

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd.1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0362**

State of Minnesota,
Respondent,

vs.

Ramey James Olson,
Appellant.

**Filed February 16, 2021
Affirmed in part, reversed in part, and remanded
Bratvold, Judge**

Stearns County District Court
File No. 73-CR-18-7906

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

Janelle P. Kendall, Stearns County Attorney, Kyle R. Triggs, Assistant County Attorney,
St. Cloud, Minnesota (for respondent)

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

Considered and decided by Reilly, Presiding Judge; Bratvold, Judge; and Cleary,
Judge.*

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

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

In less than half a day and while under the influence of several drugs, appellant stole a pickup truck, rear-ended a vehicle, rammed into a building, hit a trailer, drove through the door of an attached garage, and entered the home. When police responded, he shot them with a compound bow, injuring one officer. He finally surrendered and later pleaded guilty. In this direct appeal following final judgments of conviction for first-degree burglary and first-degree assaults, appellant argues that his consecutive sentences are disproportionate to the offense because he lacked substantial capacity for judgment based on mental illness at the time of his offenses. He also argues that the district court miscalculated his criminal-history score under *State v. Robinette*, 944 N.W.2d 242, 249 (Minn. App. 2020), *review granted* (Minn. June 30, 2020), which we issued after appellant was sentenced.

Because the district court did not abuse its discretion by imposing consecutive sentences, we affirm in part. But because *Robinette* directs that the amelioration doctrine applies to the calculation of appellant's criminal-history score, we reverse in part and remand.

FACTS

The following summarizes the evidence received at appellant Ramey James Olson's plea and sentencing hearings.

Having recently lost his job and estranged from the mother of his child, Olson drove around the day before his offenses, fishing, using methamphetamine and marijuana, and sleeping in his vehicle. On September 13, 2018, Olson drove to a liquor store in Osakis,

later describing himself as “bored as sh-t,” and found an unattended pickup truck with the keys inside. Olson “jumped in and took off” toward Sauk Centre, according to his police statement. Along the way, Olson rear-ended a sport-utility vehicle with three occupants; Olson did not stop. After Olson got to Sauk Centre, he drove into a business parking lot, where he hit a building and trailer. Another driver attempted to use his vehicle to block Olson, but Olson accelerated and escaped.

Olson drove to a residential area and entered an attached garage. According to Olson, he drove through the closed garage door, which “opened up and then swung back down,” closing behind him. Olson walked inside the house and “did some rude stuff.” He found alcohol and pills and consumed them. On the second floor, Olson entered a bedroom and found a “brick of money” that turned out to be a wedding fund for the homeowner’s son. Olson later explained, “I was on a lot of drugs and at one point I actually thought I was at [my own] home.”

Police tracked Olson to the house. At the plea hearing, Olson testified that he knew that police had found him: “A bunch of cops surrounded the house. I looked outside and it looked like I was in a video game.” Olson then “ran into one room and actually hid underneath some sheets or something”; later, Olson explained, “I ran to the window and I seen them and they were walking in circles in the driveway and I thought I was in a video game.”

While still on the second floor of the home, Olson found a compound bow and arrows. Olson owns a compound bow, has been bow hunting, and is familiar with how a

bow operates. At the plea hearing, Olson testified that he understands a bow “[s]hoots arrows in the way [that] if you hit somebody in the wrong spot you could kill them.”

Police officers entered the house, identified themselves, and began calling Olson’s name. Armed with the bow and arrows, Olson positioned himself at the top of the steps to the second floor and hid behind a corner. A Stearns County sheriff’s deputy, a state patrol trooper, and a Melrose police officer waited at the bottom of the steps. Olson shot at the officers, later claiming he “still thought [he] was in, like, a video game at that point.” Olson’s arrow struck the deputy in the forearm, fracturing his ulna. The other officers shot at Olson, hitting him four times, but he did not surrender. When his bow became disabled, Olson retreated from the stairway, and remained on the second floor.

Other officers entered the house, and began to negotiate. Olson accepted a beer and a sandwich; and as he reached out to grab the sandwich, officers fired a stun gun at Olson. Officers arrested Olson and took him into custody; he was hospitalized and sedated. At the hospital, Olson tested positive for alcohol, cannabis, and amphetamines, and later admitted to taking psilocybin mushrooms and other substances. Three hours passed from when Olson stole the parked truck until his arrest.

