

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1061**

State of Minnesota,
Respondent,

vs.

Moses Woods,
Appellant.

**Filed May 18, 2020
Reversed and remanded
Worke, Judge**

Hennepin County District Court
File No. 27-CR-18-16448

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

Michael O. Freeman, Hennepin County Attorney, Nicole Cornale, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Florey, Presiding Judge; Worke, Judge; and Larkin, Judge.

S Y L L A B U S

The amelioration doctrine applies to the 2019 sentencing guidelines provision altering the determination of when a prior conviction has decayed for calculating criminal history, which requires that a current offense date be established by the fact-finder or through an admission by the defendant.

O P I N I O N

WORKE, Judge

Appellant challenges the sentence imposed for his first-degree criminal-sexual-conduct conviction, arguing that he is entitled to the benefit of a change in the sentencing guidelines that would reduce his criminal-history score and sentence duration. We agree that the change in the sentencing guidelines applies to appellant's sentence; however, based on this record, we cannot determine if appellant is entitled to a reduction in his criminal-history score. Accordingly, we reverse and remand for proceedings consistent with this opinion.

F A C T S

On June 29, 2018, appellant Moses Woods was charged with two counts of first-degree criminal sexual conduct. *See* Minn. Stat. § 609.342, subds. 1(a), 1(h)(iii) (2010). The complaint alleged that on multiple occasions between January 1, 2012, and March 26, 2018, Woods sexually penetrated his girlfriend's daughter, a child under the age of 13 and more than 36 months younger than Woods.

According to the complaint, the victim reported that in 2012, when she was six or seven years old, Woods began "touching on her." She reported that, over the years, Woods began putting his penis in her mouth and his mouth on her vagina. Because of the multiple acts of penetration alleged, and because Woods has a prior first-degree criminal-sexual-conduct conviction, the state intended to seek an aggravated sentence in this case.

On January 22, 2019, Woods pleaded guilty to count one, first-degree criminal sexual conduct, in violation of Minn. Stat. § 609.342, subd. 1(a). The state dismissed count

two and withdrew its motion for an aggravated sentence. In establishing the factual basis supporting Woods's guilty plea, the following exchange occurred between Woods and his attorney:

Q: [Y]ou continue to tell me [that] you don't agree with everything that's contained in the complaint and everything that's contained in the police reports; correct?

A: No.

Q: You don't, do you?

A: No.

Q: However . . . you were willing to admit [That] [b]etween . . . January 1, 2012 and March 26 . . . 2018, you were residing with a woman whose initials are R.M.; is that correct?

A: Yes.

Q: And she has a minor daughter whose initials are S.M.; is that also true?

A: Yes.

Q: And during that time frame, from January of 2012 through March 26th of 2018, you were living with that family for . . . most of that time; is that true?

A: Yes.

. . . .

Q: During this period of time . . . would you agree that on a number of occasions . . . more than one, not as many as they claim, but on more than one occasion you put your penis in S.M.'s mouth; true?

A: Yes.

Q: And I think you told me that happened two or three or four or maybe five times, right?

A: Yes.

Q: They've alleged a lot more often and some other things which you've disagreed with, but you do freely acknowledge and admit that during this period of time you placed your penis in S.M.'s mouth?

A: Yes.

Q: And during that period of time she was somewhere between 6 or 7 and 13 years old; correct?

A: Yes.

A presentence investigation (PSI) was conducted on March 8, 2019. Woods disputed the timeframe in the complaint; he stated: “I didn’t start fooling with her until she was 11,” which would have been in 2015. The PSI stated that Woods “could not recall how many instances of sexual abuse occurred, but finally settled on between four and ten, over a time frame of about a year.”

The PSI shows that Woods’s criminal-sexual-conduct conviction from 1994 was discharged on March 11, 2014. Woods’s presumptive sentence of 234 months in prison, with a range between 199-280 months, was reached using four criminal-history points, including three points for the 1994 first-degree criminal-sexual-conduct conviction. On April 12, 2019, the district court sentenced Woods to 280 months in prison. This appeal followed.

ISSUE

Does a change in the sentencing guidelines regarding the decay of a prior conviction apply to the calculation of appellant’s criminal-history score?

