

*This opinion is nonprecedential except as provided by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
A21-0308**

State of Minnesota,
Respondent,

vs.

Ronald Holmes, Jr.,
Appellant.

**Filed December 27, 2021
Affirmed in part, reversed in part, and remanded
Connolly, Judge**

Hennepin County District Court
File No. 27-CR-19-19975

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

Michael O. Freeman, Hennepin County Attorney, Brittany D. Lawonn, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Gina A. Schulz, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Cochran, Judge; and
Klaphake, Judge.*

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

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Appellant challenges his 88-month prison sentence for felony drive-by shooting, arguing that the sentence violated his plea agreement and was calculated with an incorrect criminal-history score. Because appellant's criminal-history score was calculated incorrectly but the imposition of a guidelines sentence did not violate his plea agreement, we affirm in part, reverse in part, and remand.

FACTS

Appellant Ronald Holmes, Jr. was charged with one count of felony drive-by shooting in August 2019. He was charged with making terroristic threats in a separate district court file in October. He entered a guilty plea to both of these charges in a combined plea hearing in July 2020.

At the plea hearing, respondent State of Minnesota reported that the parties had reached a global settlement of several criminal matters¹ involving Holmes. The state outlined the terms of the plea agreement to be:

a plea to the drive-by shooting . . . , and a plea to the threats of violence The other three cases would be dismissed at sentencing. There would be an agreement for a 60-month prison commit. That would be on the drive-by shooting case. The presumptive sentence in that case is 88 months. The 60 months is a downward durational departure. The parties will agree on grounds for that, in particular, no injury to any parties and the actual victim in the case was not identified and is not part of this case.

¹ Holmes had also been charged in three other criminal cases that were active at the time of the plea hearing.

Holmes's counsel agreed with these terms. The plea petition which Holmes filed that same day also related similar terms—that he would plead to drive-by shooting and making terroristic threats, the other three cases would be dismissed, and he would be sentenced to “60 months commit concurrent.”

Holmes entered a guilty plea on both offenses, and the district court accepted his pleas after a lengthy inquiry by his counsel. During this inquiry, his counsel reaffirmed his desire to request release from custody pending sentencing, and that there was no agreement with the state as to his release. However, his counsel indicated that the state agreed Holmes could “ask the judge how she would like to rule in that, as it relates to that issue.” And if the state were to agree to release, it would be with several conditions, and “even if the State agrees to those things, the judge has the final say as it relates to that issue.” Holmes indicated his understanding. At the end of the inquiry and waiver of rights, the state indicated “that’s all correct, Your Honor.”

After the district court accepted his pleas and entered convictions for both offenses, Holmes made his request for release. His counsel indicated that he would accept conditional release with home monitoring, and “is agreeing that the Court can sentence him to the high end of the box . . . as it relates to the more serious offense” if he violated conditions the district court may impose. The state reiterated that “this plea agreement did not include that top of the box if he violates and all those conditions of release,” and that the state “did not make it part of the plea agreement that he has to stay in, but we also never got to the point of making it part of the plea agreement that he does get out.”

The district court ultimately granted his request. It ordered release without bail subject to several conditions, including that he remain law abiding and submit to electronic home monitoring. The district court also informed Holmes that if he violated his conditional release, he was “looking at top of the box” for sentencing, with consecutive sentences on the two offenses. The state then requested that, “because we’re kind of modifying the plea agreement with this potential for top of the box if he violates,” that Holmes’s counsel “make a record that he is accepting that condition of release that his sentence can be the maximum by law if there’s any substantial violation pending sentencing.” His counsel agreed, and Holmes indicated his understanding that if he fails to meet the conditions, “the judge will be able to sentence, per your agreement . . . to the high end of the box on both cases.”

Holmes violated the conditions of his release in October and November. At sentencing in December, the state asserted its understanding that due to the violations, the district court was “free to sentence anywhere the Court sees fit within the guidelines,” and requested a sentence between 75 and 88 months for the drive-by-shooting offense and 27 months concurrent for terroristic threats. Holmes requested the 60-month sentence per the plea agreement. The district court indicated that she would “consider the 60 months,” but that she had told Holmes “if he violated any condition . . . of his conditional release, that I would not be able to sentence him to the 60 months.”

