

*This opinion is nonprecedential except as provided by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
A22-0114**

State of Minnesota,
Respondent,

vs.

Suvwe Peter Ighovojah,
Appellant.

**Filed January 9, 2023
Affirmed
Reilly, Judge**

Ramsey County District Court
File No. 62-CR-19-8222

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

John J. Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney,
St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Andrew J. Nelson, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Bratvold, Judge; and
Halbrooks, Judge.*

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

NONPRECEDENTIAL OPINION

REILLY, Judge

Appellant challenges his sentence for aiding and abetting second-degree intentional murder, arguing that the district court sentenced appellant based on an inaccurate criminal-history score. We affirm for two reasons. First, the parties and district court discovered the criminal-history score error before sentencing and the district court sentenced appellant using an accurate score. Second, appellant's sentence is within the presumptive range of the sentencing guidelines as contemplated by the plea agreement.

FACTS

Law enforcement identified appellant Suvwe Peter Ighovojah as the driver of a vehicle spotted around the time of a fatal, gang-related shooting in September 2017. The victim was shot multiple times in front of an apartment complex in Roseville, Minnesota. In October 2019, a grand jury indicted Ighovojah for his role in the victim's death on four aiding-and-abetting charges: (1) first-degree murder for the benefit of a gang; (2) first-degree premeditated murder; (3) second-degree intentional murder committed for the benefit of a gang; and (4) second-degree intentional murder.

Ighovojah reached a plea agreement with respondent State of Minnesota and the district court held a plea hearing. In exchange for Ighovojah pleading guilty to aiding and abetting second-degree intentional murder in violation of Minn. Stat. § 609.19, subd. 1(1) (2016), the state agreed to dismiss the remaining charges against him. The written plea petition also stated that “[t]he parties agree to the guidelines sentence in this matter, 406 months, with credit for any time served since the offense date.” Ighovojah's attorney

summarized for the district court that it was his belief that the parties agreed Ighovojah “would receive a guideline sentence, which, barring some surprise, the parties agree that he has five criminal-history points. The guideline sentence for that is 406 months.” The state agreed with this summary.

During his plea colloquy, Ighovojah admitted that he drove his white Chevy Impala with his friend, P.W., as a passenger to the victim’s Roseville apartment complex in September 2017 to kill the victim. When they arrived, P.W. stepped out of Ighovojah’s car, shot the victim multiple times, and returned to the car before Ighovojah drove them both away from the scene. Ighovojah testified that he aided and abetted in second-degree intentional murder. The district court accepted his plea, adjudicated him guilty of the offense, and ordered a presentence investigation (PSI). The PSI calculated Ighovojah’s criminal-history score to be four points, not five points.

In October 2021, the district court held a sentencing hearing. The district court noted the discrepancy in the calculation of Ighovojah’s criminal-history score between the PSI and the score the parties relied on at the plea hearing.¹ The district court remarked,

The parties contemplated a criminal-history score of five, and I’m not recalling whether they knew it was going to come in as a four and that was part of the agreement to sentence it as if it were five, or if the four is a surprise because it’s a different number than we talked about at the time of the plea.

¹ For second-degree intentional murder, the sentencing guidelines specify that the presumptive sentence for a criminal-history score of four points is 386 months with a range of 329 to 463 months. Minn. Sent’g Guidelines 4.A (2017). For a criminal-history score of five points, the presumptive sentence is 406 months with a range of 346 to 480 months. *Id.*

The state responded, “Your honor, I don’t believe the criminal-history score has any effect on this plea. The parties negotiated a set number, which is well within the guideline sentence.” Ighovojah’s attorney agreed and noted, “[the state] is correct that we made a specific agreement for the days under five [criminal-history points]. Even with this, while the presumptive duration is 386 [months], the range is from 329 to 463 [months], so we’re still . . . really close to the middle of that range.” Ighovojah’s attorney concluded that (1) his client and the state agreed as to the basis of the plea petition; and (2) he explained to Ighovojah that “the plea we’ve reached is for 406 months.” The district court sentenced Ighovojah to 406 months in prison as contemplated by the plea agreement.