ANALYSIS

Woods argues that his case must be remanded for resentencing because a change in the sentencing guidelines reduces his criminal-history score and presumptive sentence. A sentence based on an incorrect criminal-history score is an illegal sentence that may be corrected at any time. *State v. Maurstad*, 733 N.W.2d 141, 147 (Minn. 2007). When a defendant’s sentence is based on an incorrect criminal-history score, his case must be remanded for resentencing. *State v. Provost*, 901 N.W.2d 199, 202 (Minn. App. 2017).

The interpretation of the sentencing guidelines is a question of law reviewed de novo. *State v. Strobel*, 932 N.W.2d 303, 306 (Minn. 2019).

Woods’s criminal-history score includes three points for his 1994 criminal-sexual-conduct conviction. Woods argues that under the current sentencing guidelines, the prior conviction would be considered decayed, and his criminal-history score would not include these three points. The parties agree on much of the analysis; they part ways, however, on one decay factor that leads to their different conclusions regarding the appropriate resolution of this case.

First, the parties agree that under the sentencing guidelines that were in effect when Woods was sentenced in 2019, his sentence was legal because his 1994 conviction had not decayed and was appropriately included in the calculation of his criminal-history score. When Woods was sentenced, the guidelines for calculating a criminal-history score prohibited the use of a “prior felony sentence or stay of imposition following a felony conviction . . . if a period of fifteen years has elapsed since the date of discharge from or expiration of the sentence to the date of the current offense.” Minn. Sent. Guidelines 2.B.1.c. (2018). Woods was discharged after he completed probation on March 11, 2014, and the date range of the current offense is between January 1, 2012, and March 26, 2018. A period of 15 years has not elapsed between these dates. Thus, the parties are correct that Woods’s sentence was legal when imposed.

Second, the parties agree that the change in the sentencing guidelines applies to Woods’s case because his case was not final before the change took effect. See *State v. Kirby*, 899 N.W.2d 485, 496 (Minn. 2017) (stating, under amelioration doctrine,

amendments to sentencing guidelines apply to cases that are not final when the amendment mitigates punishment and the legislature does not state a clear intention to abrogate the doctrine). We agree with the parties that the change in the sentencing guidelines applies to Woods's case.

Third, the parties agree that two of the three requirements under the current sentencing guidelines apply to Woods's case. Effective August 1, 2019, the sentencing guidelines regarding the calculation of a criminal-history score were amended. The section on the decay factor now reads:

In computing the criminal history score, a prior felony sentence or stay of imposition following a felony conviction must not be used if all the following, to the extent applicable, occurred before the date of the current offense:

- (1) the prior felony sentence or stay of imposition expired or was discharged;
- (2) a period of fifteen years elapsed after the date of the initial sentence following the prior conviction; and
- (3) if the prior felony sentence was executed, a period of fifteen years elapsed after the date of expiration of the sentence.

Minn. Sent. Guidelines 2.B.1.c. (Supp. 2019). The parties agree that the third requirement applies only to executed sentences; Woods was convicted on March 9, 1994, received a stay of imposition for 20 years, and, although he had a probation violation in 2004, he was continued on probation and discharged on March 11, 2014, without having his sentence executed. The third requirement does not apply here.

Finally, the parties agree that the second of the two applicable requirements has been met. The second requirement states that a prior felony will not be included in a

criminal-history score when “a period of fifteen years elapsed after the date of the initial sentence following the prior conviction” and the date of the current offense. *See id.* Woods received a stay of imposition on March 9, 1994. The current offense has a date range between January 1, 2012, and March 26, 2018. Fifteen years after the initial sentence date (March 9, 1994) occurred on March 9, 2009. Thus, 15 years had elapsed between the initial sentencing on March 9, 1994, and the current offense date range beginning on January 1, 2012.

The parties disagree, however, as to the first requirement of the decay factor—whether Woods’s stay of imposition was discharged before the date of the current offense. *See id.* Woods argues that he satisfied the first requirement because he was discharged when he completed probation on March 11, 2014, and the plea record does not establish that the offense occurred on or before March 11, 2014.

