

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0240**

State of Minnesota,
Respondent,

vs.

Kendall Dvontae Pruitt,
Appellant.

**Filed February 10, 2025
Reversed and remanded
Johnson, Judge**

Ramsey County District Court
File No. 62-CR-22-1317

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

John J. Choi, Ramsey County Attorney, Elizabeth Lamin, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Leah C. Graf, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Johnson, Judge; and Klaphake, Judge.*

SYLLABUS

Under Minnesota Sentencing Guideline 2.B.5.b (Supp. 2021), a district court may assign prior-felony criminal-history points for a prior non-Minnesota conviction only if

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

(1) the equivalent Minnesota offense is a felony and (2) the defendant received a sentence for the prior non-Minnesota conviction that would be a felony-level sentence in Minnesota.

OPINION

JOHNSON, Judge

Kendall Dvontae Pruitt pleaded guilty to aiding and abetting second-degree murder. In determining Pruitt's criminal-history score for sentencing purposes, the district court assigned him two prior-felony points and one custody-status point, for a total of three criminal-history points. We conclude that the district court erred by assigning Pruitt one and one-half prior-felony points based on a prior federal conviction that is equivalent to a Minnesota gross misdemeanor. We also conclude that, because the prior federal conviction is equivalent to a Minnesota gross misdemeanor, the district court erred by assigning Pruitt one custody-status point. Therefore, we reverse and remand for resentencing.

FACTS

In March 2022, the state charged Pruitt with aiding and abetting second-degree intentional murder, in violation of Minn. Stat. §§ 609.19, subd. 1(1), 609.05, subd. 1, 609.11, subd. 5(a) (2020). The state alleged in the complaint that, during the evening of February 1, 2022, a 27-year-old man was playing video games in a bedroom of a residence in St. Paul when he was fatally shot multiple times through a window. The state alleged that Pruitt was one of four persons who fired shots at the victim.

Three months later, the state filed a superseding indictment alleging five charges: (1) aiding and abetting first-degree murder for the benefit of a gang, in violation of Minn. Stat. §§ 609.185(a)(1), 609.229, subd. 2 (2020); (2) aiding and abetting first-degree

premeditated murder, in violation of Minn. Stat. § 609.185(a)(1); (3) aiding and abetting second-degree intentional murder for the benefit of a gang, in violation of Minn. Stat. §§ 609.19, subd. 1(1), 609.229, subd. 2 (2020); (4) aiding and abetting second-degree intentional murder, in violation of Minn. Stat. § 609.19, subd. 1(1); and (5) possession of firearm by ineligible person, in violation of Minn. Stat. § 624.713, subd. 1(2) (2020). The state later filed a notice of its intent to seek an aggravated sentence.

In July 2023, the district court ordered a pre-plea sentencing memorandum because the parties were considering a plea agreement. Probation officers prepared a pre-plea memorandum that identified three prior convictions. First, in 2015, Pruitt was convicted in Minnesota of third-degree riot for the benefit of a gang. Second, in 2017, Pruitt was convicted in federal court of engaging in a conspiracy to possess a firearm as a felon. Third, in 2020, Pruitt was convicted in federal court of escaping from federal custody. The probation officers recommended that one-half of a prior-felony point be assigned for Pruitt's first prior conviction but that no prior-felony points be assigned for the second and third prior convictions because there are no equivalent Minnesota offenses. Accordingly, the probation officers recommended that Pruitt's one-half prior-felony point be rounded down to zero prior-felony points. *See* Minn. Sent'g Guidelines 2.B.1.i (Supp. 2021) (requiring that partial prior-felony point values be rounded down to nearest whole number).

The state filed a memorandum of law to challenge the recommendation of the pre-plea memorandum. The state argued that, in addition to the one-half prior-felony point for the first prior conviction, the district court should assign Pruitt one and one-half prior-felony points for the second prior conviction (the 2017 federal conviction of engaging in a

conspiracy to possess a firearm as a felon) on the ground that the offense is equivalent to a Minnesota felony offense. The state also argued that the district court should assign Pruitt one custody-status point on the ground that he committed the present offense while on supervised released for his second prior conviction. Accordingly, the state argued that the district court should assign Pruitt a total of three criminal-history points. Pruitt responded by filing a memorandum in which he argued for zero prior-felony points. The district court resolved the issue by indicating its intent to assign three criminal-history points for the reasons urged by the state.

In September 2023, the state and Pruitt entered into a plea agreement. Pruitt agreed to plead guilty to the fourth count of the superseding indictment (aiding and abetting second-degree intentional murder), and the state agreed to dismiss the remaining counts. The parties agreed on an executed sentence of 406 months of imprisonment. At a sentencing hearing in November 2023, the district court imposed the agreed-upon sentence, which is within the presumptive sentencing range given a severity level of 11 and a criminal-history score of three. *See* Minn. Sent’g Guidelines 4.A (Supp. 2021). Pruitt appeals.

