

*This opinion is nonprecedential except as provided by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
A20-0600**

State of Minnesota,
Respondent,

vs.

Julie Lynn Bigelow,
Appellant.

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

Olmsted County District Court
File Nos. 55-CR-18-3441, 55-CR-18-3711

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

Mark A. Ostrem, Olmsted County Attorney, Jennifer D. Plante, Senior Assistant County Attorney, Rochester, Minnesota (for respondent)

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

Considered and decided by Gaïtas, Presiding Judge; Connolly, Judge; and Reyes, Judge.

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

Appellant Julie Lynn Bigelow appeals from her convictions of first-degree sale of methamphetamine and second-degree possession of methamphetamine, arguing that the district court improperly participated in plea negotiations requiring reversal of her

convictions. Alternatively, she argues that the district court incorrectly calculated her jail credit. We affirm Bigelow's convictions but remand for the district court to correct her jail credit.

FACTS

In December 2017, Bigelow sold 28 grams of methamphetamine to a police informant. Consequently, the state charged Bigelow with first-degree sale of 17 or more grams of methamphetamine, Minn. Stat. § 152.021, subd. 1(1) (2016), and second-degree possession of 25 or more grams of methamphetamine, Minn. Stat. § 152.022, subd. 2(a)(1) (2016).

Approximately five months after the encounter with the informant, police arrested Bigelow on a warrant. During a pat search, a deputy discovered a plastic bag containing over 25 grams of methamphetamine concealed under Bigelow's clothing. The state filed a second complaint charging Bigelow with first-degree sale of 17 or more grams of methamphetamine, Minn. Stat. § 152.021, subd. 1(1), and second-degree possession of 25 or more grams of methamphetamine, Minn. Stat. § 152.022, subd. 2(a)(1). Following her arrest, Bigelow posted bail. She remained out of custody while both cases were pending.

Bigelow eventually entered into a plea agreement with the state. The terms of that agreement were placed on the record at an April 2019 plea hearing. In exchange for Bigelow's guilty pleas to one count of first-degree sale for selling methamphetamine to the informant and one count of second-degree possession for the methamphetamine found upon her arrest, the state agreed to dismiss all the remaining charges, which included two other unrelated cases. The state also agreed to recommend a sentence within the middle of

the presumptive duration prescribed by the Minnesota Sentencing Guidelines. Bigelow faced a substantial prison sentence under the agreement, even if the district court accepted the state's sentencing recommendation. The presumptive sentence was between 98 and 138 months for the first-degree offense and between 92 and 129 months for the second-degree offense. Minn. Sent. Guidelines 4.C (2016). The parties agreed that all other sentencing terms would be "open to argument" at the sentencing hearing, which would occur on a later date after Bigelow participated in a presentence investigation (PSI).

After the agreement was placed on the record, Bigelow waived her trial rights and admitted her guilt. The district court accepted the pleas and adjudicated her guilty of both charges.

In scheduling the sentencing hearing, Bigelow's attorney made a special request of the district court. Rather than scheduling sentencing within the standard six weeks of the plea hearing, the attorney asked to delay sentencing for 90 days so that Bigelow could participate in a family event and get her affairs in order before going to prison. The state did not object to the request. Although the district court agreed to delay the sentencing hearing, the district court imposed a condition on Bigelow's continued release. The district court ordered Bigelow to immediately report for a drug test, cautioning Bigelow that if the test was positive, Bigelow would be taken into custody. Additionally, the district court instructed Bigelow to cooperate with the PSI interview and to appear for sentencing.

Following the guilty plea hearing, Bigelow did not submit to a drug test. The next day, the district court issued a warrant for Bigelow's arrest. Bigelow ultimately failed to appear for her PSI interview and for the scheduled sentencing hearing.

About eight months later, Bigelow was arrested on the district court’s warrant. At Bigelow’s rescheduled sentencing hearing, the state recommended a 98-month sentence, the lowest available sentence within the presumptive sentencing range. Bigelow’s attorney similarly pressed the district court for a 98-month sentence for the most serious charge and a 92-month sentence for the lesser charge; counsel also advised the court that Bigelow was entitled to 56 days of custody credit.

