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**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0275**

State of Minnesota,
Respondent,

vs.

Cortney John Edstrom,
Appellant.

**Filed October 26, 2020
Reversed and remanded
Johnson, Judge**

Hennepin County District Court
File No. 27-CR-15-28931

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

Michael O. Freeman, Hennepin County Attorney, Jonathan P. Schmidt, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Stan Keillor, Special Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Larkin, Judge; and Frisch, Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

In 2016, Cortney John Edstrom was convicted of a first-degree controlled-substance crime and was sentenced to 134 months of imprisonment. In 2019, he moved to correct

his sentence on the ground that he was entitled to the shorter sentence prescribed by the Drug Sentencing Reform Act (DSRA), which had become law four days before his sentencing hearing. The district court denied the motion on the ground that Edstrom possessed not only controlled substances but also firearms, thereby implicating the new offense of aggravated first-degree controlled-substance crime, which was created by a different section of the DSRA. We conclude that the district court erred by denying Edstrom's motion even though he satisfied all three of the requirements of the amelioration doctrine. Therefore, we reverse and remand for resentencing pursuant to the DSRA.

FACTS

In October 2015, police officers received a report that Edstrom was selling methamphetamine from his apartment in Brooklyn Park. In a search of the apartment conducted pursuant to a search warrant, officers found “several firearms, ammunition, scales with methamphetamine residue, marijuana, and approximately 226 grams of methamphetamine.” *State v. Edstrom*, 916 N.W.2d 512, 515 (Minn. 2018) (*Edstrom II*).

The state charged Edstrom with four offenses: (1) first-degree controlled-substance crime, in violation of Minn. Stat. § 152.021, subd. 1(1) (2014), based on his alleged sale of ten grams or more of methamphetamine; (2) first-degree controlled-substance crime, in violation of Minn. Stat. § 152.021, subd. 2(a)(1) (2014), based on his alleged possession of 226 grams of methamphetamine; (3) possession of a firearm by an ineligible person, in violation of Minn. Stat. § 624.713, subd. 1(2) (2014); and (4) fifth degree controlled-substance crime, in violation of Minn. Stat. § 152.025, subd. 2(a)(1) (2014), based on his alleged possession of marijuana.

In May 2016, a jury found Edstrom not guilty of the first charge and guilty of the second, third, and fourth charges. On May 27, 2016, the district court imposed concurrent prison sentences of 134 months and 60 months for the convictions on the second and third charges.

On direct appeal, Edstrom made four arguments to this court, including a challenge to the district court's denial of his pre-trial motion to suppress evidence. We concluded that the district court erred by denying the motion to suppress. *State v. Edstrom*, 901 N.W.2d 455, 457-58 (Minn. App. 2017) (*Edstrom I*), *rev'd*, 916 N.W.2d 512 (Minn. 2018). On further review, the supreme court reversed this court's opinion and remanded for consideration of Edstrom's three other arguments. *Edstrom II*, 916 N.W.2d at 514. On remand, we rejected Edstrom's remaining arguments and affirmed his conviction. *State v. Edstrom*, 2019 WL 178448 (Minn. App. Jan. 14, 2019) (*Edstrom III*). At no time on direct appeal did Edstrom challenge his sentence.

In August 2019, Edstrom filed a motion to correct his sentence pursuant to rule 27.03, subdivision 9, of the rules of criminal procedure. He argued that the sentence for his conviction of first-degree controlled-substance crime is not authorized by law on the ground that the presumptive sentence for that offense was made shorter by section 18 of the DSRA, 2016 Minn. Laws ch. 160, which had become law four days before the sentencing hearing, and that he was entitled by the amelioration doctrine to the shorter sentence. In response, the state argued that the amelioration doctrine should not apply on the ground that the sentence Edstrom received is authorized by another section of the

DRSA, which created a new offense entitled aggravated first-degree controlled-substance crime.

In November 2019, the district court filed an order in which it adopted the state's argument and denied Edstrom's motion. Edstrom appeals.

D E C I S I O N

Edstrom argues that the district court erred by denying his motion to correct his sentence. A district court “may at any time correct a sentence not authorized by law.” Minn. R. Crim. P. 27.03, subd. 9. An offender may obtain a correction of his or her sentence by filing a motion to correct sentence. *See, e.g., Townsend v. State*, 834 N.W.2d 736, 739 (Minn. 2013); *Johnson v. State*, 801 N.W.2d 173, 175 (Minn. 2011). A sentence is not authorized by law if it is “contrary to law or applicable statutes.” *State v. Schnagl*, 859 N.W.2d 297, 301 (Minn. 2015).

