

*This opinion is nonprecedential except as provided by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**

A20-0457

A20-0458

State of Minnesota,
Respondent,

vs.

Jeremy Simon Garcia,
Appellant.

Filed March 1, 2021
Affirmed in part, reversed in part, and remanded
Florey, Judge

Mower County District Court
File No. 50-CR-18-2502

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

Kristen Nelsen, Mower County Attorney, Megan Burroughs, Assistant County Attorney,
Austin, 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; Reilly, Judge; and Frisch,
Judge.

NONPRECEDENTIAL OPINION

FLOREY, Judge

Appellant Jeremy Simon Garcia challenges his sentence for aggravated robbery,
arguing that the district court erred in its calculation of his criminal-history score by

assigning points for foreign convictions that were not supported by sufficient record evidence. Garcia also argues that even if the criminal-history score is correct, he was guaranteed a maximum sentence of 117 months based on his negotiated guilty plea. Because the plea agreement contemplated a top-of-the-box sentence based on Garcia's criminal-history score, we affirm the district court's conclusion that the plea agreement did not limit the sentence to 117 months. But because there was insufficient evidence in the record regarding the foreign convictions and because Garcia did not object at sentencing to use of these convictions, we reverse Garcia's sentence and remand for further proceedings.¹

FACTS

Garcia was charged with first-degree aggravated robbery after he robbed a convenience store located in Mower County at gunpoint on November 11, 2018. Garcia entered a guilty plea to one count of first-degree aggravated robbery. As part of the plea negotiation and based on his criminal-history score, the parties agreed to “a bottom of the box eighty-four (84) month” sentence if Garcia complied with presentencing release conditions; if he did not comply, he would receive “a top of the box sentence of 117 months.” In examining Garcia prior to his plea, the district court emphasized that Garcia would receive the “bottom of the box if [he] follow[ed] all the conditions; top of the box if [he] didn't.”

¹ Garcia also appealed his escape-from-custody conviction but he has not briefed or argued this aspect of his appeal and, therefore, we decline to address it.

The probation officer calculated that Garcia had five criminal-history points, including a custody-status point, two felonies in Mower County, and two felonies in Maverick County, Texas. The probation officer briefly noted on the sentencing worksheet that the two Texas felonies were similar to simple robbery and third-degree burglary in Minnesota. There was no testimony about the Texas convictions and only limited documentation about one conviction included in the file.

Garcia was released prior to sentencing upon a number of conditions, but he absconded prior to the sentencing date. While on the run, Garcia committed a first-degree aggravated robbery in Olmsted County; he entered a guilty plea to this charge and was sentenced to commitment in August 2019. Garcia appeared in Mower County in October 2019. The parties discussed sentencing on the aggravated-robbery charge, noting that because of violation-of-release conditions, “the agreement is for top of the box, 117 months.” The district court ordered a new sentencing worksheet.

The new sentencing worksheet calculated six criminal-history points, with a sentencing range of 92 to 129 months. No additional information was included about the Texas offenses. At sentencing, Garcia’s attorney argued that he should receive a 117-month sentence because that was what was “contemplated.” The district court concluded that the agreement had been for the “top of the box,” which was now 129 months because Garcia had committed an intervening new offense, the aggravated robbery in Olmsted County. Garcia was sentenced to 129 months.

Garcia appeals, arguing that the district court improperly included the Texas convictions in his criminal-history score without sufficient record evidence and sentenced him in violation of the plea agreement to 129 months rather than 117 months.

DECISION

I. Use of foreign convictions in calculation of a criminal-history score

“A sentence based on an incorrect criminal-history score is an illegal sentence that may be corrected at any time.” *State v. Woods*, 945 N.W.2d 414, 416 (Minn. App. 2020). The district court’s factual determination of a defendant’s criminal-history score is reviewed for an abuse of discretion, unless it involves interpretation of the sentencing guidelines or a statute. *State v. Morgan*, ___ N.W.2d ___, 2020 WL 7484757 (Minn. App. Dec. 21, 2020). Here, the issue is whether the state sustained its burden of proving Garcia’s criminal-history score by a preponderance of the evidence and, therefore, whether the district court abused its discretion by including the Texas convictions in the criminal-history-score calculation. *State v. Maley*, 714 N.W.2d 708, 711 (Minn. App. 2006).

The Minnesota Sentencing Guidelines direct a court to consider foreign convictions when calculating a criminal-history score. Minn. Sent. Guidelines 2.B.5 (2018). The sentencing court must determine whether the conviction is the equivalent of a Minnesota felony offense and whether the offender received a felony-level sentence. *Id.* The state has the burden of proving by a preponderance of the evidence that foreign convictions meet this standard. *Maley*, 714 N.W.2d at 711. To do so, the state should provide certified copies of the conviction or other competent evidence, such as oral testimony. *Id.* at 711-12.