This appeal follows.

DECISION

The district court did not abuse its discretion when it sentenced Ighovojah based on his correct criminal-history score to a duration within the corresponding presumptive range of the sentencing guidelines and specifically contemplated by his plea agreement.

We afford the district court great discretion in the imposition of sentences and will reverse sentencing decisions only for an abuse of discretion. *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014). A district court abuses its discretion when it makes a decision based on an erroneous view of the law or when its decision is against logic and facts in the record. *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012). We will generally not review a district court’s exercise of its sentencing discretion when the sentence imposed is within the presumptive guidelines range. *State v. Delk*, 781 N.W.2d 426, 428 (Minn. App. 2010), *rev. denied* (Minn. July 20, 2010).

Under the Minnesota Sentencing Guidelines, the presumptive sentence for an offense is determined based on the offender’s criminal-history score and the severity level of the charged offense. Minn. Sent’g Guidelines 1.B.13 (2017). For offenses involving a presumptive commitment to prison, the guidelines prescribe a corresponding presumptive range of sentence lengths. *Id.* The district court must “use accurate criminal-history scores in order to set mandatory presumptive sentences that comply with the Minnesota Sentencing Guidelines.” *State v. Maurstad*, 733 N.W.2d 141, 142 (Minn. 2007). Any “sentence based on an incorrect criminal-history score is an illegal sentence” that is correctable at any time. *Id.* at 147.

Ighovojah argues the district court abused its discretion when it sentenced him to 406 months in prison because 406 months is the presumptive sentence corresponding to a criminal-history score of five. Relying on *State v. Provost*, Ighovojah asserts that the parties continued to use a score of five as the “anchor” for their sentencing recommendations and the district court “must resentence” him based on his accurate score of four. 901 N.W.2d 199, 202 (Minn. App. 2017). We disagree.

First, the record does not support Ighovojah’s contention that the district court sentenced him using an inaccurate score. The parties believed Ighovojah’s criminal-history score was five at the time of the plea hearing. But at the beginning of the sentencing hearing, the district court alerted the parties to Ighovojah’s score calculation in the PSI and asked whether they “knew it was going to come in as a four” or if his accurate score was “a surprise.” The state acknowledged the corrected score and argued that it had no impact on the plea agreement because the parties negotiated for a specific sentence of 406 months.

Ighovojah's attorney also acknowledged the corrected score and observed that under a criminal-history score of four, a 406-month sentence was "still . . . really close to the middle" of the presumptive range of 329 to 463 months. Thus, it is clear from the record that at the time of sentencing, the district court and parties understood that Ighovojah's criminal-history score was four.

Second, Ighovojah's reliance on *Provost* is misplaced. In *Provost*, the district court sentenced a defendant to 48 months in prison based on a criminal-history score of six. *Id.* at 201. Later, one of defendant's convictions was reversed, leading to a reduction of one and one-half points to his criminal-history score, and he moved the district court to correct his sentence. *Id.* The district court denied defendant's motion, reasoning his sentence was "still authorized." *Id.* The 48-month sentence, originally within the guidelines under his incorrect criminal history score, also fell within the presumptive guidelines range under his corrected criminal-history score. *Id.* This court held that "because the sentencing guidelines serve as the anchor for a district court's discretion at sentencing," a sentence based on an incorrect criminal-history score is an unauthorized sentence "even if the sentence would still be within the presumptive sentencing guidelines range when calculated with the correct criminal-history score." *Id.* at 202 (adopting conclusion of the United States Supreme Court in *Molina-Martinez v. United States*, 578 U.S. 189, 198-99 (2016)).

Unlike *Provost*, the parties and the district court realized the mistake in calculating Ighovojah's criminal-history score *before* he was sentenced. We addressed a similar issue in an unpublished opinion in *Hodges v. State* and concluded that *Provost* did not apply when a defendant is sentenced based on a correct criminal-history score. A19-2003, 2020

WL 4932790, at *2-3 (Minn. App. Aug. 24, 2020) (*Hodges II*), *rev. denied* (Minn. Nov. 17, 2020). Although not precedential, we find the reasoning to be persuasive on closely analogous facts.

