

*This opinion is nonprecedential except as provided by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
A20-1600**

State of Minnesota,
Appellant,

vs.

Harold Leroy Fenster, Jr.,
Respondent.

**Filed June 28, 2021
Reversed and remanded
Cochran, Judge**

Kandiyohi County District Court
File No. 34-CR-20-608

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

Shane D. Baker, Kandiyohi County Attorney, Willmar, Minnesota (for appellant)

Theresa Patock, Jones & Patock, Willmar, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Cochran, Judge; and
Frisch, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

In this sentencing appeal, the state argues that the district court erred by ordering a stay of adjudication over the state's objection. Because the district court did not identify any clear abuse of the prosecutorial charging function that would allow it to stay adjudication over the state's objection, we reverse and remand for resentencing.

FACTS

The state charged respondent Harold Fenster with fifth-degree assault and disorderly conduct in August 2020. The complaint alleged that Fenster struck the victim, who was 17 years old, in the face. Fenster agreed to plead guilty to fifth-degree assault in exchange for the state dismissing the disorderly-conduct charge.

At the plea hearing, Fenster pleaded guilty to the assault charge and provided the district court with his version of events. According to Fenster, he lived in the same neighborhood as the victim. Fenster had known the victim's family for many years. Fenster explained that the victim had "been giving [him] the bird on a regular basis," including three times on the day of the incident.¹ On that day, Fenster was in his yard when the victim drove past. Fenster thought the victim was speeding, and Fenster signaled to him to slow down. After the victim drove by, Fenster went to talk to him. The victim was parked in his vehicle at the time. Fenster asked him "to quit givin[g] [him] the bird." According to Fenster, the victim began screaming, said that he did not speed, and accused Fenster of reporting him to the police. Fenster said that he then "lost [his] cool," reached in the window of the victim's vehicle, and slapped the victim on both sides of his face. Fenster admitted that he did not act in self-defense and was not afraid of being assaulted.

After hearing from Fenster, the district court heard victim-impact statements from the victim and his mother. Their statements described the assault incident somewhat

¹ To give someone the "bird" refers to the "obscene gesture of anger, defiance, or derision made by pointing or jabbing the middle finger upward." *The American Heritage Dictionary of the English Language* 185 (5th ed. 2018).

differently than Fenstra. The victim claimed that he was “driving through the neighborhood peacefully” when Fenstra followed him home. Fenstra then “verbally and physically assault[ed] [him] in [his] truck on [his] parents’ driveway.” The victim’s mother said that Fenstra came up to the victim while the victim was still in his vehicle. Fenstra “started screaming at him.” According to her, Fenstra then slapped the victim twice with the back of his hand and tried to choke the victim.

Following the victim-impact statements, Fenstra’s attorney read three letters of support for Fenstra written by Fenstra’s neighbors. They detailed the victim’s history of speeding in the neighborhood and responding rudely when asked to slow down. The district court then proceeded to sentencing.

The district court discussed Fenstra’s sentence and announced that it would stay adjudication. The district court explained its reason for staying adjudication:

I’m going to find that there are particular circumstances in this matter that would justify treating this differently from a standard sentence. Quite frankly it appears that there has been an issue in the neighborhood with regards to some traffic behavior and it caused essentially Mr. Fenstra to boil over. I’m not condoning that fact that you used physical actions to deal with this problem; we don’t do that. I think you’ve recognized that

Along with the stay of adjudication, the district court imposed several conditions to which Fenstra had agreed in his plea petition. Those conditions included that he undergo an anger evaluation and follow its recommendations, write a letter of apology, remain law-abiding, have no same or similar offenses, and pay a \$100 fine. The district court told Fenstra that the length of the stay was one year. The district court also explained that, if Fenstra

complied with the conditions, the matter would be dismissed and a conviction would not be entered. The district court said that this would give Fenster “a chance to clean [his] record.”

