STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1558

State of Minnesota,
Respondent,

vs.

Cedric Gershone Gibbs,
Appellant.

Filed December 12, 2022
Affirmed in part, reversed in part, and remanded
Smith, Tracy M., Judge

Hennepin County District Court
File No. 27-CR-19-32010

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

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larson, Presiding Judge; Johnson, Judge; and Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this direct appeal from his judgment of conviction for third-degree criminal sexual conduct, appellant Cedric Gershone Gibbs argues that his conviction must be reversed and a new trial granted because the district court admitted irrelevant evidence

when it permitted the alleged victim to testify regarding how "this assault affected [her] life." In the alternative, Gibbs argues, and respondent State of Minnesota agrees, that he is entitled to resentencing because the district court erred in calculating his criminal-history score based on a full custody-status point when, under a 2019 amendment to the Minnesota Sentencing Guidelines, he should be assigned only a one-half custody-status point.

We conclude that the district court did not abuse its discretion by admitting the challenged testimony because it was relevant to whether the sexual conduct was consensual, but it did err by not giving appellant the benefit of the amended custody-status provision in the sentencing guidelines. Thus, we affirm in part, reverse in part, and remand for resentencing.

FACTS

In December 2019, the state charged Gibbs with third-degree criminal sexual conduct in violation of Minnesota Statutes section 609.344, subdivision 1(d) (2018) (sexual penetration of a person who is "physically helpless") for sexually assaulting J.R. J.R. had known Gibbs—who is approximately 20 years older than she—since she was a child.

At a bench trial, J.R. recounted the incident. She testified that on May 22, 2019, Gibbs and his brother D.G. met up with J.R., J.R.'s sister T.J., and some friends for a night of celebrating in downtown Minneapolis. J.R. testified that the night ended at a hotel room, where J.R. passed out after drinking heavily. According to J.R., she awoke to Gibbs "rubbing [her] butt" and quickly told Gibbs to stop or she would "chin check him." J.R. testified that she then fell back asleep and later awoke to the feeling of something inside

her vagina and the sensation of Gibbs wiping her genital area, which felt wet, with a towel. J.R. said that she did not know what to do and pretended to be asleep. She explained that, when her sister T.J. returned to the room to go to the bathroom, J.R. ran into the bathroom and told T.J. that Gibbs had "raped" her. T.J. then called 911, and J.R. confronted Gibbs before having "a complete panic attack."

The state concluded its direct examination of J.R. by asking her, "How has this assault affected your life?" The district court overruled Gibbs's relevancy objection, and J.R. answered:

> I don't do crowds anymore. I don't trust nobody anymore. I have nightmares. In therapy – I need therapy. I just had a son, and I can't even trust his father to watch him because I'm afraid that if I take my eyes off my baby for a second, something could happen to him.
>
> And especially with my daughter, like, I can't have a relationship right now because I'm afraid that they might try to hurt my children.
>
> My relationship with a lot of people in the family is kind of – I shut down. I don't talk to nobody like that anymore. I try to stay to myself. I'm in the house. I became a homebody.
>
> For a while, I did – well, I'm not going to say I did drugs. I experimented to try and numb the pain. It didn't work, so pretty much my life has been hell.
>
> I have panic attacks. I have anxiety to the fact – I can't even go to Walmart without having headphones. I can't go in public without, you know, prepping myself and giving myself a pep talk. It's hard. It is. I'm not gonna lie. This has made my life hell.
>
> Because, to be honest, I never – like I said, I never got an apology, not once.

Following J.R.'s testimony, the state called a series of other witnesses whose testimony aligned with J.R.'s. The state called J.R.'s sister T.J., the responding officer, the nurse who performed J.R.'s sexual-assault examination, and the sergeant in charge of the case. The state also presented the testimony of four employees of the Minnesota Bureau of Criminal Apprehension (BCA) involved in testing the samples taken from J.R. during the sexual-assault examination. One of the BCA employees testified that J.R.'s blood alcohol concentration was 0.03 approximately six hours after the assault and a second BCA employee testified that J.R.'s perianal and cervical swabs tested positive for a "single-source male DNA profile that matche[d] Cedric Gibbs."

The defense asserted that the sexual conduct was consensual. Gibbs called one witness, his brother D.G. D.G. testified that J.R. was awake and flirting with Gibbs throughout the evening. D.G. also stated that he left the hotel room briefly to go check on his car but did not think Gibbs had sufficient time to have sex with J.R. during his absence. D.G.'s trial testimony differed on certain points from his previous police interview. Specifically, in his initial police interview, D.G. did not mention that J.R. was flirting and did not tell the police that Gibbs admitted to having consensual sex with J.R. at the hotel.

The district court found Gibbs guilty, concluding he committed third-degree criminal sexual conduct by intentionally sexually penetrating the victim with knowledge or reason to know that she was physically helpless.

On August 25, 2021, the district court sentenced Gibbs to a guidelines sentence of 53 months of imprisonment—a bottom-of-the-box sentence—and 10 years of conditional release. *See* Minn. Sent'g Guidelines 4.A (2018). This sentence was based on the C severity

level of the offense and a criminal-history score of one, which was based on a custody-status point of one. Gibbs was assigned this custody-status point because he was on probation for gross-misdemeanor driving while impaired (DWI) at the time of this sexual assault.

This appeal follows.

DECISION

I. The district court did not abuse its discretion by admitting into evidence J.R.'s testimony about how the sexual assault affected her life.

Gibbs argues that the district court abused its discretion by admitting J.R.'s testimony about how the sexual assault "affected her life" because the evidence was irrelevant.

