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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0037**

State of Minnesota,
Respondent,

vs.

Jeremiah James Booth,
Appellant.

**Filed September 17, 2012
Vacated
Hooten, Judge**

Blue Earth County District Court
File No. 07-CR-11-3896

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

Ross E. Arenson, Blue Earth County Attorney, Mankato, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Susan J. Andrews, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

UNPUBLISHED OPINION

HOOTEN, Judge

Appellant, whose prior extended juvenile jurisdiction probation was revoked when he was 20 years old, challenges a subsequent revocation of probation after his 24th birthday and the execution of a 68-month prison sentence. Concluding that under the

circumstances of this case, appellant's extended jurisdiction probation ended when appellant was 21 and that the district court lacked jurisdiction, we vacate the revocation of appellant's probation and executed sentence. Since the state has not filed a brief or any other response, this matter proceeds on appeal pursuant to Minn. R. Civ. App. P. 142.03.

FACTS

In February 2005, appellant was charged as a juvenile in Blue Earth County with several crimes, including criminal sexual conduct, kidnapping, and burglary, based upon incidents that occurred between April 29, 2002, and August 31, 2003, when appellant was fifteen and sixteen years old.¹ The state initially sought adult certification. However, based on a certification study's recommendation and the parties' agreement, the district court ordered appellant retained as an Extended Jurisdiction Juvenile (EJJ). Appellant pleaded guilty to one count of second-degree criminal sexual conduct and two counts of fourth-degree criminal sexual conduct. In an order filed on May 19, 2006, the Blue Earth County district court accepted the guilty plea, imposed a 68-month stayed sentence of incarceration, placed appellant on EJJ probation until age 21, and transferred the matter to Olmsted County for disposition. The EJJ sentencing worksheet listed the presumptive adult sentence as a 68-month commitment to the Commissioner of Corrections.

On September 27, 2006, the Olmsted County district court adjudicated appellant delinquent on the guilty plea and adopted the Blue Earth County district court's order

¹ Appellant's date of birth is May 20, 1987.

imposing a 68-month stayed prison sentence. The Olmsted County district court also imposed numerous conditions, including successful completion of an in-patient sex-offender treatment program, a prohibition against appellant's use or possession of pornography or sexually explicit material unless approved by a treating therapist or court services, a requirement to remain law-abiding and have no similar offenses, and cooperation with predatory-offender registration as required by statute.²

On September 27, 2007, appellant's probation officer filed a Notice of and Application for Probation Violation Hearing and an Application for Detention Hearing alleging that appellant failed to successfully complete his required in-patient sex-offender treatment program. On November 13, 2007, after a hearing, the Olmsted County district court found that appellant had intentionally or inexcusably violated the conditions of his probation by failing to successfully complete his sex-offender treatment program and that the need for appellant's incarceration did not outweigh policies favoring rehabilitation and treatment. The district court found that appellant needed further treatment, that he had "disabilities including mental health and behavioral issues that will require treatment and services for most if not all of his adult life," that his placement "in adult prison would be counter-productive," that he would qualify for multiple treatments and services such

² Neither the order from Blue Earth County setting forth appellant's plea of guilty, nor the dispositional order issued in Olmsted County, includes a provision imposing a mandatory period of conditional release. *See* Minn. Stat. § 609.3455, subd. 6 (2006). There is no record that any mandatory conditional release was ever included as part of appellant's sentence, disposition or any subsequent proceedings. Notwithstanding Minn. R. Crim. P. 27.03, subd. 9, which allows for the correction or modification of a sentence, "the expiration of a sentence operates as a discharge that bars further sanctions for a criminal conviction." *State v. Purdy*, 589 N.W.2d 496, 498 (Minn. App. 1999) (holding that the court lacked jurisdiction to impose a conditional release term once defendant's sentence expired).

as civil commitment, and that he had not violated any security rules or committed new offenses during his treatment. Having found that appellant had violated the conditions of his EJJ probation but was amenable to further probation, the district court revoked his EJJ status, placed him on adult probation, and ordered that a sentencing hearing be held within 14 days of the revocation order. Appellant was 20 years old at the time of the revocation hearing. Appellant then filed a motion to transfer venue back to Blue Earth County, where his criminal acts had taken place, for adult sentencing. This motion was granted by the Olmsted County district court on November 28, 2007.

