

*This opinion is nonprecedential except as provided by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
A21-0748**

State of Minnesota,
Respondent,

vs.

Clifford Monroe Skinaway, Jr.,
Appellant.

**Filed May 9, 2022
Affirmed in part, reversed in part, and remanded
Bratvold, Judge**

Aitkin County District Court
File No. 01-CR-20-496

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

James P. Ratz, Aitkin County Attorney, Lisa Roggenkamp Rakotz, Assistant County Attorney, Aitkin, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Christopher L. Mishek, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Segal, Chief Judge; Bratvold, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

Appellant challenges the sentence imposed after his conviction for second-degree assault. He raises two issues. First, he argues the district court erred by assigning him a one-half custody-status point based on a prior conviction for gross-misdemeanor criminal vehicular operation that appellant asserts was a “traffic” offense. Second, he argues the

district court used an incorrect criminal-history score before imposing his sentence and later erred by denying a motion to correct his sentence. We conclude, first, the district court did not err by assigning a one-half custody-status point because appellant's prior conviction was not for a traffic offense. Second, we conclude the district court erred by sentencing appellant using an incorrect criminal-history score because the district court should have disregarded appellant's one-half custody-status point before determining his criminal-history score. Thus, we affirm in part, reverse in part, and remand for resentencing consistent with this opinion.

FACTS

The facts of the underlying offense are taken from the complaint, which appellant Clifford Monroe Skinaway Jr. admitted was true at his plea hearing. On June 25, 2020, Aitkin County police responded to a report of a fight and stabbing. About an hour after police responded, a deputy arrested Skinaway, who was "covered in blood," "wearing a small punch dagger on a lanyard around his neck," and "very intoxicated." Later that night, the victim told police he was arguing with Skinaway when Skinaway "jumped up and hit him." Skinaway admitted he stabbed the victim.

Respondent State of Minnesota charged Skinaway with three counts: second-degree attempted murder and first- and second-degree assault. Skinaway agreed to plead guilty to second-degree assault and enter inpatient chemical-dependency treatment, and the state agreed to dismiss the remaining counts. The district court accepted Skinaway's guilty plea, convicted him, and ordered a presentence investigation (PSI) report.

The PSI report included a sentencing worksheet that assigned Skinaway three-and-a-half felony points and a one-half custody-status point. The PSI report identified Skinaway's criminal-history score as four and recommended a sentence between 39 and 54 months.

At the sentencing hearing, Skinaway moved for a downward dispositional departure and his attorney stated Skinaway's criminal-history score was four. The state opposed the motion and asked for a sentence of 54 months. The district court denied Skinaway's departure motion and sentenced him to 45 months in prison.

Following sentencing, Skinaway moved to correct his sentence under Minn. R. Crim. P. 27.03, subd. 9, arguing the PSI report inaccurately calculated his criminal-history score, and that resulted in a sentence not authorized by law. At a hearing on Skinaway's motion, the prosecuting attorney conceded that Skinaway's felony points should have been rounded down to three and argued the district court had discretion to assign a one-half custody-status point.¹ The district court denied Skinaway's motion, stating, "[M]y decision is to deny the motion to modify the sentencing . . . [because] I believe that the sentence is appropriate." The district court added, "I really believe that had all of these arguments been made back then, this is the conclusion that I would have come to."

Skinaway appeals.

¹ The prosecuting attorney referred to a memorandum submitted by a corrections agent before the hearing. The memorandum stated that if the district court chooses "to apply the .5 custody-status point, the defendant's criminal history score will stay the same, as will the presumptive sentence. However, if the [district court] chooses not to apply the .5 custody-status point, the defendant's criminal history score would round down to a score of 3."

DECISION

Minn. R. Crim. P. 27.03, subd. 9, allows the district court to “correct a sentence not authorized by law.” “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). “We review the district court’s denial of a motion to correct a sentence for an abuse of discretion. Specifically, we review the district court’s legal conclusions de novo and its factual findings under the clearly erroneous standard.” *Townsend v. State*, 834 N.W.2d 736, 738 (Minn. 2013) (citation omitted). Calculation of a criminal-history score is a question of law that we review de novo. *State v. Williams*, 771 N.W.2d 514, 520 (Minn. 2009).

The state did not file a brief with this court. Even so, this appeal is submitted for decision under Minn. R. Civ. App. P. 142.03 and is “determined on the merits.” Skinaway raises two issues on appeal. First, Skinaway argues the district court determined his criminal-history score by erroneously assigning a one-half custody-status point based on a prior conviction for a “traffic” offense. Second, Skinaway argues the district court abused its discretion by using an incorrect criminal-history score before imposing his sentence. We address these issues in turn.