ISSUE

Is Pruitt’s prior federal conviction of engaging in a conspiracy to possess a firearm as a felon, for which the district court assigned him one and one-half prior-felony points, equivalent to a Minnesota felony offense?

ANALYSIS

Pruitt argues that the district court erred by assigning him one and one-half prior-felony points for his 2017 federal conviction of engaging in a conspiracy to possess a firearm as a felon, which Pruitt contends is not equivalent to a Minnesota felony offense.

A.

The legislature has authorized the promulgation of sentencing guidelines “to maintain uniformity, proportionality, rationality, and predictability in sentencing.” Minn. Stat. § 244.09, subd. 5 (2024). The Minnesota Sentencing Guidelines prescribe presumptive sentences for felony offenses. Minn. Sent’g Guidelines 2.C (Supp. 2021). A defendant’s presumptive sentence depends on two variables: the severity level of the present offense and the defendant’s criminal-history score. Minn. Sent’g Guidelines 2, 2.C.1 (Supp. 2021).

This appeal is concerned solely with Pruitt’s criminal-history score. A defendant’s criminal-history score is the “sum of points” derived from the defendant’s prior felony convictions, the defendant’s “custody status at the time of the [present] offense,” the defendant’s “prior misdemeanors and gross misdemeanors,” and the defendant’s “prior juvenile adjudications.” Minn. Sent’g Guidelines 2.B (Supp. 2021). “The State bears the burden of proof at sentencing to show that a prior conviction qualifies for inclusion within the criminal-history score.” *Williams v. State*, 910 N.W.2d 736, 740 (Minn. 2018). Appellate courts generally apply an abuse-of-discretion standard of review to a district court’s determination of a defendant’s criminal-history score. *State v. Strobel*, 921 N.W.2d 563, 573 (Minn. App. 2018), *aff’d*, 932 N.W.2d 303 (Minn. 2019). But if the district

court's determination depends on an interpretation of the sentencing guidelines, a *de novo* standard of review applies. *State v. Strobel*, 932 N.W.2d 303, 306 (Minn. 2019).

The sentencing guidelines provide that prior non-Minnesota convictions may be included in a defendant's criminal-history score. Minn. Sent'g Guidelines 2.B.5.a (Supp. 2021). In any particular case, the district court "must make the final determination as to whether and how a prior non-Minnesota conviction should be counted in the criminal history score." *Id.* The guidelines direct district courts to analyze the issue in the following way:

Find the equivalent Minnesota offense based on the elements of the prior non-Minnesota offense. The section in which to count the non-Minnesota offense in criminal history depends on:

- whether the offense is defined as a felony, gross misdemeanor, or targeted misdemeanor in Minnesota; and
- the sentence imposed.

An offense may be counted as a felony only if it would both be defined as a felony in Minnesota, and the offender received a sentence that in Minnesota would be a felony-level sentence, which includes the equivalent of a stay of imposition. The offense definitions in effect when the current Minnesota offense was committed govern the designation of non-Minnesota convictions as felonies, gross misdemeanors, or misdemeanors.

Minn. Sent'g Guidelines 2.B.5.b (Supp. 2021) (emphasis added).

Guideline 2.B.5.b accounts for the fact that there is "[n]o uniform nationwide characterization of the terms 'felony,' 'gross misdemeanor,' and 'misdemeanor.'" Minn. Sent'g Guidelines cmt. 2.B.502 (Supp. 2021). The guideline makes clear that there are two

independent requirements for the assignment of prior-felony points based on a prior non-Minnesota conviction. First, the prior non-Minnesota offense must be defined as a felony; second, the defendant must have received a sentence that would be a felony-level sentence in Minnesota. *Id.* Given the clear language of guideline 2.B.5.b, a district court does not have discretion to assign prior-felony points for a prior non-Minnesota offense unless both requirements are satisfied. Rather, a district court may assign prior-felony criminal-history points for a prior non-Minnesota conviction only if (1) the equivalent Minnesota offense is a felony and (2) the defendant received a sentence for the prior non-Minnesota conviction that would be a felony-level sentence in Minnesota.

B.

In this case, Pruitt contends that the first requirement of guideline 2.B.5.b is not satisfied because his 2017 federal conviction would not be defined as a felony under Minnesota law.