In *Hodges II*, a defendant pleaded guilty to an offense and the parties agreed to a presumed sentencing range for a person with a criminal-history score of five, which was 260 to 306 months. *Id.* at *1. At sentencing, the district court noted that the defendant's PSI clarified he had a criminal-history score of four, which corresponded to a sentencing range of 199 to 281 months under the guidelines. *Id.* The state recommended that the district court sentence the defendant to 281 months in prison — a “top-of-the-box” sentence for the corrected criminal-history score and within the range anticipated by the plea agreement. *Id.* The district court sentenced defendant to 281 months. *Id.*

The district court denied the defendant's subsequent petition for postconviction relief, finding his sentence complied with the plea agreement he originally reached with the state. *See Hodges v. State*, A13-2207, 2014 WL 3558335, at *4 (Minn. App. July 21, 2014) (*Hodges I*), *rev. denied* (Minn. Sept. 24, 2014) (affirming the denial of postconviction relief and holding the mutual mistake about defendant's criminal-history score did not render his plea unintelligent). The defendant later moved to correct his sentence, arguing his sentence was illegal because it was calculated based on an incorrect criminal-history score. *Hodges II*, 2020 WL 4932790, at *2. This court held that the district court did not abuse its discretion in denying the defendant's illegal-sentence claim because the defendant was sentenced based on his correct criminal-history score of four. *Id.* at *3.

Here too, the parties reached a plea agreement under the shared belief that Ighovojah's criminal-history score was five. Before sentencing, the parties and the district court learned that Ighovojah's correct criminal-history score was four points. Like *Hodges II*, the district court's sentence of 406 months adhered to the parties' plea agreement. It also fell within the permissible discretionary sentencing range for his crime under his accurate criminal-history score. As a result, the district court did not abuse its discretion when sentencing Ighovojah because the sentence is not an "illegal sentence" ultimately "based on an incorrect criminal-history score." *Maurstad*, 733 N.W.2d at 147.

Ighovojah further argues that, under the plea agreement, the parties agreed to a "middle-of-the-box" guidelines sentence tied to his accurate criminal-history score rather than a specific sentence of 406 months. We agree that there is some ambiguity as to the exact terms of the agreement. The plea petition states that the parties agreed "to the guidelines sentence in this matter, 406 months." At the plea hearing, the state endorsed Ighovojah's attorney's summary of the agreement where he "would receive a guideline sentence . . . [and] the parties agree that he has five criminal-history points." The parties' understanding of the agreement's terms appeared to differ slightly at the sentencing hearing. The state argued that the parties agreed on a "set number" and the corrected criminal-history score had no effect on the plea because the duration fell within the permissible guidelines range corresponding to his accurate score. Ighovojah's attorney's assertion that "[the state] is correct that we made a specific agreement for the days under five [criminal-history points]," suggests that the agreement was tied to his criminal-history

score. Yet, Ighovojah's attorney also stated that he explained to Ighovojah "the plea we've reached is for 406 months," which suggests the agreement was for a specific sentence.

Despite this ambiguity, we are not persuaded that Ighovojah's sentence is unauthorized. "[A]ny sentence within the presumptive range for [a] convicted offense constitutes a presumptive sentence." *Delk*, 781 at 428; *see also State v. Jackson*, 749 N.W.2d 353, 359 n.2 (Minn. 2008) ("All three numbers in any given cell [of the sentencing guidelines grid] constitute an acceptable sentence."). Even if the plea agreement were for a "guidelines sentence" rather than a specific sentence, 406 months is a presumptive guidelines sentence. *See* Minn. Sent'g Guidelines 4.A.

To the extent that Ighovojah is making a mutual-mistake argument, he does not seek to withdraw his plea. Ighovojah only asks this court to reverse the district court's illegal sentence and remand with instructions to sentence Ighovojah according to his correct criminal-history. As the district court sentenced Ighovojah based on his correct criminal-history score, consistent with the sentencing guidelines and his plea agreement, we cannot grant his requested remedy. We discern no abuse of discretion.

Affirmed.