We review a district court's evidentiary ruling concerning the relevancy of evidence for an abuse of discretion. *State v. Ali*, 855 N.W.2d 235, 249 (Minn. 2014). Appellate courts will not reverse an evidentiary ruling unless the appellant shows "both that the district court abused its discretion in admitting the evidence and that the appellant was thereby prejudiced." *State v. Guzman*, 892 N.W.2d 801, 812 (Minn. 2017). A district court abuses its discretion when its decision is "based on an erroneous view of the law or is against logic and the facts in the record." *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019).

Relevant evidence is generally admissible. Minn. R. Evid. 402. Evidence is relevant when it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Minn. R. Evid. 401. Relevant evidence "logically tends to prove or disprove a

material fact in issue." *State v. Mosley*, 853 N.W.2d 789, 797 (Minn. 2014). Evidence that has even a slight probative value is sufficient to meet the relevancy threshold under rule 401's liberal approach. *See* Comm. cmt., Minn. R. Evid. 401. This "minimal relevancy approach" applies to "any fact that is of consequence" to the disposition of the litigation. *State v. Ture*, 632 N.W.2d 621, 631 (Minn. 2001). A fact of consequence is one which would assist the factfinder even remotely in determining an issue in question. *State v. Schulz*, 691 N.W.2d 474, 478 (Minn. 2005).

Gibbs acknowledges that a disputed fact of consequence was whether his sexual conduct was consensual, but he asserts that J.R.'s testimony on how the assault affected her life was not probative of the contested fact of consent. He asserts that whether the "alleged sexual assault made [J.R.] experiment with drugs, think people would hurt her children, and wear headphones at Walmart did not make it 'more or less probable' that J.R. did not consent to the crime." We are not persuaded.

Under the "minimal relevancy approach," J.R.'s testimony makes it more probable that the sexual penetration by Gibbs was not consensual. *See* Minn. R. Evid. 401; *Ture*, 632 N.W.2d at 631. As a result of the sexual encounter, J.R. became fearful, untrusting, and anxious. This reaction to the event "logically tends to prove" that the sexual contact was nonconsensual. *Mosley*, 853 N.W.2d at 797. The district court therefore exercised its discretion appropriately in ruling that J.R.'s testimony about how the assault affected her life was admissible.

Because we see no abuse of discretion in the district court's admission of the evidence, we need not address Gibbs's argument that he was prejudiced by the evidentiary ruling. Gibbs's challenge to his conviction fails.

II. The district court erred by sentencing appellant based on a criminal-history score of one.

Gibbs also argues, and the state concurs, that he is entitled to resentencing with a reduced criminal-history score based on an amendment to the sentencing guidelines that became effective after the date of his offense but before his judgment of conviction was final. We agree.

Whether a sentence conforms to the requirements of the sentencing guidelines is a question of law that is reviewed de novo. *State v. Williams*, 771, N.W.2d 514, 520 (Minn. 2009). A sentence based on an incorrect criminal-history score can be corrected at any time. *State v. Maurstad*, 733 N.W.2d 141, 147 (Minn. 2007); *see also* Minn. R. Crim. P. 27.03, subd. 9 ("The court may at any time correct a sentence not authorized by law.").

The sentencing guidelines prescribe sentencing ranges that are presumed appropriate. Minn. Sent'g Guidelines 1.A.6 (2018). The prescribed sentencing range for a given felony offense is determined by the criminal-history score of an individual and the offense's severity level. Minn. Sent'g Guidelines 2.A.1, 2.B (2018). When sentencing Gibbs, the district court calculated the presumptive range using a criminal-history score of one. The criminal-history score of one was based on Gibbs's custody-status point of one. That custody-status point was assigned under the 2018 Minnesota Sentencing Guidelines

based on Gibbs being on probation for gross-misdemeanor DWI at the time he committed the offense.

In 2019, the Sentencing Guidelines Commission amended the custody-status provision. *See* Minn. Sent'g Guidelines 2.B.2 (Supp. 2019). Under the amended provision, a court may assign only a one-half custody-status point if the person was on probation for gross-misdemeanor DWI at the time of the offense. Minn. Sent'g Guidelines 2.B.2.a(3)(v) (Supp. 2019).

When an amendment to the sentencing guidelines takes place after the date of an offense, a defendant may be entitled to the benefit of the amendment under the amelioration doctrine. Under that doctrine, an amendment mitigating punishment must be applied to acts committed prior to its effective date so long as (1) there is no final judgment reached in the case and (2) the legislature did not intend to abrogate the doctrine. *State v. Robinette*, 964 N.W.2d 143, 147 (Minn. 2021); *see also State v. Kirby*, 899 N.W.2d 485, 490 (Minn. 2017). The amelioration doctrine applies with respect to the 2019 amendment to the guidelines' custody-status provision. *See State v. Beganovic*, 974 N.W.2d 278, 288 (Minn. App. 2022), (applying amelioration doctrine with respect to 2019 amendment to Minn. Sent'g Guidelines 2.B.2.a.3), *rev. granted on other grounds* (Minn. June 29, 2022). Because Gibbs's judgment of conviction was not final when the 2019 amendment took effect, the amelioration doctrine requires that he be given the benefit of the reduced custody-status-point provision.

Under the amended provision, Gibbs is correct that his custody-status point is not one but is rather one-half point. Under our ruling in *Beganovic*, "[w]hen a defendant's

criminal-history score includes a partial custody-status point, the partial point must be disregarded when determining the presumptive sentence." 974 N.W.2d at 281. Disregarding the partial custody-status point brings Gibbs's criminal-history score down to zero. We therefore reverse Gibbs's sentence and remand to the district court for resentencing with a criminal-history score of zero.

Affirmed in part, reversed in part, and remanded.