Here, the state provided a judgment of conviction attested to as accurate for one of the Texas offenses but offered no other evidence about that conviction or the second Texas conviction. On the sentencing worksheet, the probation office opined that the convictions were the equivalent of simple robbery and third-degree burglary under Minnesota law, but the probation officer did not testify or offer comments at the sentencing hearing. This does not satisfy the state's burden of proving by a preponderance of evidence that the Texas convictions are the equivalent of a Minnesota felony offense for which Garcia received felony-level sentences and, therefore, the district court's criminal-history-score calculation was an abuse of discretion.

If a defendant fails to object at sentencing to the district court's determination that foreign convictions must be included in the criminal-history score, this court may reverse the sentence and remand to the district court to permit the state to further develop the sentencing record. *State v. Outlaw*, 748 N.W.2d 349, 356 (Minn. App. 2008), *review denied* (Minn. July 15, 2008); *see also State v. Strobel*, 921 N.W.2d 563, 577 (Minn. App. 2018) (citing *Outlaw* to support a remand to supplement the sentencing record), *aff'd* 932 N.W.2d 303 (Minn. 2019).

Because Garcia did not object to use of the Texas convictions at sentencing, we reverse his sentence and remand to the district court for further proceedings.

II. Interpretation of plea agreement

Garcia argues that the terms of his negotiated plea limit the district court to a maximum sentence of 117 months. According to the plea petition, the parties agreed that Garcia would plead guilty to one count of first-degree aggravated robbery and receive a

bottom-of-the-box sentence of 84 months based on a criminal-history score of five, but if he violated any of the presentencing release conditions, he would be sentenced to a top-of-the-box sentence of 117 months. Garcia argues that the district court's imposition of a top-of-the-box sentence of 129 months based on a criminal-history score of six violates this plea agreement.

In a negotiated plea agreement, “[w]hat the parties agreed to involves an issue of fact to be resolved by the district court.” *State v. Brown*, 606 N.W.2d 670, 674 (Minn. 2000). But the interpretation and enforcement of plea agreements is a question of law subject to de novo review. *State v. Rhodes*, 675 N.W.2d 323, 326 (Minn. 2004). Whether a plea agreement is ambiguous is a question of law. *In re Ashman*, 608 N.W.2d 853, 858 (Minn. 2000). A plea agreement is ambiguous if it is susceptible to more than one construction. *Id.* In a close case, ambiguity should be resolved in favor of the defendant. *Id.*

When Garcia challenged the sentence at the hearing, the district court found that the plea agreement was for a top-of-the-box sentence if he violated any of the presentencing-release conditions. Garcia would have received 117 months, but the district court found that something else “happened afterward getting that extra point. You put yourself in a different status” by committing and being convicted of aggravated robbery in Olmsted County. The district court explained that it would have “gone with” 117 months if there “had been a mistake of fact between the parties,” but the higher sentence was based on an enhanced criminal-history score because Garcia had been convicted of another intervening offense. The district court’s factual determination was not erroneous.

Plea agreements are similar to contracts; “[a]n unqualified promise made as part of a plea agreement must be honored.” *State v. Meredyk*, 754 N.W.2d 596, 603 (Minn. App. 2008). But if a plea agreement is conditional or qualified, the court is free to impose a different sentence. *See State v. Montez*, 899 N.W.2d 200, 203-04 (Minn. App. 2017). Garcia’s plea agreement was conditional: he was to receive a bottom-of-the-box sentence of 84 months unless he violated release conditions; if he violated them, he would receive a top-of-the-box sentence of 117 months. But Garcia’s plea agreement was also conditioned on his criminal-history score, which changed with the addition of the Olmsted County aggravated robbery conviction.

The Minnesota Supreme Court stated that a sentencing court may not ignore criminal-history points but must determine “in a manner consistent with the requirements of Minnesota’s current sentencing guidelines, how many criminal points [a defendant] should have.” *State v. Reece*, 625 N.W.2d 822, 825-26 (Minn. 2001) (concluding that district court erred by failing to analyze foreign convictions because it found they were too severe). This supports the district court’s decision to base the sentence on a proper criminal-history score. In light of our remand, we cannot affirm Garcia’s sentence, but we conclude that the district court did not err by determining that the negotiated plea contemplated a top-of-the-box sentence based on a properly calculated criminal-history score.

Affirmed in part, reversed in part, and remanded.