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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-1701**

State of Minnesota,  
Respondent,

vs.

Reggie LeAndrew Hart,  
Appellant.

**Filed August 13, 2012  
Affirmed  
Collins, Judge\***

Ramsey County District Court  
File No. 62-CR-1-2524

Lori Swanson, Attorney General, St. Paul, Minnesota; and

John J. Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney,  
Erik Withall, Certified Student Attorney, St. Paul, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Cathryn Y. Middlebrook, Frank  
R. Gallo, Jr., Assistant Public Defenders, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Wright, Judge; and Collins,  
Judge.

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

## UNPUBLISHED OPINION

**COLLINS**, Judge

Appellant challenges his sentence for felony domestic assault, arguing that the assignment of a custody-status point in the calculation of his criminal-history score violated his constitutional equal-protection rights because other similarly situated reoffenders would not be assigned a custody-status point. We affirm.

### FACTS

On March 11, 2011, appellant Reggie Hart assaulted K.M.H. at the St. Paul home where they lived with K.M.H.'s three children. Hart pleaded guilty to the ensuing charge of domestic assault under Minn. Stat. § 609.2242, subd. 4 (2010), a felony offense because it was committed within ten years of two or more previous qualified domestic violence-related convictions. Hart's predicate convictions were a 2004 misdemeanor fifth-degree assault conviction and a 2009 felony domestic-assault-by-strangulation conviction.

In a corrected sentencing worksheet, the Ramsey County Community Corrections Department asserted that Hart should be assigned three criminal history points for his prior offenses plus a custody-status point for committing the current offense within the original probationary term for the 2009 domestic-assault-by-strangulation conviction. For the 2009 offense, Hart received a stayed 21-month prison sentence, and was placed on probation for three years, with a probation discharge date of October 23, 2012.

When Hart committed the 2009 domestic-assault-by-strangulation offense, he was on supervised release for a 1999 second-degree murder conviction. Upon his conviction

for the domestic-assault-by-strangulation offense, Hart's supervised release on the murder conviction was revoked, and he was returned to prison to serve out his sentence. According to the state, "[p]robation mistakenly believed that [Hart's] incarceration for the 1999 [murder] conviction was a long enough period of time to cover his 21-month sentence for domestic assault by strangulation, so probation requested that appellant be discharged from probation. [Hart], in fact had 72 days left to serve." Hart was discharged from probation on the 2009 domestic-assault-by-strangulation offense in October 2010, based on this incorrect information.

At the sentencing hearing, Hart argued that he should not receive a custody-status point on the current offense because his 2009 probationary sentence had already been discharged at the time of the current offense, and he was not under any form of custody at the time of the current offense. He added that he was discharged from probation early on the 2009 domestic-assault-by-strangulation offense because he violated the terms of supervised release on the second-degree murder offense, and that the probationary discharge therefore actually constituted a revocation of probation to serve an executed sentence, which is an exception under the sentencing guidelines for imposition of a custody-status point when the current offense is committed while the offender is on probation for a prior offense.

A corrections representative testified that he corrected Hart's initial sentencing worksheet to add a custody-status point because Hart was given an early discharge from probation on the 2009 domestic-assault-by-strangulation offense without having his probation revoked and the stayed sentence fully executed, and the current offense

occurred within the period of the initial probationary sentence for the 2009 offense. According to corrections, Hart “should have served—had the sentence been executed, he would have served 639 days. He had actually had credit for 567 . . . He should have had the custody point by virtue of being on probation within the original time.”

The district court ruled that the sentencing error involving the discharge of the 2009 probation was a clerical error that did not implicate a due-process or equal-protection violation. Applying four criminal-history points, the district court sentenced Hart to 18-months’ in prison. This appeal followed.

## D E C I S I O N

Appellate courts give de novo review to questions involving the constitutionality of the Minnesota Sentencing Guidelines. *State v. Maurstad*, 733 N.W.2d 141, 148 (Minn. 2007). A district court’s determination of a criminal history score is discretionary and will not be reversed unless there is an abuse of that discretion. *State v. Stillday*, 646 N.W.2d 557, 561 (Minn. App. 2001), *review denied* (Minn. Aug. 20, 2002).

Under the sentencing guidelines, the district court may assign a custody-status point if the current offense was committed while the offender “was on probation[.]” Minn. Sent. Guidelines II.B.2.a (2010), or if the offender “committed the current offense within the period of the initial probationary sentence. . . . This policy does not apply if the probationary sentence for the prior offense is revoked, and the offender serves an executed sentence[.]” Minn. Sent. Guidelines II.B.2.b (2010). Here, because Hart’s probationary sentence for the 2009 domestic-assault-by-strangulation offense was not revoked and his current offense was committed within the period of the initial

probationary sentence for that offense, the district court, consistent with the guidelines, could assign him a custody status point. *See* Minn. Sent. Guidelines cmt. II.B.201 (2010) (stating that “[t]he basic rule assigns offenders one point if they were under some form of criminal justice custody when the offense was committed for which they are now being sentenced”).

Hart contends that the district court’s assignment of a custody-status point violates his constitutional rights. He argues that his class of offenders, those whose current offenses were committed during the period of the initial probationary sentence for a prior offense, is treated differently than that class of offenders who were also sentenced to probation and reoffended within the initial probationary period, but whose sentences were fully executed and served on the prior offenses. Under the sentencing guidelines, the first class of offenders is assigned a criminal-history custody-status point, while the second class is not. Hart contends that this disparate treatment violates his constitutional equal-protection rights.