I. The district court did not err by assigning Skinaway a one-half custody-status point.

Sentencing under the Minnesota Sentencing Guidelines (guidelines) “is a procedure based on state public policy to maintain uniformity, proportionality, rationality and predictability in sentencing.” Minn. Stat. § 244.09, subd. 5 (2018). The guidelines provide

a presumptive sentence range for felony offenses, laid out on a grid with two axes—criminal-history score and offense severity. *See* Minn. Sent. Guidelines 4.A. (Supp. 2019).² The grid includes only whole numbers along both axes. *See id.* The criminal-history score is determined by adding points, when applicable, for the following: custody status at the time of the offense, prior juvenile adjudications, prior misdemeanors/gross misdemeanors, and prior felony convictions. *See* Minn. Sent. Guidelines 2.B (Supp. 2019).

The guidelines provide that a one-half custody-status point is assigned when a defendant is on probation for “a non-traffic gross misdemeanor,” among other instances not relevant to Skinaway’s case. *See* Minn. Sent. Guidelines 2.B.2.a. Skinaway argues the district court erred by assigning a one-half custody-status point based on his custody status for a prior gross-misdemeanor conviction for criminal vehicular operation (CVO) under Minn. Stat. § 609.2113, subd. 3 (2018).

Skinaway acknowledges that, at the time of the assault offense, he was on probation for a gross-misdemeanor CVO conviction for causing “bodily harm to another as a result of operating a motor vehicle” and “leaving the scene of the accident.” *See* Minn. Stat. § 609.2113, subd. 3. Skinaway argues this offense is *not* a “non-traffic” offense for which a one-half custody-status point may be assigned, so the district court erred by assigning a one-half custody-status point before imposing his sentence. Even though Skinaway did not raise this issue during district court proceedings, he may raise it for the first time on appeal.

² The guidelines applicable to Skinaway are determined by the date of his offense. *See* Minn. Sent. Guidelines 2 (Supp. 2019). Because Skinaway’s assault offense occurred June 25, 2020, the guidelines in effect on that date apply.

See State v. Maurstad, 733 N.W.2d 141, 147 (Minn. 2007) (stating “a sentence based on an incorrect criminal history score is an illegal sentence—and therefore, under Minn. R. Crim P. 27.03, subd. 9, correctable ‘at any time’”).

This issue requires us to interpret the guidelines and, specifically, the meaning of “non-traffic.” “Interpreting the Minnesota Sentencing Guidelines presents a question of law, which we review de novo. When we interpret the [g]uidelines, we use the same principles as when interpreting statutes, including the canons of [statutory] interpretation in Minn. Stat. § 645.08.” *State v. Scovel*, 916 N.W.2d 550, 554 (Minn. 2018) (citation omitted). If the language in the guidelines is plain and unambiguous, the language “is presumed to manifest the intent of the Minnesota Sentencing Guidelines Commission.” *Id.* at 555. “A statute is ambiguous only if it is subject to more than one reasonable interpretation.” *State v. Thonesavanh*, 904 N.W.2d 432, 435 (Minn. 2017) (quotation omitted).

Skinaway’s argument proceeds in two steps. First, he contends the guidelines unambiguously provide that a one-half custody-status point be assigned for being under supervision for a non-traffic gross misdemeanor at the time of the current offense, from which Skinaway infers that no custody-status point is assigned for a traffic offense. We agree that the guidelines are unambiguous on this point. *See* Minn. Sent. Guidelines 2.B.2.a.

Second, Skinaway contends that the district court erred by determining that his prior CVO conviction is a non-traffic offense. Skinaway correctly notes that neither the guidelines nor caselaw define non-traffic. Relying on a dictionary definition of “traffic,”

Skinaway argues the plain meaning of non-traffic would include only “conduct unrelated to vehicles in transit.” Skinaway finally concludes that his prior CVO conviction “requires as an element a violation of Minn. Stat. § 169.09, subd. 1 [leaving the scene of an accident], which is a traffic violation.”

It is correct that Skinaway’s prior conviction for CVO under Minn. Stat. § 609.2113, subd. 3, requires proof of a traffic offense—leaving the scene of an accident. Still, this alone does not support characterizing CVO as a “traffic” offense to determine Skinaway’s custody-status points under the guidelines. The essence of a CVO offense under Minn. Stat. § 609.2113, subd. 3, is the infliction of bodily harm to another as the result of operating a motor vehicle. *See* Minn. Stat. § 609.02, subd. 7 (2018) (“‘Bodily harm’ means physical pain or injury, illness, or any impairment of physical condition.”). Because CVO is an offense against a person, it would be unreasonable to interpret “non-traffic” offense to exclude a CVO offense simply because proof of a traffic violation is required to obtain a conviction.³

Thus, we hold a CVO conviction under Minn. Stat. § 609.2113, subd. 3, is within the plain meaning of a prior conviction for a “non-traffic” offense as that phrase is used to

³ Other provisions in the guidelines persuade us that a CVO conviction is a non-traffic offense because the guidelines address the culpability of, and the custody-status points assigned for, a prior CVO conviction. For example, the guidelines provide that if the current conviction is for CVO, then two units each are assigned to previous violations of Minn. Stat. § 609.2113, among other similar offenses. Minn. Sent. Guidelines 2.B.3.g. Also, the comments to this provision state that the guidelines commission believes “that offenders whose current conviction” is for CVO are “more culpable, and for these offenders there is no limit to the total number of misdemeanor points included in the criminal history score” due to a prior CVO violation, among other similar offenses. Minn. Sent. Guidelines cmt. 2.B.304.

determine custody-status points under the guidelines. *See* Minn. Sent. Guidelines 2.B.2.a. Because we determine Skinaway’s prior conviction for CVO is a non-traffic gross misdemeanor under the guidelines, the district court did not err by assigning Skinaway a one-half custody-status point.

