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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0265**

Gregory Joseph Weyrauch, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed January 21, 2014
Affirmed
Hooten, Judge**

Ramsey County District Court
File No. 62-K0-05-002950

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

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

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

Considered and decided by Hooten, Presiding Judge; Stoneburner, Judge; and Hudson, Judge.

UNPUBLISHED OPINION

HOOTEN, Judge

Appellant contends that his due process rights were violated when the district court amended a warrant of commitment to include a conditional-release term without

first providing him with notice and a hearing and that the district court lacked jurisdiction to amend his sentence. Because appellant's due process rights were not violated by the amendment and because the district court had jurisdiction to include the conditional-release term, we affirm.

FACTS

In August 2005, the Ramsey County Attorney's Office charged appellant Gregory Joseph Weyrauch with two counts of first-degree driving while impaired in violation of Minn. Stat. § 169A.20, subd. 1(1), (5) (2004), and one count of fifth-degree possession of methamphetamine in violation of Minn. Stat. § 152.025, subd. 2(1) (2004). Weyrauch waived his jury-trial rights and agreed to a stipulated-facts trial. The district court found Weyrauch guilty of one count of first-degree driving while impaired and dismissed the remaining counts.

At his sentencing hearing, the district court sentenced Weyrauch to 72-months imprisonment and 5-years conditional release. The district court granted Weyrauch's request for a dispositional departure, staying the execution of his sentence and placing him on probation. But the district court cautioned Weyrauch, "[Y]ou should also understand that pursuant to Minnesota Statute 169A.276, Subd. 1 [(2004)], if this sentence is executed, you will be subject to a five-year conditional release period." The terms of his sentence were also included on a warrant of commitment.

At a probation-violation hearing in July 2007, Weyrauch admitted to violating the terms of his probation. The district court revoked the stay and filed a second warrant of commitment indicating that Weyrauch would serve 72 months in prison. The

conditional-release term imposed at his sentencing hearing was neither mentioned at the probation-violation hearing nor included in the second warrant of commitment.

In November 2012, prior to Weyrauch's release from prison, the Ramsey County Attorney's Office asked the district court to amend the second warrant of commitment to include the five-year conditional-release term. The district court granted the amendment.

This appeal follows.

D E C I S I O N

I.

Weyrauch argues that his due process rights were violated when the district court amended the second warrant of commitment to add the conditional-release term. Both the United States and Minnesota Constitutions, pursuant to their due process clauses, "ensure that sentencing proceedings observe the standards of fundamental fairness essential to justice." *State v. Calmes*, 632 N.W.2d 641, 645 (Minn. 2001) (quotation omitted). Whether a due process violation has occurred is a question of constitutional law reviewed de novo. *State v. Grigsby*, 806 N.W.2d 101, 111 (Minn. App. 2011), *aff'd*, 818 N.W.2d 511 (Minn. 2012).

Weyrauch asserts that the district court violated his due process rights because he had an expectation that his sentence would expire at the conclusion of his prison term. He points out that he had been in prison for more than five years and was nearing his release when the district court amended the second warrant of commitment to include the conditional-release term. "[D]ue process may be violated when a defendant's sentence is enhanced after the defendant has developed a crystallized expectation of finality in the

earlier sentence.” *Calmes*, 632 N.W.2d at 645. But a defendant’s expectation of finality must be reasonable. *See id.* at 649 (holding that modification of sentence did not violate defendant’s due process rights because his expectation regarding the finality of his sentence was unreasonable). “[T]here are due process limits on a court’s ability to modify a sentence to correct an error. . . . [But] such cases will be rare.” *Id.* at 648. We consider:

the lapse of time between the original mistaken sentence and the attempted increase, whether the defendant contributed to the mistake, the reasonableness of the defendant’s expectations, the prejudice of the sentencing change to the defendant, and the diligence exercised by the state in seeking the change.

Id. at 647 (quotation omitted).

In *Calmes*, the supreme court examined whether an appellant’s due process rights had been violated when the district court originally sentenced him solely to imprisonment and then later modified his sentence to include a conditional-release term. *Id.* at 644. Appellant pleaded guilty to first-degree burglary and second-degree criminal sexual conduct pursuant to a plea agreement and was sentenced to two concurrent terms of imprisonment. *Id.* at 643–44. The criminal sexual conduct conviction required a five-year conditional-release term, but there was no record that conditional release was discussed during plea negotiations or at the sentencing hearing. *Id.* at 644. The district court later added the five-year conditional-release term to appellant’s sentence. *Id.* When appellant challenged the change in his sentence, the district court vacated the conditional-release term. *Id.* The supreme court, meanwhile, held in *State v. Humes* that

imposition of a conditional-release term for certain criminal sexual conduct convictions are mandatory and nonwaivable. 581 N.W.2d 317, 319–20 (Minn. 1998). After appellant was released from prison and placed on supervised release, the district court reimposed the five-year conditional-release term without notice or a hearing. *Calmes*, 632 N.W.2d at 644. Appellant, again, challenged imposition of the conditional-release term, arguing that his due process rights had been violated. *Id.*