Under the common-law amelioration doctrine, a law that mitigates punishment applies to acts committed before the effective date of the law if final judgment has not yet been entered. *State v. Kirby*, 899 N.W.2d 485, 489 (Minn. 2017); *State v. Coolidge*, 282 N.W.2d 511, 514 (Minn. 1979). The amelioration doctrine is grounded in the principle that if the legislature has amended a statute to mitigate criminal punishment in a particular situation, “the legislature has manifested its belief that the prior punishment is too severe and a lighter sentence is sufficient.” *Coolidge*, 282 N.W.2d at 514. In that situation, “[n]othing would be accomplished by imposing a harsher punishment, in light of the legislative pronouncement, other than vengeance.” *Id.* at 514-15. Consequently, a defendant or offender whose criminal case has not yet reached final judgment may receive

the benefit of the new, more lenient law, so long as there is no “contrary statement of intent by the legislature.” *Edstrom v. State*, 326 N.W.2d 10, 10 (Minn. 1982). Thus, the amelioration doctrine applies if three conditions are satisfied: “(1) there is no statement by the Legislature that clearly establishes the Legislature’s intent to abrogate the amelioration doctrine; (2) the amendment mitigates punishment; and (3) final judgment has not been entered as of the date the amendment takes effect.” *Kirby*, 899 N.W.2d at 490. This court applies a *de novo* standard of review to a district court’s decision concerning the application of the amelioration doctrine. *See State v. Campbell*, 814 N.W.2d 1, 4 (Minn. 2012).

In this case, the district court recited the three requirements of the amelioration doctrine, as articulated by *Kirby*, but did not determine whether any of the requirements are satisfied. Rather, the district court referred to section 3 of the DSRA, which created the offense of aggravated first-degree controlled-substance crime, which requires evidence of a firearm as well as controlled substances and specifies a presumptive sentence that is equivalent to the presumptive sentence that previously governed the offense of first-degree controlled-substance crime. The district court reasoned that “[a]pplying the amelioration doctrine to this case would be inconsistent with the legislative intent in passing DSRA” because Edstrom was found to have unlawfully possessed a firearm. The district court further reasoned that a person who possesses “firearms as well as drugs” was not “intended to be a beneficiary of sentence mitigation.” For that reason and that reason alone, the district court denied Edstrom’s motion to correct sentence.

On appeal, the parties essentially renew the arguments that they presented to the district court. Edstrom argues that he satisfied the three requirements of the amelioration

doctrine, as articulated by *Kirby*. The state does not dispute that point. Indeed, the state concedes that the DSRA reduced the presumptive sentence for Edstrom's conviction from 134 months to 105 months, thereby conceding that the second requirement is satisfied. But the state relies on the newly created offense of aggravated first-degree controlled-substance crime and notes that the presumptive sentence for that offense is the same as the presumptive sentence for the offense of which Edstrom was convicted. The state contends that "Edstrom's conduct . . . falls within" the new aggravated offense because "the State proved that Edstrom possessed at least 151 grams of methamphetamine *and* possessed two firearms in the same course of conduct." As a consequence, the state contends, the DSRA "does not mitigate the punishment for Edstrom's conduct."

The district court's reasoning and the state's argument are flawed because they are based on an offense of which Edstrom was not convicted. The only conviction at issue is Edstrom's conviction of first-degree controlled-substance crime. See Minn. Stat. § 152.025, subd. 2(a)(1). Edstrom was neither charged with nor convicted of the offense of aggravated first-degree controlled-substance crime. He could not have been charged with or convicted of that offense because the law creating the new offense did not become effective until August 1, 2016, which was after his trial and his sentencing. See 2016 Minn. Laws ch. 160, § 3. The state does not cite any legal authority for the proposition that an amelioration claim may be defeated on the ground that an offender is culpable of an offense that was neither charged nor proved, and we are not aware of any such caselaw.

Thus, the district court erred by rejecting Edstrom's amelioration argument despite the fact that he satisfied each of the three requirements of the doctrine. Therefore, we reverse and remand for resentencing pursuant to section 18(b) of the DSRA.

Reversed and remanded.