The state objected to the district court’s sentence, saying that the state never offered a stay of adjudication as part of the plea deal. The district court noted the state’s objection but ordered the stay. The stay of adjudication was reflected on Fenster’s warrant of commitment. This appeal follows.²

DECISION

The state challenges the district court’s sentencing decision. The state argues that the district court erred by staying adjudication of Fenster’s conviction over its objection. We review a district court’s decision not to adjudicate a defendant’s guilt de novo. *State v. Martin*, 849 N.W.2d 99, 105 (Minn. App. 2014), *review denied* (Minn. Sept. 24, 2014). We agree with the state that the district court erred by staying adjudication.

Prosecutors generally have “broad discretion in the exercise of the charging function,” and, under separation-of-powers principles, courts should not interfere with prosecutors’ exercise of that discretion. *State v. Foss*, 556 N.W.2d 540, 540 (Minn. 1996). When a district court orders a stay of adjudication, it does not adjudicate the defendant’s guilt but instead imposes conditions of probation, thereby allowing the defendant to avoid a criminal conviction if he successfully completes probation. *Martin*, 849 N.W.2d at 102.

² Because Fenster did not file a brief, we ordered this appeal to proceed under Minn. R. Civ. App. P. 142.03 (providing that if a respondent fails to file a brief, the case is to be determined on the merits).

A district court may order a stay of adjudication of guilt over the prosecutor's objection only in very limited circumstances. *Id.* at 102-03. The legislature has provided that: "Except [under particular statutes not applicable here], or upon agreement of the parties, a court may not refuse to adjudicate the guilt of a defendant who tenders a guilty plea . . . or who has been found guilty by a court or jury following a trial." Minn. Stat. § 609.095(b) (Supp. 2019). In addition, the supreme court has held that a "clear abuse of the prosecutorial charging function must be found by the court before it may order a stay of adjudication over the prosecutor's objection." *State v. Lee*, 706 N.W.2d 491, 496 (Minn. 2005) (reaffirming the standard announced in *Foss*). A district court's "mere disagreement" with the prosecutor's decision to charge is not a sufficient reason for a stay of adjudication. *Foss*, 556 N.W.2d at 541.

Here, the district court, in staying adjudication, did not find any prosecutorial abuse of discretion in the charging function. Instead, the district court said that there were "particular circumstances in this matter that would justify treating this differently from a standard sentence," and explained that "it appears that there has been an issue in the neighborhood with regards to some traffic behavior and it caused essentially Mr. Fenster to boil over." The district court also stated that it was "giving [Fenster] a chance to clean [his] record." The district court's explanation suggests that it ordered a stay of adjudication because it believed that mitigating circumstances made Fenster's offense less serious than a typical fifth-degree-assault offense, and perhaps that it wanted to give Fenster the opportunity to keep his record clean.

Neither of these circumstances is a sufficient reason for staying adjudication. The district court's finding that the defendant's offense is less serious than a typical offense does not permit the district court to stay adjudication, even if it might support a downward departure. *See id.* (reversing a stay of adjudication but noting that, "[t]o the extent that the assault was less serious than the typical case of misdemeanor assault, the trial court was free to be lenient in sentencing the defendant" on remand); *State v. Thoma*, 569 N.W.2d 205, 208-09 (Minn. App. 1997) (stating that the presence of mitigating factors did not justify a stay of adjudication), *aff'd mem.*, 571 N.W.2d 773 (Minn. 1997). And this court has held on multiple occasions that the desire to allow the defendant to keep a clean record does not support a stay of adjudication. *State v. Ohrt*, 619 N.W.2d 790, 792 (Minn. App. 2000) (noting that "the benefits of avoiding a criminal record" and preventing collateral consequences of a conviction do not support a stay of adjudication); *Thoma*, 569 N.W.2d at 209 (holding that the district court's "desire to relieve an offender of the collateral consequences of her conviction," such as the loss of her driver's license, does not warrant a stay of adjudication). Much like the circumstances for which this court has reversed stays of adjudication in the past, the circumstances that the district court identified do not amount to a clear abuse of prosecutorial discretion in the exercise of the charging function that would allow for a stay of adjudication.

In the absence of a finding of a clear abuse of the prosecutorial charging function, we conclude that the district court abused its discretion by staying adjudication of Fenstra's conviction. We therefore reverse and remand for the district court to resentence Fenstra.

While the district court may not impose a stay of adjudication, we leave the appropriate sentence to the district court's discretion.

Reversed and remanded.