The supreme court determined that no due process violation occurred. *Id.* at 649. The supreme court noted that the delay in fixing the sentence, alone, was not significant in establishing a due process violation; appellant was on notice that a statute and *Humes* made his conditional-release term mandatory and nonwaivable; and that even though appellant had been released from prison more than five months, the terms of his supervised release placed him on notice that his sentence was not complete. *Id.* at 647–49.

In the instant case, Weyrauch, unlike the appellant in *Calmes*, was validly sentenced to both imprisonment and conditional release at his sentencing hearing. Weyrauch’s “earlier sentence” included the conditional-release term. Weyrauch does not claim that his earlier sentence was incorrect or that his due process rights were violated when he received his sentence. The district court’s amendment of the second warrant of commitment after the revocation of his probation and the execution of his sentence did not change or enhance his earlier sentence. It merely executed the sentence that had been validly pronounced but previously stayed.

And, as was the case in *Calmes*, the conditional-release term for Weyrauch's conviction and sentence is mandatory and nonwaivable. In *Calmes*, the supreme court noted that the appellant, who is presumed to know the law, cannot claim that he had a crystallized expectation of finality in a sentence that did not include a mandatory and nonwaivable conditional-release term. 632 N.W.2d at 648–49. The statute applicable to Weyrauch's sentence provides that if the district court “commits a person to the custody of the commissioner of corrections under this subdivision [governing mandatory penalties for felony violations], it *shall* provide that after the person has been released from prison the commissioner *shall* place the person on conditional release for five years.” Minn. Stat. § 169A.276, subd. 1(d) (emphases added).

Finally, in *State v. Staloch*, we stated that “an orally pronounced sentence controls over a judgment and commitment order when the two conflict.” 643 N.W.2d 329, 331 (Minn. App. 2002) (quotation omitted). That rule applies here. The district court told Weyrauch at his sentencing hearing that he would be subject to conditional release pursuant to statute if he violated his probation and his sentence was executed.

For all of these reasons, we hold that Weyrauch's expectation that he would receive and serve a sentence with no conditional release is unreasonable. There is no merit to his claim that his due process rights were violated when the district court amended the second warrant of commitment to include the five-year conditional-release term.

II.

Weyrauch also argues that his due process rights were violated when the district court amended the second warrant of commitment outside of his presence. “In sentencing proceedings, due process requires that a defendant have notice, an opportunity to be heard, and an opportunity to confront and cross-examine witnesses.” *State v. Kortkamp*, 560 N.W.2d 93, 96 (Minn. App. 1997). But a defendant does not have a right to be present at all sentencing hearings. *See Calmes*, 632 N.W.2d at 649–50 (explaining that the Minnesota Rules of Criminal Procedure only require a defendant’s presence at the original sentencing hearing, not modifications to a sentence). Whether a hearing is held on the imposition of conditional release to correct a sentence is left to the discretion of the district court. *Id.* at 650. “When there are questions about, for example, the validity of a plea agreement in light of the correction, or the length of the conditional release term, a hearing may be appropriate.” *Id.*

The district court did not abuse its discretion by declining to hold a hearing. Again, Weyrauch does not claim that any of his rights were violated at his original sentencing hearing. And the district court’s action in amending Weyrauch’s second warrant of commitment did not revise the original sentence. Even if his earlier sentence lacked the conditional-release term, Weyrauch has alleged no facts raising questions concerning the terms or validity of his sentence or plea.

III.

Weyrauch claims that because his supervised release has now expired, the district court lacks the authority to amend the second warrant of commitment, relying on

Martinek v. State, 678 N.W.2d 714 (Minn. App. 2004). In that case, we held that appellant's due process rights were violated because he did not receive notice of the imposition of a conditional-release term and could not have discovered it by reviewing the district court file. *Martinek*, 678 N.W.2d at 718. We further determined that because appellant's sentence had expired, the district court lacked jurisdiction to modify his sentence to include a conditional-release term. *Id.* at 718–19.

This case is distinguishable. The district court did not amend Weyrauch's sentence; it merely executed the stayed sentence pronounced at his sentencing hearing. A transcript of the sentencing hearing indicates that the district court told Weyrauch that he would be subject to conditional release if he violated the terms of probation. The district court file also contains the original warrant of commitment indicating the imposition of the conditional-release term. In sum, the district court had jurisdiction to amend Weyrauch's second warrant of commitment to include the conditional-release term.

Affirmed.