The state argues that the first requirement is not satisfied because “an overlap of two years [exists] between the current offense date range and discharge of [Woods’s] prior sentence.” The state claims that Woods “freely admitted at the plea hearing that he repeatedly sexually penetrated S.M. from January 1, 2012, to March 26, 2018.” The state asserts that the record establishes that “penetration occurred between January 1, 2012 and March 11, 2014.” But that is not accurate.

According to the complaint, the victim alleged that Woods began “touching on her” when she was six or seven years old, and that “over the years,” he began penetrating her. At the plea hearing, Woods indicated that he did not agree with the allegations in the complaint regarding the frequency of the abuse, but he did agree that “on more than one

occasion [he] put [his] penis in [the victim]’s mouth.” Woods indicated that the penetration occurred “during that period of time [when the victim] was somewhere between 6 or 7 and 13 years old.” Thus, the record establishes that Woods penetrated the victim, but it does not establish when, specifically, Woods penetrated the victim between January 1, 2012, and March 11, 2014.

The state claims that *State v. Washington* supports its position that the record establishes when the illegal conduct occurred. See 908 N.W.2d 601 (Minn. 2018). In *Washington*, the defendant was charged with failing to register as a predatory offender. *Id.* at 604. The complaint alleged an offense date range between June 9, 2013, and August 4, 2015. *Id.* The district court found the defendant guilty, and at the sentencing hearing determined that the defendant had five criminal-history points, which included a 1996 conviction. *Id.* at 605. Washington appealed his sentence, arguing that his criminal-history score should not have included the 1996 conviction because it had decayed. *Id.* Washington claimed that 15 years had lapsed between the date that his prior sentence expired in 1999 and the date of the current offense, which he claimed was August 4, 2015, the last date in the offense date range. *Id.*

The supreme court agreed with this court that failing to register is a continuing offense because the statute imposes a “continuing obligation” on the offender. *Id.* at 606 (determining that predatory-offender-registration statute imposes a continuing obligation and listing several other statutes with a continuing obligation). The supreme court stated that the sentencing guidelines “do not define what is meant by ‘the date of the offense.’” *Id.* at 607. But the supreme court determined that the only reasonable interpretation is that

the “entire range of dates over which a continuing crime is committed constitutes ‘the date of the current offense.’” *Id.* at 607-08.

The problem with the state’s reliance on *Washington* in this matter is that Woods did not plead guilty to a continuing offense. While Woods was charged with violating Minn. Stat. § 609.342, subd. 1(h)(iii), which criminalizes sexual abuse when the actor has a significant relationship to the victim, the victim is under 16 years of age, and the sexual abuse involved multiple acts over an extended period of time, he pleaded guilty to committing one act of sexual penetration. See Minn. Stat. § 609.342, subd. 1(a) (stating that a person is guilty of first-degree criminal sexual conduct when he sexually penetrates the victim who is under 13 years of age and he is more than 36 months older than the victim). Unlike the defendant in *Washington*, who violated the registration statute every day he failed to register because registration is a continuing obligation, Woods did not commit a criminal act every day over the period of time he sexually abused the victim. Thus, because Woods did not plead guilty to a continuing offense, the state’s reliance on *Washington* is misplaced.

Woods cites *State v. Goldenstein*, arguing that when doubt exists as to when a defendant’s criminal act occurred, the issue should be resolved in the defendant’s favor. See 505 N.W.2d 332, 347-48 (Minn. App. 1993), *review denied* (Minn. Oct. 19, 1993). In *Goldenstein*, both defendants were convicted of first-degree criminal sexual conduct, and one defendant was also convicted of second-degree criminal sexual conduct. *Id.* at 335. The offense date range was May 1987 through May 1990. *Id.* Among other things, the Goldensteins challenged their sentences, arguing that they should have been sentenced

under the 1987 guidelines, rather than the 1989 guidelines, which increased the presumptive sentence range. *Id.* at 347. In determining the date of the offense, which this court noted was “important for sentencing purposes,” this court stated that, even though there was an offense date range, the defendants were “convicted of a single offense occurring sometime during a three-year period.” *Id.* This court determined that the district court erred in sentencing as though the “single incident of sexual misconduct occurred after August 1, 1989,” because no trial testimony addressed the date of offense. *Id.* at 348.

