

*This opinion is nonprecedential except as provided by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
A24-1409**

State of Minnesota,
Respondent,

vs.

Paul Michael Condon,
Appellant.

**Filed July 28, 2025
Reversed and remanded
Ross, Judge**

Otter Tail County District Court
File No. 56-CR-24-689

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

Michelle M. Eldien, Otter Tail County Attorney, Ruth E. Rosengren, Assistant County Attorney, Fergus Falls, Minnesota (for respondent)

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

Considered and decided by Ross, Presiding Judge; Wheelock, Judge; and Jesson, Judge.*

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

NONPRECEDENTIAL OPINION

ROSS, Judge

Paul Condon pleaded guilty to drug and fleeing-police charges, and the district court sentenced him based in part on out-of-state offenses that were listed in a presentence investigation report but not otherwise supported. We reverse Condon's sentence because the district court based it on a criminal-history score that depended on the unproved out-of-state offenses, and we remand for resentencing.

FACTS

A state trooper attempted to stop a car in Wadena County late one night in March 2024, but the car accelerated and led the trooper on a chase into Otter Tail County at speeds exceeding 100 miles per hour. Officers from two other police departments attempted to stop the fleeing car using stop-stick devices, one of which succeeded in ending the chase. Police arrested the driver, Paul Condon, and found roughly two and a half pounds of marijuana and one pound of psilocybin mushrooms in the car.

The state charged Condon with two counts of felony drug possession and one count each of felony fleeing in a motor vehicle and misdemeanor driving after revocation. Condon pleaded guilty to one of the drug charges (second-degree possession of psilocybin) and the fleeing charge in exchange for the state's agreement to dismiss the other charges. Condon's plea agreement contemplated a sentence within the presumptive range designated by the sentencing guidelines, with a bottom-of-the-box executed sentence on the drug charge and a middle-of-the-box sentence on the fleeing charge. The district court ordered a presentence investigation (PSI).

The PSI report and its accompanying sentencing worksheet assigned Condon criminal-history points based on both Minnesota and out-of-state offenses. This resulted in five total criminal-history points for the drug-possession conviction, three and a half points of which were based on Minnesota offenses and Condon's custody status, and two of which were based on out-of-state offenses. The out-of-state offenses that contributed to the criminal-history score were a battery in Idaho that added one point, drug possession in Idaho that added half a point, and a theft in North Dakota that added half a point. The reported out-of-state offenses resulted in seven criminal-history points for the fleeing conviction, five points of which were based on Minnesota offenses and Condon's custody status, and two of which were based on the Idaho and North Dakota offenses.

The district court conducted a hearing and issued sentences consistent with the criminal-history scores just outlined. It sentenced Condon to serve a bottom-of-the-box, 84-month prison term for the drug conviction and a middle-of-the-box, 22-month term for the fleeing conviction. Condon did not object to the court's reliance on the non-Minnesota offenses to calculate his criminal-history score, and neither the court nor the state raised a question about relying on the PSI report alone to prove the existence of those convictions.

Condon appeals.

DECISION

Condon argues that the district court erred by assigning him criminal-history points that were based on out-of-state offenses. We review a district court's calculation of a defendant's 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). Although

Condon did not raise the criminal-history-score issue in the district court, a sentence based on an incorrect criminal-history score is illegal, and a defendant does not by inaction forfeit the right to challenge the score's accuracy on appeal. *State v. Maurstad*, 733 N.W.2d 141, 147 (Minn. 2007). Our review convinces us that the district court abused its discretion by calculating Condon's criminal-history score based on the out-of-state offenses.

Condon argues persuasively that the state failed to prove the out-of-state convictions. Although a district court may rely on out-of-state offenses when calculating criminal-history points, *see* Minn. Sent'g Guidelines 2.B.5 (2023), the state must "lay[] foundation for the court to do so" and has the burden to establish "the facts necessary to justify consideration of out-of-state convictions in determining a defendant's criminal history score," *State v. Maley*, 714 N.W.2d 708, 711 (Minn. App. 2006) (quotation omitted). More specifically, the state must prove by a preponderance of the evidence that the prior convictions were valid, that the defendant was the person involved, and that the crimes constituted felonies in Minnesota. *State v. Griffin*, 336 N.W.2d 519, 525 (Minn. 1983). Although the state does not have to supply certified copies of the convictions to clear this bar, the evidence it presents must conform to Minnesota Rule of Evidence 1005, which permits the state to meet its burden by presenting "other evidence of the contents" of official records when those records "cannot be obtained by the exercise of reasonable diligence." *Id.* Under this standard, the evidence purporting to prove Condon's out-of-state convictions fails to do so.

We reject the state's suggestion on appeal that the information in the PSI report and related sentencing worksheets was sufficient. The state does not meet its burden by merely

listing out-of-state offenses on a sentencing worksheet, and a district court abuses its discretion when it calculates a defendant's criminal-history score based only on PSI statements. *See Maley*, 714 N.W.2d at 710–12. Although the state may substantiate out-of-state offenses with credible testimony from a probation officer, *see State v. Jackson*, 358 N.W.2d 681, 683 (Minn. App. 1984), the state offered no testimony or other evidence to support the PSI's report of Condon's out-of-state offenses. Given the specificity with which the PSI listed Condon's alleged out-of-state offenses, we assume it would have been simple for the state to have located and obtained the supporting evidence, if it exists. But it failed to do so, and the district court abused its discretion by overlooking the failure.

Condon asks this court to simply reverse his sentence and remand for the district court to impose the “correct” sentence based on his “properly reduced criminal history score.” We have previously remanded for further record development and findings in a similar situation. *See State v. Outlaw*, 748 N.W.2d 349, 356 (Minn. App. 2008), *rev. denied* (Minn. July 15, 2008). We will follow that approach today and, in reversing Condon's sentence, remand to allow the district court to hold a new sentencing hearing at which it may reopen the record to receive evidence bearing on the existence of any conviction on which it bases Condon's criminal-history score. We add that the state has cited no precedent that *requires* us to allow the record to be reopened and that our doing so here or in previous cases therefore does not mean that, in a future case, we will continue to follow this approach rather than remand for resentencing based only on the existing record.

Reversed and remanded.