To carry its burden of proof with respect to Pruitt’s criminal-history points, the state submitted a copy of the indictment that led to Pruitt’s 2017 federal conviction. The indictment shows that Pruitt and four other persons were charged with a conspiracy to violate a federal statute that provides, “It shall be unlawful for any person . . . who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year . . . to . . . possess . . . any firearm or ammunition” 18 U.S.C. § 922(g)(1) (2012); *see also* 18 U.S.C. § 371 (2012) (providing for offense of conspiracy “to commit any offense against the United States”). To establish Pruitt’s guilt on that charge, the federal government was required to prove both the existence of a conspiracy and Pruitt’s “act to

effect the object of the conspiracy.” *See* 18 U.S.C. § 371. The state introduced copies of Pruitt’s federal plea agreement and the federal court’s judgment, which shows that Pruitt was convicted of one charge and received a 53-month prison sentence.

In this case, the district court reasoned that the federal offense of which Pruitt was convicted in 2017 is equivalent to the Minnesota offense of violating Minnesota Statutes section 624.713, which generally provides that certain categories of persons are ineligible “to possess ammunition or a pistol or semiautomatic military-style assault weapon or [with one exception] any other firearm.” Minn. Stat. § 624.713, subd. 1 (2020).

Pruitt contends that the district court erred by not correctly identifying the equivalent Minnesota offense. Specifically, Pruitt contends that the equivalent Minnesota offense is the offense of engaging in a conspiracy to commit the offense described in subdivision 1(10)(i) of section 624.713. That provision makes it unlawful for a person to possess a firearm if the person “has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year.” *Id.*, subd. 1(10)(i). A violation of section 624.713, subdivision 1(10)(i), is a gross misdemeanor. *Id.*, subd. 2(c).

In response, the state contends that the equivalent Minnesota offense is a violation of a different provision of section 624.713—subdivision 1(2). That provision makes it unlawful for a person to possess a firearm if the person has been convicted of “a crime of violence.” *Id.*, subd. 1(2). A conviction of a violation of section 624.713, subdivision 1(2), is a felony. *Id.*, subd. 2(b).

To establish a defendant’s guilt on a conspiracy charge in Minnesota, the state must prove both a conspiracy and “some overt act in furtherance of such conspiracy.” Minn.

Stat. § 609.175, subd. 2 (2020); *see also State v. Clark*, 755 N.W.2d 241, 257 (Minn. 2008). The Minnesota conspiracy statute is equivalent to the federal conspiracy statute. Consequently, to resolve this appeal, we may focus on the offense underlying Pruitt’s 2017 federal conviction. We seek to determine whether a violation of subdivision 1(10)(i) or subdivision 1(2) of section 624.713 is equivalent to a violation of 18 U.S.C. § 922(g)(1), the offense underlying Pruitt’s 2017 federal conspiracy conviction.

The applicable guideline requires that the analysis focus on “offense definitions in effect when the current Minnesota offense was committed,” not the defendant’s conduct or status at the time of the prior non-Minnesota conviction. *See* Minn. Sent’g Guidelines 2.B.5.b (Supp. 2021). The language of subdivision 1(10)(i) is identical to the language of the statute setting forth the offense underlying Pruitt’s federal conspiracy conviction, which applies to a person “who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year.” *See* 18 U.S.C. § 922(g)(1). Accordingly, the Minnesota offense of violating section 624.713, subdivision 1(10)(i), is equivalent to the federal offense of violating 18 U.S.C. § 922(g)(1). Consequently, the Minnesota offense of engaging in a conspiracy to violate section 624.713, subdivision 1(10)(i), is equivalent to Pruitt’s 2017 federal conviction of engaging in a conspiracy to violate 18 U.S.C. § 922(g)(1).

As stated above, the offense of violating section 624.713, subdivision 1(10)(i), is a gross misdemeanor, not a felony. Minn. Stat. § 624.713, subd. 2(c). Likewise, the offense of engaging in a conspiracy to violate section 624.713, subdivision 1(10)(i), is not a felony because the penalty for a conspiracy offense may be no more than one-half of the penalty

for the intended crime. *See* Minn. Stat. § 609.175, subd. 2(3); *see also* Minn Stat. § 609.02, subds. 2-4 (2020). Thus, the first requirement of the assignment of prior-felony points based on a prior non-Minnesota conviction—that the offense is defined as a felony in Minnesota—is not satisfied. *See* Minn. Sent’g Guidelines 2.B.5.b (Supp. 2021).

C.

The state contends that the district court did not err by assigning prior-felony points for Pruitt’s 2017 federal conviction because the district court’s analysis is consistent with *Hill v. State*, 483 N.W.2d 57 (Minn. 1992).

In *Hill*, the supreme court applied the 1987 version of the sentencing guidelines to determine whether the defendant’s prior out-of-state convictions should be deemed felonies for purposes of calculating the defendant’s criminal-history score. *Id.* at 60. The defendant argued that the inquiry should be limited to the question of whether Minnesota has an offense with the same definition as the prior out-of-state conviction. *Id.* at 61. The supreme court disagreed with the defendant’s argument, reasoning that the inquiry is broader because the comments to the sentencing guidelines “suggest that the main focus should be on the offense definition” but that a sentencing court “should also consider ‘the nature’ of the offense and ‘the sentence received by the offender.’” *Id.* at 61 (quoting Minn. Sent’g Guidelines cmt. II.B.505 (1987)).