Similarly here, Woods pleaded guilty to a single offense occurring sometime between January 1, 2012, and March 26, 2018. While Woods admitted to committing more than one criminal act during this timeframe, he did not specifically admit to committing an act between January 1, 2012, and March 11, 2014. Because the record does not show when Woods committed the act to which he pleaded guilty, there is uncertainty as to whether he was discharged from probation before the date of the current offense.

Another case that supports Woods’s argument that a specific offense date is necessary in calculating his correct sentence is *State v. DeRosier*, in which the supreme court affirmed this court’s reversal and remand of DeRosier’s sentence because the jury did not find an offense date. 719 N.W.2d 900, 901 (Minn. 2006). At DeRosier’s jury trial on first-degree criminal-sexual-conduct charges, the victim testified that sexual encounters began in June 2000 and that she was certain that one encounter occurred in August 2000. *Id.* at 901-02. The district court instructed the jury that to satisfy one of the elements of the offense, it had to find that DeRosier’s conduct took place “on or about June, July, or August 2000.” *Id.* at 902. The jury found DeRosier guilty, and the district court sentenced

him to 144 months in prison using August 2000 as the offense date and the 2000 sentencing guidelines; if the district court had used an earlier offense date and an earlier version of the sentencing guidelines, the presumptive sentence would have been 86 months in prison. *Id.*

The supreme court determined that the district court erred in deciding the date of DeRosier's offense and imposing a longer sentence than the pre-August presumptive sentence. *Id.* at 903. The supreme court decided that the district court's decision violated *Blakely v. Washington*, 542 U.S. 296, 303, 124 S. Ct. 2531 (2004), which requires any fact that increases a sentence to be found by a jury. *Id.*

Similarly here, Woods's sentence included three points for the prior criminal-sexual-conduct conviction. These points would not factor into his criminal-history score if his prior offense had decayed. Under the decay-factor analysis, an offense date for the current offense is necessary in determining whether a prior offense is decayed. Here, there was no jury to make a current-offense-date finding, and Woods did not admit to an offense date when he pleaded guilty, but the determination of the current offense date dictated the length of Woods's sentence.

Another case that lends support, albeit limited because it is unpublished, is *State v. Helm*. See No. A11-0144, 2012 WL 3792101 (Minn. App. Sept. 4, 2012). In that case, the defendant was charged with multiple counts of second-degree criminal sexual conduct occurring between January 1, 2006, and August 1, 2009. *Id.* at *1. The defendant pleaded guilty and the district court sentenced him according to the 2008 guidelines. *Id.* at *2. The defendant challenged his sentence, arguing that he should have been sentenced under the 2006 guidelines because the offense to which he pleaded guilty had a date range beginning

in January 2006. *Id.* at *4. This court rejected that argument because when Helm pleaded guilty, he pleaded to an incident that occurred in August 2008. *Id.* The opinion states that Helm entered his plea, “based on an incident that occurred in August 2008.” *Id.* at *2. Helm “testified that he could recall the date of the incident because he and the victim were decorating the house in preparation for a celebration of the wedding anniversary of [him] and his then-wife. It was while they were decorating the house that [Helm] sexually assaulted his then-11-year-old relative on the dining room table.” *Id.*

In *Helm*, although there was a date range, the defendant pleaded guilty to one incident that occurred on a particular date. The record established the date and supported the district court’s application of the 2008 guidelines. Here, there is a date range, but nothing in the record supporting a date for one act of criminal sexual conduct. Accordingly, we reverse and remand to the district court for further proceedings to establish an offense date and resentencing. *See State v. Outlaw*, 748 N.W.2d 349, 356 (Minn. App. 2008) (reversing and remanding for district court to determine whether out-of-state convictions can be counted as felonies for an enhanced sentence), *review denied* (Minn. July 15, 2008).

D E C I S I O N

The 2019 revision to the sentencing guidelines modifying the decay of a prior conviction applies to Woods’s case based on application of the amelioration doctrine. Because the decay-factor analysis requires a fact-finding or admission regarding the current offense date in order to determine whether Woods was discharged from probation before the current offense was committed, and the record fails to establish the current offense date

within the date range as charged, we reverse and remand for a determination of Woods's current offense date and resentencing.

Reversed and remanded.