In a *Mirandized* statement, Olson admitted to driving the pickup truck from Osakis to Sauk Centre, causing property damage along the way, as described above, and crashing through the garage door of the home. He admitted that, once inside the home, he found the compound bow in a closet. He claimed he was “target shooting” and that “I was supposed to, to target shoot at [the police] when they came through because I was supposed to end

my life because I was stuck in a bad place.” Olson said that he “just figured they would shoot me.”

The state charged Olson with theft of a motor vehicle under Minn. Stat. § 609.52, subd. 2(a)(1) (2018) (count one); first-degree burglary of the home under Minn. Stat. § 609.582, subd. 1(b) (2018) (count two); and three counts of first-degree assault under Minn. Stat. § 609.221, subd 2(a) (2018)—the deputy (count three), the trooper (count four), and the police officer (count five).

The district court ordered evaluations under Minn. R. Crim. P. 20.01 (competency) and 20.02 (criminal responsibility).¹ A mental-health examiner completed two written reports after interviewing 31-year-old Olson and reviewing his medical records, academic records, the criminal complaint, evidence, jail records, and referral information from Olson’s attorney. Both reports summarized Olson’s history of substance abuse—he began drinking heavily when he was 15 and self-reported daily methamphetamine use since he was 16. He had court-ordered substance-abuse treatment in 2014 after his third DWI and described treatment as his longest period of sobriety, but Olson added that he “started use again the day [he] got out.”

Both reports also summarized Olson’s history of mental illness, other evaluations, and treatment, including a 2014 court-ordered assessment and psychotherapy. He was diagnosed with generalized anxiety disorder; social anxiety disorder; social phobia, generalized type; alcohol-use disorder; methamphetamine dependence; avoidant

¹ The district court ordered the two evaluations take place simultaneously under Minn. R. Crim. P. 20.04.

personality disorder; and panic disorder with agoraphobia. Police interviews with family members and his girlfriend described “odd behaviors,” such as collecting mushrooms and minerals. While Olson showed some confusion and “bizarre responding” during the hospital stay after his arrest, he stabilized and was discharged to jail the next day. During his detention, Olson “presented no recent behavioral or mental health concerns.” The examiner diagnosed Olson with generalized anxiety disorder and severe stimulant-use disorder.

As for Olson’s competency to stand trial, the examiner determined that Olson had “sufficient present capacity to consult with his attorney with a reasonable degree of rational understanding, and he maintains a rational as well as functional understanding of the proceedings against him.” Olson was “quite motivated to participate in his defense to further his long-term goals,” and “was able to communicate effectively and maintain adequate attention and concentration.” The examiner concluded that “Mr. Olson’s prognosis for maintaining his capacity to proceed to trial is good,” though “[s]hould he experience an exacerbation of his symptoms, further assessment” also may be appropriate.

As for Olson’s criminal responsibility, the examiner determined that “[Olson’s] level of confusion and disorientation at the time of the offense would likely have made it difficult for Mr. Olson to fully appreciate his actions. The question remains whether this defect in reasoning is attributable to mental illness or cognitive impairment.” The examiner noted Olson’s history of “acute polysubstance intoxication, overdose, and associated delirium.” After his arrest, Olson exhibited acute intoxication, disorientation, “impaired levels of consciousness,” and paranoia/delusions. Olson’s “mental status cleared

significantly” without psychotropic medication within days after his arrest. The examiner found “no data to support the presence of acute symptoms of psychosis, or other loss of contact with reality, outside of that attributable to the aforementioned effects of substances, at the time of the offense.”

The examiner determined that “it is unlikely Mr. Olson would have engaged in the alleged behaviors in the absence of acute substance intoxication and associated delirium.” Still, the examiner concluded that “at the time of the commission of the offense charged, Mr. Olson was not laboring under such a defect of reason, due to mental illness or cognitive impairment as not to know the nature of the acts constituting the offense with which he is charged, or that they were wrong.”

At a hearing following Olson’s evaluation, the district court adopted the examiner’s findings and decided that Olson was competent to proceed and subject to criminal responsibility. Olson did not object.

The state and Olson eventually reached a plea agreement: Olson agreed to plead guilty to first-degree burglary (count two) and two counts of first-degree assault (counts three and five). In exchange, the state agreed to dismiss the other charges. The parties agreed that the district court could sentence Olson within a range of 146 to 290 months. At the plea hearing, Olson admitted to the facts outlined above. The district court accepted Olson’s plea and referred him for presentence investigation (PSI).

