This opinion is nonprecedential except as provided by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
A22-0893

State of Minnesota,
Respondent,

vs.

Darren Ray Liimatainen,
Appellant.

Filed December 27, 2022
Affirmed
Worke, Judge

Carlton County District Court
File No. 09-CR-19-1106

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

Lauri A. Ketola, Carlton County Attorney, Jeffrey LH Boucher, Chief Deputy County Attorney, Carlton, Minnesota (for respondent)

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

Considered and decided by Smith, Tracy M., Presiding Judge; Worke, Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

Following remand for resentencing, appellant argues that the district court abused its discretion by imposing the original sentence based on its determination that appellant's criminal-history score included a prior felony conviction. We affirm.

FACTS

In 2013, appellant Darren Ray Liimatainen pleaded guilty to felony fifth-degree controlled-substance possession.

In 2019, Liimatainen pleaded guilty to third- and fifth-degree possession of methamphetamine. Liimatainen's criminal-history score was six and included one-half point for the 2013 drug conviction. The district court sentenced Liimatainen to 21 months for the fifth-degree offense and 57 months[1] for the third-degree offense, stayed the sentences, and placed him on probation.

When Liimatainen violated his probation, the district court executed his sentences. Liimatainen appealed the revocation of probation and the inclusion of the one-half point for the 2013 conviction in his criminal-history score. This court affirmed the revocation of probation but concluded that the record failed to establish that the 2013 conviction would be a felony after enactment of the 2016 Drug Sentencing Reform Act (DSRA). *See State v. Liimatainen*, No. A21-0536, 2021 WL 5764585, at *5 (Minn. App. Dec. 6, 2021), *rev. denied* (Minn. Feb. 23, 2022). This court reversed Liimatainen's sentence and directed that on remand the state could develop the record to establish that the 2013 conviction is a felony. *Id.*

On remand, the dispute related to the quantity of the controlled substance, Lortab, that Liimatainen admitted to possessing when he pleaded guilty in 2013. Liimatainen argued that he admitted to possessing one unit of Lortab, which is a gross misdemeanor.

[1] With a criminal-history score of five, the presumptive sentence would have been 51 months in prison.

The state argued that Liimatainen admitted that he "had Lortab" not just "a Lortab" and supplemental information—the criminal complaint indicating that officers found "four (4) pills," a photograph of items seized from Liimatainen's person showing four Lortab pills, and the evidence log documenting the four Lortab pills—showed that Liimatainen admitted to possessing four Lortab pills. The district court concluded that Liimatainen pleaded guilty to possessing "Lortab," which was plural. It determined that the 2013 conviction was a felony and imposed a 57-month sentence. This appeal followed.

DECISION

Liimatainen argues that the district court abused its discretion by determining that the 2013 conviction is a felony in calculating his criminal-history score. This court reviews the district court's determination of a criminal-history score for an abuse of discretion. *State v. Edwards*, 900 N.W.2d 722, 727 (Minn. App. 2017), *aff'd mem.*, 909 N.W.2d 594 (Minn. 2018).

When Liimatainen pleaded guilty in 2013, the fifth-degree conviction was a felony. In 2016, the DSRA provided that first time drug offenses are gross misdemeanors when the amount possessed is "one dosage unit or less if the controlled substance was possessed in dosage units." Minn. Stat. § 152.025, subd. 4(a)(1) (2018). Thus, the district court had to determine whether the 2013 drug conviction would currently be a gross misdemeanor or a felony. *See State v. Strobel*, 932 N.W.2d 303, 307-10 (Minn. 2019) (stating that when calculating a criminal-history score, a pre-2016 fifth-degree possession offense is counted as a felony if it would be a felony under current law).

At the 2013 guilty-plea hearing, the following occurred:

The Court:	Okay. And they thought that you might be under the influence of something, but they did find that you had Lortab with you; is that correct?
[Liimatainen]:	In the jacket I was wearing there was, yeah, but no, I wasn't under the influence of anything.
The Court:	All right. But you had no legal prescription for Lortab.
[Liimatainen]:	No, I did not.
The Court:	And you understand you can't possess that, that's a scheduled or legend drug; you can't, without a doctor's prescription.
[Liimatainen]:	I do now, yes.

This exchange shows that Liimatainen admitted to possessing the Lortab that was found in his jacket, which was four Lortab pills. The district court did not ask "[Officers] did find that you had *Lortabs* with you" because Lortab is a brand name like Tylenol that does not require the addition of an "s" to make plural. The district court asked Liimatainen if he had a "legal prescription for Lortab." Generally, a prescription is for more than one pill. A quantity will appear on the prescription, but the prescription for "Lortab" will include all of the pills in the bottle.

Liimatainen argues that the district court improperly relied on *State v. Colclasure*, in which the defendant was found with a bottle of prescription pills that he identified as Lortab. No. A11-55, 2011 WL 5119124, at *1 (Minn. App. Oct. 31, 2011).[2] Liimatainen argues that *Colclasure* had nothing to do with whether "Lortab" is singular or plural. But

[2] We are not bound by our nonprecedential opinions, but we may cite them as "persuasive authority." Minn. R. Civ. App. P. 136.01, subd. 1(c).

the district court did not rely on *Colclasure*; it merely cited an example of the use of the word "Lortab" as plural.

Further, on remand, in developing the record to establish that the 2013 conviction is a felony, the state provided the criminal complaint, the photograph, and the inventory log. Liimatainen does not dispute that the complaint indicated that he possessed four "Lortabs," and the photo shows four of one type of pill. Instead, he claims that these exhibits may show that he was found with four Lortab pills, but they do not establish that he admitted to possessing multiple Lortab pills.

The complaint and photographs provided context and clarity to statements made during the plea hearing. Liimatainen admitted that officers found that he "had Lortab with [him]" "[i]n the jacket [he] was wearing." He did not state that he was pleading guilty to possessing only one of the four Lortab pills found in his jacket. He admitted that he possessed the Lortab found in his jacket, which was four Lortab pills. The district court did not abuse its discretion in determining that the 2013 conviction is a felony under current law and appropriately included in Liimatainen's criminal-history score.

Affirmed.