Despite the Olmsted County district court's order requiring a sentencing hearing within 14 days of the revocation order, no adult sentencing was ever conducted in Blue Earth County. Rather, the Blue Earth County district court issued an order on January 15, 2008, requiring that appellant "continue to be held" in the Blue Earth County jail and that Blue Earth County Corrections and Social Services expeditiously explore funding and placement of appellant with Alpha Human Services. This order was captioned as emanating from the "Juvenile Division" of the Blue Earth County district court, as were a number of subsequent orders which dealt with funding issues surrounding the placement and treatment of appellant. Appellant turned 21 years of age on May 20, 2008.

During a review hearing on September 30, 2008, the district court learned that funding was available for appellant's placement with Alpha Human Services and ordered appellant to complete this treatment as a "term of his probation." During the hearing, in response to an inquiry from appellant's attorney concerning the absence of a sentencing hearing and order, the district court stated that the order requiring completion of this

particular treatment was “an interim order to get him where he needs to go and then we will put together the final order setting out the conditions of probation and all that sort of stuff.” The order indicated that a “modified sentencing order would be promulgated at a later date.” The record does not reflect that any modified order was ever issued or that an adult sentencing hearing was held after appellant’s placement at Alpha Human Services.

Almost three years later, in August 2011, when he was 24 years old, appellant was terminated from his placement with Alpha Human Services for viewing child pornography on his cell phone. A probation revocation hearing was ordered in Blue Earth County. However, before the hearing could be held, appellant filed a motion to dismiss on the basis that the Blue Earth County district court lacked jurisdiction because EJJ probation was revoked and no sentence or conditions of probation had been pronounced. In the alternative, appellant requested that he receive credit for 1,067 days that he had been in juvenile detention, correction facilities, or jail.

On October 26, 2011, the district court denied the motion, reasoning that classification as a juvenile or adult proceeding was an “administrative problem,” that an adult sentence had been pronounced at the time of appellant’s original plea hearing, and that appellant assented to jurisdiction by having asked for and received extensive treatment services through the court. The district court executed the 68-month prison sentence and denied appellant’s request to receive jail credit for time spent in treatment. This appeal followed.

DECISION

Appellant contests the execution of his prison sentence on the basis that he was never sentenced in district court after revocation of EJJ probation. This court reviews questions of jurisdiction and interpretation of statutes de novo. *State v. J.E.S.*, 763 N.W.2d 64, 67 (Minn. App. 2009) (“When a statute provides the basis for the juvenile court’s jurisdiction over the juvenile, the issue of jurisdiction is a question of law subject to de novo review.”). Appellant argues that the district court lacked jurisdiction both to impose the probationary condition requiring treatment at Alpha Human Services and to revoke adult probation and execute his prison sentence.

Since appellant was 16 on May 20, 2003, which was during the time period the offenses were committed, he qualified for an EJJ prosecution.³ “An EJJ prosecution is a blending of juvenile and adult criminal dispositions that extends jurisdiction over a young person to age twenty-one and permits the court to impose both a juvenile disposition and a criminal sentence.” *In re Welfare of B.N.S.*, 647 N.W.2d 40, 42 (Minn. App. 2002). In an extended jurisdiction juvenile prosecution, if the juvenile pleads guilty or is found guilty, the district court “shall (1) impose one or more juvenile dispositions under section 260B.198; and (2) impose an adult criminal sentence, the execution of which shall be stayed on the condition that the offender not violate the provisions of the disposition order and not commit a new offense.” Minn. Stat. § 260B.130, subd. 4(a) (2010); *see also* Minn. R. Juv. Delinq. P. 19.10, subd. 1 (similar language). If the district court finds that reasons exist to revoke the stay, “the court must order execution of the previously

³ The record establishes that the matter was properly designated as an EJJ prosecution within meaning of Minn. Stat. § 260B.130, subdivision 1(2) (2010).

imposed sentence unless the court makes written findings regarding the mitigating factors that justify continuing the stay.” Minn. Stat. § 260B.130, subd. 5(c). “Upon revocation of extended jurisdiction juvenile status, the court shall treat the offender as an adult and may order any of the adult sanctions authorized by [section 609.14, subd. 3].” Minn. R. Juv. Delinq. P. 19, subd. 3(C)(1).

On November 13, 2007, the Olmsted County district court revoked appellant’s EJJ status and placed him on adult probation without any further conditions of probation. The district court likely anticipated that conditions would be imposed at a sentencing hearing to be held within 14 days. Instead, the matter was transferred back to Blue Earth County where the parties and the court spent almost one year attempting to provide appellant with treatment and services. By September 30, 2008, when he was ordered into treatment at Alpha Human Services,⁴ appellant had already turned 21.