When Olson described his offense to the presentence investigator, he stated, “I was going through issues—alcohol, drugs, spiritual issues, thought I was talking to God, hearing voices. . . . I went through ‘hyper mode,’ a drug-induced comatose. . . . I believe

God was with me the whole time, and wanted me to do these things.” The report stated that Olson “acknowledge[d] the harm his actions caused to his family and friends, but fail[ed] to appropriately acknowledge the harm caused to the direct victims of his actions, as well as the community as a whole.” The report recommended permissive consecutive sentencing “considering the extreme level of danger [Olson’s] actions posed to the officers and the community.” Finally, the report recommended incarceration for 58 months on the burglary count, and two consecutive 120-month sentences for the two assault counts, based on a criminal-history score of one.

In December 2019, close to a year after the competency and criminal-responsibility evaluations, a dispositional advisor from the Office of the Seventh Judicial District Public Defender filed a sentencing memorandum at the request of Olson’s attorney. The memorandum took no position on sentencing but intended “to give the Court more insight into what the appropriate punishment for [Olson] ought to be.” The dispositional advisor interviewed Olson, who remained in custody. Olson said he was still experiencing delusions, which the advisor described as “ongoing for some time.” Olson referred to “outside forces that guided him during his crime spree.”

The advisor disagreed with the earlier evaluation that, because Olson’s mental impairment was drug induced, his psychosis gradually cleared with prolonged abstinence.²

² The dispositional advisor’s memorandum also explained that Olson was taking prescribed medication after his referral to a psychotherapist at Stearns County Jail.

Noting that a year had passed while Olson remained in custody and substance-free, and that Olson's delusions had not cleared, the advisor recommended a comprehensive psychological evaluation "to rule out a serious and persistent mental health issues (SPMI)." In part, the advisor made this recommendation because Olson's previous psychological testing, completed during the competency evaluation, was found invalid.

Based on interviews with Olson's family members, the dispositional advisor described Olson's mental-health history by adding details not found in Olson's previous rule 20 evaluations. For example, Olson's mother "acknowledged he told her dead relatives often talked to him." And Olson's girlfriend described his paranoia about her ex-boyfriend, whom Olson continued to fear while in jail. Despite Olson's longstanding drug abuse history, "all collateral sources spoke of this offense [as] very uncharacteristic of him."

The advisor stated that the evidence suggests that Olson "likely has [serious and persistent mental-health issues]," citing two reasons. First, Olson has "maintained throughout his case that he had outside sources telling him and signs that pointed him to how he ended up at the home. . . . To date this has not changed." Second, Olson has had "additional delusions that have persisted throughout his more than yearlong incarceration." The advisor concluded that "[Olson's] needs can be addressed within the institution."

At a December 2019 sentencing hearing, Olson was present and represented by counsel. Olson's attorney noted that Olson was taking prescribed medication and was "competent at this time." The district court heard arguments about the sentence. The state emphasized that Minnesota has a 120-month mandatory minimum sentence for the assault counts, argued for consecutive sentences totaling 290 months, and pointed to the effect of

Olson's actions on the community, the severity of his crimes, and the discrepancies in Olson's account of what happened. The state submitted a victim-impact statement.

Defense counsel argued that Olson should receive a "top-of-the-box" sentence of 146 months for the first-degree assault of the deputy, but that his other sentences for counts four and five should run concurrently. The defense compared Olson's case and sentence to similar cases with less severe sentences, explained the severity of Olson's mental-health issues, and highlighted Olson's lack of prior criminal history. Olson read an apology letter expressing remorse.

The district court stated:

I'm concerned with Mr. Olson's mental health, his rationale for what was going on, his version of the events, not only to the officers at the time but to me at the plea hearing, to [the dispositional advisor], even his family members, although the family members still seem to think that it's more addiction than mental health. If what he's saying is true, Mr. Olson is suffering from a severe and persistent mental health disorder. Obviously I'll never know whether that's true or not.

The district court sentenced Olson to the "top-of-the-box" and imposed 69 months on the first-degree burglary count (count two). The district court then sentenced Olson to 120 months for the first first-degree assault count (count four) to run consecutively to the burglary sentence. Finally, the district court sentenced Olson to 120 months for the other first-degree assault conviction (count five), to run concurrently with the other sentences. Thus, the district court imposed a consecutive total of 189 months in prison.

This appeal follows.

