “convictions adjudicated simultaneously cannot constitute both a prior conviction and a present offense” under the statute because “[w]ith no temporal gap whatsoever between a district court’s adjudication of offenses, no conviction is entered ‘before’ the other, and no conviction can be prior to the other.” *Id.* at 156-57.

Here, Artola asserts that his convictions were entered simultaneously, and thus, the imposition of a lifetime conditional-release term was not permissible. In *Nodes*, the supreme court held that the following statement by the court was considered sequential:

I will now formally accept the pleas, and on count one adjudicate him guilty of criminal sexual conduct in the first degree, a felony, in violation of Minnesota Statute 609.342,

subd. 1(a) and subd. 2(a), on or about February 26, 2013, and also on count three, criminal sexual conduct in the second degree, a felony, in violation of Minnesota Statute 609.343, subd. 1(a) and subd. 2(a) on or about March 19, 2013.

863 N.W.2d at 79. In contrast, we held in *Brown* that the following statement by the district court was a simultaneous conviction:

You were convicted on June 22, 2018, of the crimes of criminal sexual conduct in the first and second degree. And standing convicted of those crimes, so you're going to be convicted today on both counts, it is the sentence of law and the judgment of this court that as punishment, therefore, you shall be committed to the Commissioner of Corrections of this state for a period of 216 months on [c]ount 1 and 140 months on [c]ount 2. Count 2 will run concurrently with [c]ount 1.

937 N.W.2d at 155-56. Here, the district court made the following statement: "So having adjudicated you and found you guilty as to Counts 1, 2, 3, and 4, the judgment of the Court is you are guilty and convicted of those offenses." We conclude that, like the district court in *Brown*, the district court here convicted Artola of all four counts simultaneously. Accordingly, we reverse the imposition of lifetime conditional-release terms and remand for resentencing in accordance with *Brown*.

Reversed and remanded.