STATE OF MINNESOTA
IN COURT OF APPEALS
A13-2338

William Joseph Eggert, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed June 16, 2014
Affirmed
Hooten, Judge

LeSueur County District Court
File No. 40-CR-05-281

William Joseph Eggert, Moose Lake, Minnesota (pro se appellant)

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

Brent Christian, Le Sueur County Attorney, Jason L. Moran, Assistant County Attorney, Le Center, Minnesota (for respondent)

Considered and decided by Hooten, Presiding Judge; Kirk, Judge; and Reyes, Judge.

U N P U B L I S H E D O P I N I O N

HOOTEN, Judge

In this pro se appeal, appellant argues that he was erroneously sentenced to a ten-year term of conditional release. Because appellant's sentence is authorized under the applicable sentencing statute, we affirm.

FACTS

In July 1987, appellant William Eggert was convicted of third-degree criminal sexual conduct and sentenced to 18 months of probation. In April 2005, the state charged Eggert with two counts of third-degree criminal sexual conduct committed "on or about between May 1, 2002, and September 30, 2002." One count was dismissed; Eggert pleaded guilty to the other and was sentenced to 55 months' imprisonment plus 10 years of conditional release. In September 2011, upon Eggert's motion to correct his sentence for a miscalculation, the district court reduced Eggert's sentence to 53 months so that the sentence is within the presumptive sentence range. In September 2013, Eggert again moved to correct his sentence, this time to reduce his conditional-release term from ten years to five. The district court denied the motion. Eggert appeals.

D E C I S I O N

A district court may correct a sentence that is unauthorized by law at any time. Minn. R. Crim. P. 27.03, subd. 9; *see also Vazquez v. State*, 822 N.W.2d 313, 318 (Minn. App. 2012) (concluding that the statutory two-year time limit does not apply to motions properly filed under rule 27.03, subdivision 9). Denial of a motion to correct a sentence will not be reversed unless the district court abused its discretion or the original sentence was unauthorized by law. *State v. Amundson*, 828 N.W.2d 747, 752 (Minn. App. 2013). A sentence is unauthorized by law if it does not meet the requirements of the applicable sentencing statute. *State v. Cook*, 617 N.W.2d 417, 419 (Minn. App. 2000), *review denied* (Minn. Nov. 21, 2000). Interpretation of a sentencing statute is a question of law subject to de novo review. *State v. Borrego*, 661 N.W.2d 663, 666 (Minn. App. 2003).

Eggert raises numerous constitutional, procedural, and statutory arguments. But the crux of his appeal is that the sentencing court erred by imposing a ten-year—rather than a five-year—term of conditional release. Eggert contends that, under Minn. Stat. § 609.109, subd. 7 (2002) (repealed 2006), his 1987 conviction is not a qualifying conviction triggering a mandatory imposition of a ten-year term of conditional release.

The district court reasoned, and the state now argues, that the imposition of a ten-year conditional-release term was proper under Minn. Stat. § 609.108, subd. 6 (Supp. 2005) (repealed 2006), and the conditional-release statute referenced, Minn. Stat. § 609.3455, subd. 6 (Supp. 2005). But their reliance on these statutes is misplaced. Section 609.108, subdivision 6 applies only to certain patterned and predatory sex offenders receiving at least double the presumptive sentence or the statutory maximum. Minn. Stat. § 609.108, subd. 1 (Supp. 2005) (repealed 2006). Eggert was not sentenced under this statute and instead received a presumptive sentence. Therefore, section 609.108 does not apply.

More fundamentally, we must apply only the statutes in effect at the time of the criminal offense. *See State v. Soukup*, 746 N.W.2d 918, 923 (Minn. App. 2008) (stating that a law violates the ex post facto prohibition "by punishing as a crime an act previously committed, which was not a crime at the time"), *review denied* (Minn. June 18, 2008). Here, the district court erred by relying on 2005 statutes in effect at the time of sentencing, rather than the 2001 or 2002 statutes in effect at the time Eggert committed the offense. Indeed, the conditional-release statute, section 609.3455, did not exist at the

time of the offense. *See* 2005 Minn. Laws ch. 136, art. 2, § 21, at 929–32 (enacting section 609.3455).

But the application of the incorrect statutes by the district court does not mean that Eggert received an unlawful sentence requiring our reversal. Eggert correctly identifies the relevant statute, Minn. Stat. § 609.109, subd. 7, but he incorrectly interprets it. At the time Eggert committed his offense in 2002, section 609.109, subdivision 7(a) provided:

> If [a] person was convicted for a violation of [among other offenses, third-degree criminal sexual conduct], the person shall be placed on conditional release for five years, minus the time the person served on supervised release. If the person was convicted for a violation of one of those [offenses] after a previous sex offense conviction as defined in subdivision 5, . . . the person shall be placed on conditional release for ten years, minus the time the person served on supervised release.[1]

"[A] conviction is considered a previous sex offense conviction if the person was convicted of a sex offense before the commission of the present offense of conviction." Minn. Stat. § 609.109, subd. 5 (2002) (repealed 2006).

Eggert contends that his 1987 conviction is not a previous sex offense conviction because section 609.109, subdivision 7(a) "was not in effect at the time [he] committed his 1987 offense." But based on the plain and unambiguous language of section 609.109, subdivision 5, Eggert's qualifying conviction need only be one that he was convicted of "before the commission of" his 2002 offense; it need not be one committed after the

[1] Because Eggert committed the offense around May 1, 2002 to September 30, 2002, either the 2000 or 2002 version of section 609.109 would apply. But we need not resolve this issue because the versions are substantively the same. *Compare* Minn. Stat. § 609.109, subd. 7(a) (2002) (repealed 2006), *with* Minn. Stat. § 609.109, subd. 7(a) (2000) (repealed 2006).

enactment of section 609.109 in 1998. *See Cook*, 617 N.W.2d at 418, 420 (holding that a prior 1988 conviction for intrafamilial sexual abuse was a qualifying conviction triggering a ten-year term of conditional release under section 609.109, subdivision 7); 1998 Minn. Laws ch. 367, art. 6, § 6, at 729–31 (enacting section 609.109). Because Eggert was convicted of third-degree criminal sexual conduct in 1987, the sentencing court did not err by imposing a ten-year term of conditional release for his second conviction of the same offense under section 609.109, subdivision 7(a). Accordingly, Eggert's sentence is authorized by law, and the denial of his motion to correct his sentence was not an abuse of discretion.

Affirmed.