DECISION

I. The district court did not abuse its discretion by imposing consecutive sentences within the sentencing guidelines and the parameters of Olson’s plea agreement.

Olson contends that the district court abused its discretion by imposing consecutive sentences, arguing that he lacked substantial capacity for judgment when he committed the offenses, and therefore his consecutive sentences are disproportionate to his culpability. The state responds that the district court did not abuse its discretion because the severity of Olson’s crimes warranted consecutive sentences, his mental state at the time of the offense was influenced by voluntary drug use, and the district court considered Olson’s mental-health history and his mental status at the time of sentencing.

We review the district court’s decision to impose consecutive sentences for abuse of discretion. *State v. Ali*, 895 N.W.2d 237, 247 (Minn. 2017). We will only interfere with a district court’s sentencing discretion when “the sentence is disproportionate to the offense or unfairly exaggerates the criminality of the defendant’s conduct.” *Id.* (quotation omitted). To determine whether the district court abused its discretion, “we look to past sentences received by other offenders” in similar circumstances. *Id.* (quotation omitted).

The Minnesota Sentencing Guidelines provide that, generally, “when an offender is convicted of multiple current offenses . . . concurrent sentencing is presumptive.” Minn. Sent. Guidelines 2.F (2018); *see* Minn. Stat. § 609.15, subd. 1 (2018). The guidelines allow for permissive consecutive sentencing, however, when (1) the current offense carries a presumptive commitment to prison, and (2) “the offender is being sentenced for multiple current felony convictions for crimes on the list of offenses eligible for permissive

consecutive sentences.” Minn. Sent. Guidelines 2.F.2.a.(1)(ii). Here, both requirements for consecutive sentencing are met: Olson’s offenses carry presumptive prison commitments and both first-degree burglary and first-degree assault are eligible for permissive consecutive sentences. Minn. Sent. Guidelines 6 (2018). Thus, the district court followed the guidelines when imposing consecutive sentences for Olson’s offenses.

On appeal, Olson primarily argues that the district court abused its discretion by imposing consecutive sentences because, though his “voluntary intoxication contributed to this mental state, it was intertwined with his underlying mental illness.” Mental illness is a mitigating factor that, according to Olson, should have led the district court to impose concurrent sentences. The state argues that drug abuse—not mental illness—affected Olson’s judgment and “even if his mental health issues were intertwined with his drug use, the lower court already factored this into the sentence.”

Olson is correct that mental illness is a mitigating factor under the guidelines, among other nonexclusive factors that district courts may, subject to their discretion, use to depart during sentencing. Mental illness or impairment is a mitigating factor justifying downward departure if the offender “lacked substantial capacity for judgment” when committing the offense. Minn. Sent. Guidelines 2.D.3.a.(3) (2018). Caselaw also provides that mental illness justifies mitigating a sentence if the defendant can show the illness deprived him of control over his actions, *State v. Lee*, 491 N.W.2d 895, 902 (Minn. 1992), or caused him to not appreciate the wrongfulness of his actions, *State v. Wilson*, 539 N.W.2d 241, 244 (Minn. 1995). “The voluntary use of intoxicants,” however, “does not fall within the

purview of this factor.” Minn. Sent. Guidelines 2.D.3.a.(3).³ “This court has consistently held that the issue of legal mental illness is a question for the fact-finder to resolve.” *Wilson*, 539 N.W.2d at 244.

We see no error in the district court’s decision to rely on the findings of the mental-health examiner when determining whether to impose concurrent or consecutive sentences. The examiner determined, as Olson noted in his brief to this court, that at the time of his offenses, “Olson was in a state of ‘psychosis’ or ‘delirium’ that caused him to be ‘disoriented, confused, with impaired levels of consciousness,’ and to have ‘impaired/delayed cognition,’ ‘perceptual disturbance,’ and a ‘belief that the world was not real.’” The examiner found, however, “no data to support the presence of acute symptoms of psychosis, or other loss of contact with reality, outside of that attributable to the aforementioned effects of substances, at the time of the offense.”