The district court denied Holmes’s request for a downward durational departure and sentenced him to an 88-month prison commitment on the drive-by shooting and a concurrent 27 months for the terroristic-threats offense. Holmes appeals.

DECISION

Holmes contends that his 88-month sentence is a breach of the plea agreement, entitling him to specific performance of a 60-month sentence instead. *See State v. Brown*, 606 N.W.2d 670, 674 (Minn. 2000) (“On demonstration that a plea agreement has been breached, the court may allow withdrawal of the plea, order specific performance, or alter the sentence if appropriate.”). Specifically, he argues that the condition of the plea agreement stating that he could be sentenced according to the guidelines if he violated his conditional release was invalid as an impermissible intrusion by the district court into plea-agreement negotiations, leaving only the agreement for a 60-month sentence in exchange for his guilty pleas. *See Wheeler v. State*, 909 N.W.2d 558, 564 (Minn. 2018) (stating that “a district court judge should not participate in the plea bargaining negotiation itself”). We are not persuaded.

We determine whether a plea agreement has been breached by looking to “what the parties to the plea bargain reasonably understood to be the terms of the agreement.” *Brown*, 606 N.W.2d at 674 (quotation omitted). We conduct this review de novo. *See State v. Rhodes*, 675 N.W.2d 323, 326 (Minn. 2004) (applying de novo review to the “interpretation and enforcement of plea agreements”). Upon review, we are satisfied that the state participated in the addition of the guidelines-sentence condition to Holmes’s plea agreement, and that he reasonably understood his 60-month sentence to be contingent upon complying with conditional release.

At the outset of the plea hearing, the parties concurred as to the basic terms of the agreement: a guilty plea in two cases, dismissal of three additional cases, and a

recommendation for a 60-month sentence with an agreement that grounds exist for a downward durational departure. But there was an additional component to the negotiations revealed by Holmes’s counsel—that the state would not oppose his request for release pending sentencing but would insist upon conditional release, with the details left to the district court’s discretion. Holmes then requested such release and proposed “that the Court can sentence him to the high end of the box . . . as it relates to the more serious offense” if he violated his release. The district court accepted this proposal and ordered conditional release. The state then asked to ratify Holmes’s understanding of this finalization of their agreement—because they “modif[ied] the plea agreement with this potential for top of the box if he violates”—to ensure there was “a record that he is accepting that condition of release that his sentence can be the maximum by law if there’s any substantial violation pending sentencing.” His counsel agreed and Holmes indicated he understood that his contemplated 60-month sentence was contingent on complying with his conditional release.

We are satisfied that this record supports the interpretation that the district court was merely determining an aspect of Holmes’s sentence that the plea agreement “left to its discretion,” which it is free to do. *See State v. Meredyk*, 754 N.W.2d 596, 604 n.4 (Minn. App. 2008). Accordingly, we are guided by our own precedent that when an appellant’s “plea agreement included conditions and he did not comply with those conditions, the district court had no obligation to impose the sentence in the plea agreement and did not violate the plea agreement by imposing a different sentence.” *State v. Montez*, 899 N.W.2d 200, 204 (Minn. App. 2017). The district court thus did not violate Holmes’s plea

agreement, and he is not entitled to specific performance of a 60-month sentence. We therefore affirm the imposition of a guidelines sentence.

However, the parties agree that Holmes's guidelines sentence was calculated incorrectly according to *State v. Robinette*, 944 N.W.2d 242 (Minn. App. 2020), *aff'd*, 964 N.W.2d 143 (Minn. 2021), which stated that the 2019 amendments to the Minnesota Sentencing Guidelines apply to all cases that were pending as of the effective date of the amendments. Under these amendments, Holmes was incorrectly attributed a full custody-status point for probation relating to a gross misdemeanor instead of one-half of a criminal-history point. See Minn. Sent. Guidelines 2.B.2.a (Supp. 2019). His correctly calculated criminal-history score is three. See *id.* Because his sentence was calculated using an incorrect criminal-history score, we reverse and remand for resentencing using the correct criminal-history score of three. See *State v. Stewart*, 923 N.W.2d 668, 680 (Minn. App. 2019) (reversing and remanding for resentencing with instructions to use the correct criminal-history score), *rev. denied* (Minn. Apr. 16, 2019).

Affirmed in part, reversed in part, and remanded.