Before pronouncing sentence, the district court referenced Bigelow’s failure to obtain a drug test, failure to participate in the PSI, and failure to appear at her scheduled sentencing hearing. The district court also noted that Bigelow’s offenses were not victimless crimes, observing that selling methamphetamine harms other people. Then, the district court sentenced Bigelow to 133 months in prison for the first-degree sale conviction—a sentence near the top of the presumptive range—and a concurrent prison term of 106 months for the second-degree possession conviction.

Bigelow appeals.

DECISION

I. The district court did not interfere in the parties’ plea negotiations.

Bigelow first argues that the district court improperly intervened in the plea-bargaining process. A district court “must not participate in plea negotiations.” Minn. R. Crim. P. 15.04, subd. 3(1); *Wheeler v. State*, 909 N.W.2d 558, 564-65 (Minn. 2018). When a judge becomes involved in the plea-bargaining process, there is an inherent risk that the defendant will feel pressured to plead guilty, potentially leading to an involuntary plea. *See Wheeler*, 909 N.W.2d at 567-68. Thus, the district court can approve or reject a plea

but cannot effectively become a party to negotiations. *Id.* at 564-65. The district court may, however, inquire about the status of negotiations, share general sentencing practices, and provide “nonbinding plea and sentencing information at the joint request of the parties” without becoming improperly entangled in the plea-bargaining process. *Id.* at 565.

Whether a district court judge impermissibly intervened in plea negotiations is a question of law that appellate courts review de novo. *Id.* at 568. If there was improper judicial participation, a reviewing court must examine the totality of the circumstances to determine whether the resulting guilty plea was voluntary. *Id.* at 567-68. The voluntariness of a plea presents a factual question, which is reviewed for clear error. *Id.*

We now turn to Bigelow’s claims. Bigelow argues that the district court injected itself into the plea negotiations by requiring her to take a drug test, and then penalizing her for failing to comply with this condition by imposing a lengthier sentence than recommended under the agreement. According to Bigelow, the district court “self-designated itself as a party to the case” and effectively “creat[ed] its own sub-plea agreement.” We disagree for several reasons.

First, there is no evidence in the record that the district court participated in the parties’ plea negotiations. The record shows that the state and Bigelow reached an agreement that was presented to the district court. Under the terms of the agreement, the state agreed to dismiss multiple charges and to recommend a particular sentence to the district court. In taking Bigelow’s pleas, the district court’s role was limited to accepting the guilty pleas and entering convictions.

Second, the district court's order requiring Bigelow to report for a drug test was not a term of the plea agreement, but instead was a condition of Bigelow's continued release pending sentencing. The district court imposed the condition *after* Bigelow had entered the guilty pleas. And the district court only added the condition in addressing Bigelow's post-plea request to delay the sentencing hearing. The discussion about the condition was as follows:

THE COURT: I will allow that, Ms. Bigelow. But you're currently under conditions that you are not to be using, correct?

THE DEFENDANT: Yes.

THE COURT: What I'm going to do is we'll get a date 90 days out. I'm going to ask that after you stop down with [community corrections] to get the Pre-sentence Investigation started, as part of that I'm going to order that you take a drug test today. If it's clean, you can remain at liberty and we'll have the sentencing date that we're going to get sometime in June. If you are not clean, I'm going to order that you be taken into custody and be held pending sentencing. Do you understand that?

THE DEFENDANT: Yes.

Because Bigelow had pleaded guilty and was convicted, the district court had authority to impose conditions of continued release, wholly apart from any plea agreement that Bigelow had with the state. *See* Minn. R. Crim. P. 27.01 ("After conviction but before sentencing, the court may continue or alter the terms of release, or the court may confine the defendant."). Indeed, the court could have simply denied Bigelow's request and taken her into custody until the sentencing hearing. Bigelow was facing a significant prison sentence, and the district court was willing to allow Bigelow to spend three months out of custody before commencing the prison term. But the district court was also concerned about Bigelow's propensity to use controlled substances. Ordering Bigelow to take a drug test

to confirm her abstinence from drugs was a reasonable condition to ensure public safety. *See id.* (stating that a district court should consider factors set forth in rule 6.02 in determining appropriate post-adjudication conditions of release); Minn. R. Crim. P. 6.02, subd. 2 (stating that a district court should consider “the nature and circumstances of the offense charged” and “the community’s safety,” among other factors, in determining conditions of release).