In this case, the district court cited and relied on *Hill* when assigning criminal-history points to Pruitt. The district court reasoned that the “nature” of Pruitt’s 2017 federal conviction and the sentence he received are “consistent with” section 624.713 generally. The state contends that the district court did not err because “the combination of” the

offense definition, the nature of the offense, and the sentence Pruitt received “supported the district court’s determination that the federal conspiracy felon-in-possession statute is akin to possession of a firearm by an ineligible person based on a prior crime-of-violence conviction.”

We question whether the district court properly applied *Hill*, in which the supreme court stated that “the main focus should be on the offense definition.” *Id.* at 61. But, more importantly, we question whether *Hill* applies. The *Hill* opinion must be understood in the context of the 1987 version of the sentencing guidelines, which is significantly different from the 2021 version with respect to the assignment of prior-felony points for non-Minnesota prior convictions. In 1987, the entirety of guideline II.B.5 provided, “The designation of out-of-state convictions as felonies, gross misdemeanors, or misdemeanors shall be governed by the offense definitions and sentences provided in Minnesota law.” Minn. Sent’g Guidelines II.B.5. (1987). In contrast, the 2021 version of guideline 2.B.5 consists of five paragraphs, including the long, detailed paragraph we have quoted above. *See supra* 6. In addition, the *Hill* court relied primarily on comment II.B.505, which provided that “sentencing courts should consider the nature and definition of the foreign offense, as well as the sentence received by the offender.” *See Hill*, 483 N.W.2d at 61 (citing Minn. Sent’g Guidelines cmt. II.B.505 (1987)). But that comment no longer exists. The 2021 guideline contains two distinct requirements and expressly states that both requirements must be satisfied before a district court may assign prior-felony points to a prior non-Minnesota conviction. Minn. Sent’g Guidelines 2.B.5.b (Supp. 2021). The *Hill*

opinion does not provide useful guidance concerning how to apply the 2021 version of guideline 2.B.5.b.

The state also argues, in the alternative, that Pruitt should be assigned at least one prior-felony point for his 2017 federal conviction. The state relies on guideline 2.B.5.d, which states, “Federal felony offenses that received a sentence that in Minnesota would be a felony-level sentence, *but for which no comparable Minnesota offense exists*, must receive a weight of one in computing the criminal history score.” Minn. Sent’g Guidelines 2.B.5.d. (Supp. 2021) (emphasis added). This provision applies only if there is no comparable Minnesota offense. *Id.* But we have concluded that a Minnesota offense is equivalent to the federal offense of which Pruitt was convicted in 2017. Because that Minnesota offense is “equivalent” to that federal offense for purposes of guideline 2.B.5.b, the Minnesota offense is “comparable” to the federal offense for purposes of guideline 2.B.5.d. Thus, the state’s alternative argument is without merit.

For these reasons, the district court erred by assigning Pruitt one and one-half prior-felony points for his 2017 federal conviction.

D.

In arguing for an appropriate appellate remedy, Pruitt asserts that, if the erroneously assigned one and one-half prior-felony points are removed from the calculation, only one-half prior-felony point remains. He contends that the one-half prior-felony point should be rounded down to zero prior-felony points. Pruitt’s contention is consistent with a guideline that provides, “If the sum of the [prior-felony] weights results in a partial point, the point value must be rounded down to the nearest whole number.” Minn. Sent’g Guidelines

2.B.1.i. (Supp. 2021). Thus, Pruitt's one-half prior-felony point must be rounded down to zero prior-felony points.

Pruitt further argues that, if his 2017 federal conviction is equivalent to a Minnesota gross-misdemeanor offense, he should have been assigned only one-half of a custody-status point, not one custody-status point. Pruitt's contention is consistent with a guideline providing that only one-half of a custody-status point should be assigned to a Minnesota non-traffic gross misdemeanor. *See* Minn. Sent'g Guidelines 2.B.2.a., 2.B.2.a.(iv) (Supp. 2021). Furthermore, one-half of a custody-status point must be rounded down to zero custody-status points. *State v. Beganovic*, 974 N.W.2d 278, 288 (Minn. App. 2022), *aff'd*, 991 N.W.2d 638 (Minn. 2023). Thus, Pruitt's one-half custody-status point must be rounded down to zero custody-status points.

Because both the one-half prior-felony point and the one-half custody-status point must be rounded down to zero, Pruitt's total criminal-history score is zero.

DECISION

The district court erred by sentencing Pruitt based on a criminal-history score of three. Pruitt's criminal-history score is zero. Therefore, we reverse and remand for resentencing.

Reversed and remanded.