At this point, the district court acted without jurisdiction because appellant’s probationary period had expired. “The jurisdiction of the court over an extended jurisdiction juvenile, with respect to the offense for which the individual was convicted as an extended jurisdiction juvenile, extends until the offender becomes 21 years of age, unless the court terminates jurisdiction before that date.” Minn. Stat. § 260B.193, subd. 5(b) (2010); *see also* Minn. R. Juv. Delinq. P. 19.10, subd. 2 (“Unless the stayed sentence is executed after a revocation hearing pursuant to Rule 19.11, jurisdiction of the juvenile court shall terminate on the child’s twenty-first (21st) birthday or at the end of the

⁴ The record indicates that an intake assessment was completed in February 2008, at which time appellant was accepted at Alpha Human Services. However, there was no funding for the treatment available at that time. Once funding was obtained nearly one year later, the court ordered that appellant be placed at Alpha Human Services.

maximum probationary term, whichever occurs first.”). Without jurisdiction, the district court no longer had authority to impose adult sanctions or mental health treatment or counseling under sections 609.14, subdivision 3(2), and 609.135, subdivision 1(b).

A district court has no authority to revoke probation and execute a sentence outside of an imposed probationary period. *See J.E.S.*, 763 N.W.2d at 67–69 (reversing decision to revoke probation of an extended jurisdiction juvenile when decision to revoke was based in part on violations alleged after offender turned 21); *see also State v. Whitfield*, 483 N.W.2d 102, 104 (Minn. App. 1992) (holding that district court lacked jurisdiction to revoke probation after probationary period had expired), *superseded by statute*, Minn. Stat. § 609.14, subd. 1(b) (2010) (allowing probation revocation within six months after expiration of the stay of execution of sentence); *State, City of Eagan v. Stofferahn*, 434 N.W.2d 501, 502 (Minn. App. 1989) (reversing decision to revoke stay when revocation occurred after period of stay had expired), *superseded by statute*, Minn. Stat. § 609.14, subd. 1(b), *as recognized in In re Welfare of V.D.M.*, 623 N.W.2d 277, 280 (Minn. App. 2001), *review denied* (Minn. May 15, 2001); *State v. Shields*, 423 N.W.2d 744, 747 (Minn. App. 1988) (reversing decision to revoke probation where improperly imposed sentence resulted in revocation of stay of execution beyond statutory maximum for period of stay). “When a court does not have the authority to hear and determine a particular class of actions and the particular questions that the court assumes to decide, the court lacks subject-matter jurisdiction.” *Vang v. State*, 788 N.W.2d. 111, 117 (Minn. 2010).

When addressing appellant’s jurisdictional argument at the probation revocation hearing on October 26, 2011, the district court linked the question of jurisdiction to the efforts to provide treatment at Alpha Human Services and other locations. However, “a court cannot acquire subject-matter jurisdiction ‘either by waiver or consent.’” *In re Welfare of M.J.M.*, 766 N.W.2d 360, 364 (Minn. App. 2009) (quoting *Schroeder v. Schroeder*, 658 N.W.2d 909, 912 (Minn. App. 2003)), *review denied* (Minn. Aug. 26, 2009). “Further, lack of subject-matter jurisdiction may be raised at any time by the parties or sua sponte by the court, and cannot be waived by the parties.” *Id.* (citing *Marzitelli v. City of Little Canada*, 582 N.W.2d 904, 907 (Minn. 1998)).

On this record, we conclude that the district court lacked jurisdiction to revoke appellant’s probation and execute his prison sentence after he reached age 21. This timeline is clearly outside of the statutory window in which probation *may* have been revoked subsequent to appellant’s 21st birthday. *See* Minn. Stat. § 609.14, subd. 1(b); *V.D.M.*, 623 N.W.2d at 280. We vacate the revocation of appellant’s adult probation and executed sentence for lack of jurisdiction.⁵

Vacated.

⁵ Since appellant was adjudicated delinquent relative to one count of second-degree criminal sexual conduct and two counts of fourth-degree criminal sexual conduct in orders from both Blue Earth and Olmsted counties, he must register as a predatory sex offender pursuant to Minn. Stat. § 243.166, subd. 1b(a)(1)(iii) (2010); *see In re Welfare of J.R.Z.*, 648 N.W.2d 241, 248 (Minn. App. 2002) (applying sex-offender registration to juveniles), *review denied* (Minn. Aug. 20, 2002).