Finally, the district court did not abuse its discretion in deviating from the state’s sentencing recommendation and imposing a sentence at the higher end of the presumptive range. District courts are generally afforded “great discretion” in sentencing and will not be reversed absent an abuse of that discretion. *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014) (quotation omitted). The district court imposed a sentence within the presumptive guidelines range—a sentence that is presumed appropriate in most cases. *See* Minn. Sent. Guidelines 1.B.13 (2016); *see also State v. Delk*, 781 N.W.2d 426, 428 (Minn. App. 2010) (noting that appellate courts will typically not review a district court’s discretionary imposition of a sentence within the presumptive guidelines range), *review denied* (Minn. July 20, 2010). Although the state recommended the lowest sentence within the presumptive range, the district court was not bound by the state’s sentencing recommendation. Under the terms of the plea agreement, the state merely agreed to make a sentencing recommendation and the district court made no promises regarding the sentence it would impose. *See State v. Wukawitz*, 662 N.W.2d 517, 522 n.3 (Minn. 2003) (recognizing that “some plea agreements contemplate recommendations by the parties without binding the court to a specific sentence”).

Bigelow argues that the district court's sentence represented a punishment for violating the court's condition to obtain a drug test, evincing a personal bias. She notes that our supreme court has cautioned that "[j]udges should avoid the appearance of impropriety and should act to assure that parties have no reason to think their case is not being fairly judged." *State v. Dorsey*, 701 N.W.2d 238, 249 (Minn. 2005) (quoting *Pederson v. State*, 649 N.W.2d 161, 164-65 (Minn. 2002)).

But the record here does not reveal that the district court's sentence was the result of personal bias or any other improper considerations. In determining whether a judge should be disqualified for bias under the Code of Judicial Conduct, "the question is whether an objective examination of the facts and circumstances would cause a reasonable examiner to question the judge's impartiality." *State v. Burrell*, 743 N.W.2d 596, 601 (Minn. 2008); *see also* Minn. Code Jud. Conduct Canon 2. Although the district court referenced Bigelow's failure to obtain the ordered drug test, it is not reasonable to question a district court's impartiality for remarking on a defendant's violation of a condition of release. *See Burrell*, 743 N.W.2d at 601-02 ("The mere fact that a party declares a judge partial does not in itself generate a reasonable question as to the judge's impartiality."). And in any event, the district court was also concerned about Bigelow's other conduct after the guilty-plea hearing, observing that Bigelow failed to participate in the PSI and failed to appear at her sentencing hearing. Additionally, the district court pointed out that Bigelow's actions in selling methamphetamine harmed other people. Contrary to Bigelow's claim that the district court's sentence was the product of personal bias, each of these circumstances was relevant and appropriate for the district court to consider in determining

an appropriate sentence for Bigelow within the bounds of her plea agreement. We discern no abuse of discretion in the district court's sentence.

In sum, we conclude that the district court's actions did not amount to improper participation in the plea-bargaining process. Accordingly, we affirm Bigelow's convictions.

II. Bigelow is entitled to one additional day of jail credit.

Bigelow next argues that the district court erred in awarding her 55 days of jail credit when she has served 56 days in connection with her cases. The state concedes that Bigelow is entitled to an additional day of jail credit.

“The district court does not have discretion on whether to award custody credit.” *State v. Roy*, 928 N.W.2d 341, 344 (Minn. 2019). Rather, a defendant is entitled to credit for each day spent in custody in connection with the offense being sentenced. *Id.* at 345 (citing Minn. R. Crim. P. 27.03, subd. 4(B)). The burden lies with the defendant to show that she is entitled to custody credit. *Id.* at 344.

The record establishes that Bigelow is entitled to 56 days of custody credit. We therefore remand to the district court to modify Bigelow's custody credit from 55 days to 56 days.

Affirmed in part and remanded.