II. The district court erred by imposing Skinaway’s sentence based on an incorrect criminal-history score.

Skinaway argues the district court erred by failing to round down his felony points and by failing to disregard his one-half custody-status point, leading to an inaccurate criminal-history score of four instead of the correct score of three. We agree.

We first consider the felony-point portion of Skinaway’s criminal-history score. When a defendant’s felony-point total includes a partial point, “the point value must be rounded down to the nearest whole number.” Minn. Sent. Guidelines 2.B.1.i. The state conceded this point at the hearing on Skinaway’s motion to correct his sentence. Thus, Skinaway’s three-and-one-half felony points should have been rounded down to three before determining his criminal-history score. Because the district court did not round down Skinaway’s felony points before sentencing or in response to his motion to correct the sentence, the district court erred.

Second, we consider Skinaway’s criminal-history score based on his one-half custody-status point. In 2019, the guidelines were changed to “assign one-half custody status point” when an offender is on probation, parole, or supervised release “after entry of a guilty plea, guilty verdict, or conviction” of an enumerated offense. Minn. Sent.

Guidelines 2.B.2.a. The guidelines, however, do not discuss how partial custody-status points are to be treated when determining a defendant's criminal-history score.

Recently, this court addressed this question in *State v. Beganovic*, ___ N.W.2d ___, ___, 2022 WL 1073237, at *6 (Minn. App. Apr. 11, 2022), which held that “a partial custody-status point should be disregarded when calculating the presumptive sentence.”⁴ Thus, the district court erred by failing to disregard Skinaway's one-half custody-status point before calculating his criminal-history score.

In sum, the district court erred by failing to round down Skinaway's felony-point total before determining his criminal-history score. Then, the district court erred by failing

⁴ In *Beganovic*, this court adopted the reasoning of the guidelines commission's January 15, 2022 memorandum, which was issued after Skinaway was sentenced. *Id.* at *6-7. The memorandum provides guidance on the “half custody status point problem” and instructed district courts to “recalculate [a defendant's] Total Criminal History Points manually whenever” there is a one-half custody-status point. Minn. Sent. Guidelines Comm'n, Half Custody Status Point Problem – Interim Guidance (Jan. 15, 2022), https://mn.gov/sentencing-guidelines/assets/20220115-MSGC-PartialPointsinCriminalHistory_tcm30-515455.pdf. The memorandum describes “the practical effect” as being that “when a criminal history score falls between two numbers on the grid because of a one-half custody status point, the lower number should be used to determine the presumptive sentence as if the half custody status point were always rounded down.” *Id.*

The commission's memorandum cites this court's nonprecedential opinion in *State v. Eubanks*, No. A19-2042, 2021 WL 318260, at *5-6 (Minn. App. Feb. 1, 2021). In *Eubanks*, the appellant had one-half felony point and a one-half custody-status point. *Id.* at *5. This court reasoned that because the appellant “has only one-half of a felony point, with rounding down, his total felony points are zero. With the recent amendments to the sentencing guidelines, he is left with only one-half of a custody point, which is also rounded down. This leaves him with a criminal history score of zero.” *Id.* at *6. This court reversed the district court's sentence based on the inaccurate criminal-history score and remanded for resentencing. *Id.*

Eubanks relied on the amelioration doctrine because the date of the offense was before the guidelines were amended in 2019 and “Eubanks's conviction was not final when the amendment became effective.” *Id.* Here, we do not rely on the amelioration doctrine because Skinaway's offense occurred after the 2019 guidelines became effective.

to disregard Skinaway's one-half custody-status point before determining his criminal-history score. Taking these errors together, the district court erred by imposing Skinaway's sentence using an inaccurate criminal-history score of four when his correct criminal-history score is three.

This error is not harmless. Even though Skinaway received a sentence within the presumptive range for the offense severity and a criminal-history score of three, a district court "must resentence the defendant" when the defendant is sentenced based on an incorrect criminal-history score. *State v. Provost*, 901 N.W.2d 199, 202 (Minn. App. 2017). "[B]ecause the sentencing guidelines serve as the anchor for a district court's discretion at sentencing, 'when a [g]uidelines range moves up or down, offenders' sentences tend to move with it.'" *Id.* (quoting *Molina-Martinez v. United States*, 578 U.S. 189, 199 (2016)).

We conclude the district court erred by sentencing Skinaway using an inaccurate criminal-history score and by denying Skinaway's motion for a corrected sentence. Thus, we remand for resentencing using a correct criminal-history score.

Affirmed in part, reversed in part, and remanded.