The district court did not abuse its discretion when it determined that Olson’s psychosis was brought on by voluntary intoxication, rather than mental illness. We are bound by the district court’s findings because they are supported by the record. “The trial court is in a best position to weigh the various sentencing options and therefore is granted broad discretion in sentencing.” *Massey v. State*, 352 N.W.2d 487, 489 (Minn. App. 1984) (affirming discretionary imposition of consecutive sentences) (citing *State v. Back*,

³ Neither Minnesota caselaw nor statutory law recognize addiction as a mental illness that establishes a defense. *State v. McClenton*, 781 N.W.2d 181, 189 (Minn. App. 2010) (“mental illness caused by voluntary intoxication is not a defense”) (quotation omitted), *review denied* (Minn. June 29, 2010); *see* Minn. Stat. § 609.075 (2018) (“An act committed while in a state of voluntary intoxication is not less criminal by reason thereof. . . .”).

341 N.W.2d 273, 275 (Minn. 1983)), *review denied* (Minn. Oct. 16, 1984). While the dispositional advisor questioned some of the examiner’s conclusions—specifically about a potential SPMI diagnosis—the district court considered the advisor’s analysis and was in the best position to assess the record evidence. We see no error in the district court’s consideration of this conflicting evidence.

Olson next argues that even if his actions were a product of drug abuse, that fact does not negate his underlying mental-health issues, which reduced his culpability. He points to *State v. Wall*, 343 N.W.2d 22 (Minn. 1984), to argue that, despite a defendant’s voluntary intoxication, courts may consider an underlying mental illness and mitigate a defendant’s culpability and sentence. In *Wall*, the appellant was “drinking” before the offense, and the supreme court determined that he “lacked substantial capacity for judgment” because of his underlying mental illness. *Id.* at 25.

There, the appellant strangled his wife to death after claiming that his wife was poisoning him. *Id.* at 24. The appellant had suffered from paranoia and schizophrenia for many years, and the supreme court noted that his refusal to take medication is a common symptom of schizophrenia. *Id.* The district court imposed an upward durational departure at sentencing because “the victim was particularly vulnerable due to age, infirmity or reduced physical capacity.” *Id.* at 25. The supreme court modified the sentence, reducing it to the maximum guidelines sentence because the appellant lacked substantial capacity for judgment as a result of his schizophrenia. *Id.* at 25-26.

As the state recognizes, *Wall* is not analogous for two reasons. First, unlike the district court in *Wall*, the district court here did not depart from the guidelines in sentencing

Olson. The guidelines permit the district court to sentence Olson to consecutive sentences for his offenses and the sentence imposed also fell within the parameters of his plea agreement. Second, in *Wall*, “it [was] clear from the record that [the appellant], ‘because of mental impairment, lacked substantial capacity for judgment when the offense was committed.’” *Id.* at 25 (quoting Minn. Sent. Guidelines II.D.2.a.(3) (1982)). The district court recognized that Olson’s mental state was, at best, unclear.⁴

In determining Olson’s mental status and culpability, the district court weighed Olson’s statements to the officers at the time of his arrest, to the district court at the plea hearing, and to his family members, along with the findings from the rule 20 examination reports and the dispositional advisor’s memorandum. The district court appropriately weighed conflicting evidence, considered the severity of Olson’s crimes alongside the severity of Olson’s mental-health issues, and imposed consecutive prison sentences totaling 189-months, well within the range contemplated by Olson’s plea agreement with the state. Because the issue of legal mental illness is a question for the fact-finder to resolve, we rely on the district court’s determinations, which have ample support in the record. *See Wilson*, 539 N.W.2d at 244.

⁴ Just before sentencing Olson, the district court recognized that “[i]f what he’s saying is true, Mr. Olson is suffering from a severe and persistent mental health disorder,” but noted that “[o]bviously I’ll never know whether that’s true or not.” The record supports the district court’s reason to doubt Olson. As part of the competency and criminal responsibility evaluations, the evaluator administered a psychological test “designed to assess psychopathology and personality traits.” Olson “endorsed an excessive number of infrequent responses, including a large number of items rarely endorsed by even the most ill psychiatric inpatients. Rather than severity of mental health problems, these results were consistent with individuals who overreport or feign symptoms of mental illness.”

To conclude, when sentencing Olson, the district court had discretion to (1) impose consecutive sentences for first-degree burglary and assault, and (2) reduce or increase the sentence within the presumptive guideline range and range contemplated by the plea agreement. Because the district court exercised its discretion within the parameters of the sentencing guidelines and agreement of the parties, and properly considered the evidence and arguments before it, the district court did not abuse its discretion.⁵

II. Based on *Robinette*, Olson must be resentenced.

Olson argues that the district court wrongly calculated his criminal-history score because he was assigned one custody-status point, even though his offense occurred after his discharge from probation for a prior offense. Olson’s argument relies on the amelioration doctrine, and our recent decision in *State v. Robinette*, 944 N.W.2d 242, 249 (Minn. App. 2020), *review granted* (Minn. June 30, 2020).