The United States and Minnesota constitutions guarantee citizens equal protection of the laws. U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 2. An equal-protection challenge to the Minnesota Sentencing Guidelines is treated in the same manner as an equal-protection challenge to other laws. *State v. Jaworsky*, 505 N.W.2d 638, 644 (Minn. App. 1993), *review denied* (Minn. Sept. 30, 1993). “An essential element of an equal protection claim is that the persons claiming disparate treatment must be similarly situated to those to whom they compare themselves. Similarly situated groups must be alike in all relevant respects.” *St. Cloud Police Relief Ass’n v. City of St. Cloud*, 555

N.W.2d 318, 320 (Minn. App. 1996) (quotation omitted), *review denied* (Minn. Jan. 7, 1997). Further, unless an equal-protection claim involves a suspect class or violation of a fundamental constitutional right, a district court applies a rational-basis test under both the state and federal constitutions to determine if there is a proper reason for disparate treatment of similarly-situated classes. *Gluba ex rel. Gluba v. Bitzon & Ohren Masonry*, 735 N.W.2d 713, 719 (Minn. 2007); *Kolton v. Cnty. of Anoka*, 645 N.W.2d 403, 411 (Minn. 2002). Hart does not argue that he is in a suspect class or that his fundamental rights were violated. The parties disagree about whether the two defined classes of reoffenders are alike for equal-protection purposes and whether there is a rational basis for treating the two classes differently.

First, we agree with the state’s assertion that the two classes defined by Hart are not similarly situated. While both classes reoffended within the period of the initial probationary sentence for the prior offenses, one class had their probation revoked and fully served their executed sentence before reoffending, while the other class did not. The status of the two classes of reoffenders is thus different—(1) a reoffender who has fully served an executed sentence before committing a new offense has completely satisfied his punitive accountability on the prior offense and is no longer under any form of custody, *see* Minn. Sent. Guidelines cmt. III.C.04 (2010) (stating that “[t]he primary purpose of imprisonment is punishment”); but (2) a reoffender who was discharged from probation early but who reoffends within the period of the initial probationary sentence for a prior offense remains in a custodial setting for purposes of sentencing. *See* Minn. Sent. Guidelines II.B.2.b (permitting assignment of custody-status point if new offense

occurred “within the period of the initial probationary sentence”); *see also Roberts v. United States*, 320 U.S. 264, 272, 64 S. Ct. 113, 117 (1943) (stating that purpose of probation is to “provide an individualized program offering a young or unhardened offender an opportunity [for rehabilitation] without institutional confinement under the tutelage of a probation official and under the continuing power of the court to impose institutional punishment for [the] original offense in the event [of abuse of] this opportunity”); *State v. Osborne*, 732 N.W.2d 249, 253 (Minn. 2007) (“The purpose of probation is rehabilitation”); *State v. Modtland*, 695 N.W.2d 602, 606 (Minn. 2005) (same); *State v. Franklin*, 604 N.W.2d 79, 84 (Minn. 2000) (“Besides rehabilitation, probation is intended to preserve public safety”). Because the two classes are not similarly situated due to differences in their custodial status for sentencing purposes under the sentencing guidelines, there is no requirement that they be treated the same, for equal-protection purposes. *See Schatz v. Interfaith Care Ctr.*, 811 N.W.2d 643, 656 (Minn. 2012) (stating that “we routinely reject equal-protection claims when a party cannot establish that he or she is similarly situated to those whom they contend are being treated differently”); *State v. Cox*, 798 N.W.2d 517, 521 (Minn. 2011) (permitting routine rejection of equal-protection claim “when a party cannot establish that he or she is similarly situated to those whom they contend are being treated differently”); *Paquin v. Mack*, 788 N.W.2d 899, 906 (Minn. 2010) (requiring equal-protection claimant to “show that similarly situated persons have been treated differently”).

Second, there is a rational basis for assigning a custody-status point to a reoffender who is discharged early from a probationary sentence but commits a crime within the

period of the initial probationary sentence for the prior offense, while not assigning a point to a reoffender whose probation is revoked and serves an executed sentence on a prior offense, but reoffends during the initial term of probation. The rational basis for this difference is that placement on probation is less punitive than execution of a prison sentence, and the possibility of assignment of a criminal history custody status point for the duration of the initial probationary period promotes law-abiding behavior in the probationary reoffender. There is a deterrent value of punitive accountability as to the probationary reoffender, who enjoys less deprivation of liberty because of his probationary status, that does not apply to the reoffender who has completed a sentence of imprisonment and in whom the state has no custodial interest. These distinctions provide a rational basis for treating the two groups differently. *See State v. Russell*, 477 N.W.2d 886, 888 (Minn. 1991) (stating that “distinctions which separate those included within the classification from those excluded must not be manifestly arbitrary or fanciful but must be genuine and substantial, thereby providing a natural and reasonable basis to justify the legislation adapted to peculiar conditions and needs”).

Because Hart has not demonstrated that he has been treated differently than those who are similarly situated, and because there is a rational basis for treating the two defined classes differently, Hart’s equal-protection argument fails.

**Affirmed.**