“A defendant cannot forfeit appellate review of his criminal history score.” *State v. Scovel*, 916 N.W.2d 550, 554 n.5 (Minn. 2018). Interpreting the Minnesota Sentencing Guidelines presents a question of law, which this court reviews de novo. *Id.* at 554. When a defendant’s incorrect criminal-history score increases the presumptive sentencing range,

⁵ While the unique nature of Olson’s crime spree makes comparison difficult, a cumulative 189-month sentence for a first-degree burglary and two first-degree assault convictions is in line with our caselaw. *See, e.g., State v. Wiley*, No. A09-135, 2009 WL 3255600 (Minn. App. Oct. 13, 2009), *review denied* (Minn. Dec. 15, 2009) (affirming permissive consecutive sentences for a first-degree burglary and two second-degree assault convictions totaling 120 months).

we remand the case for resentencing under the correct criminal-history score. *State v. Provost*, 901 N.W.2d 199, 202 (Minn. App. 2017).

When Olson was sentenced in December 2019 for his 2018 offenses, the applicable version of the guidelines assessed one criminal-history point, called a custody-status point, “if the offender [was] discharged from probation but commit[ted] an offense within the initial period of probation pronounced by the court.” Minn. Sent. Guidelines 2.B.2.a(4) (2018). The guidelines, however, were recently amended so that a custody-status point is assigned only if the offender was actually on probation when he committed the offense in question (2019 amendment). Minn. Sent. Guidelines 2.B.2.a(1) (Supp. 2019). The 2019 amendment provides that it applies to offenses committed on or after the effective date, which was August 1, 2019.

In *Robinette*, which we decided after Olson was sentenced, we applied the amelioration doctrine to an appellant’s criminal-history score by relying on the 2019 amendment, even though the offense occurred in 2018. 944 N.W.2d at 248-50. The amelioration doctrine requires that a new or amended law mitigating punishment must be applied to acts committed before its effective date, so long as (1) there is no statement by the legislature establishing its intent to abrogate the amelioration doctrine, (2) the amendment mitigates punishment, and (3) no final judgment has been reached and the legislature did not clearly express a contrary intent. *State v. Kirby*, 899 N.W.2d 485, 488 (Minn. 2017). *Robinette* applied the amelioration doctrine to the 2019 amendment. 944 N.W.2d at 249. Specifically, we “discern[ed] no statement by the legislature

establishing its intent to abrogate the amelioration doctrine with regard to the modification to Minn. Sent. Guidelines 2 subd. B.2.” *Id.* at 251.

Relying on *Robinette*, Olson argues that we must remand for resentencing because the district court assigned one criminal-history point based on custody status, even though his 2018 offense was committed after he was discharged from probation. The state argues that *Robinette* was wrongly decided, and has preserved the issue should the supreme court reverse or modify our decision. But the state also agrees with Olson that, if the 2019 amendment applies to acts committed before its effective date, then the 2019 amendment applies to Olson’s criminal-history score.

Olson’s criminal-history score affects his presumptive sentence for first-degree burglary. Olson’s PSI report assigned one custody-status criminal-history point based on a 2013 DWI offense. Probation discharged Olson on the DWI offense on December 28, 2016, well before the current offense. Olson did not have any prior felony convictions, or any other basis for the criminal-history point. With a criminal-history score of one, 69 months is a “top-of-the-box” sentence for first-degree burglary—this is the sentence Olson received. *See* Minn. Sent. Guidelines 4.A (2018). In contrast, with a criminal-history score of zero, a 69-month sentence requires an upward departure. *Id.* Here, the district court did not order a departure, nor did it make the necessary findings to do so. Thus, we reverse in part and remand for resentencing.

In conclusion, the district court did not abuse its discretion by imposing consecutive, guidelines sentences within the bounds of Olson’s negotiated plea agreement. Thus, we affirm in part. But Olson should not have received a custody-status point for committing

his 2018 offense after his discharge from probation. *See Robinette*, 944 N.W.2d at 248-50.

We therefore reverse in part and remand for resentencing because the district court sentenced Olson with an incorrect criminal-history score.

Affirmed in part, reversed in part, and remanded.