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**STATE OF MINNESOTA
IN COURT OF APPEALS
A14-0629**

State of Minnesota,
Respondent,

vs.

Kevin Michael Smith,
Appellant.

**Filed June 16, 2014
Reversed and remanded
Cleary, Chief Judge**

St. Louis County District Court
File No. 69DU-CR-07-5738

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

Mark S. Rubin, St. Louis County Attorney, Christopher J. Pinkert, Assistant County Attorney, Duluth, Minnesota (for respondent)

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

Considered and decided by Cleary, Chief Judge; Kirk, Judge; and Smith, Judge.

UNPUBLISHED OPINION

CLEARY, Chief Judge

Appellant Kevin Michael Smith challenges the district court's denial of his motion for correction of his sentence under Minn. R. Crim. P. 27.03, subd. 9. After the state

filed a letter in lieu of its brief agreeing with appellant that the district court erred in denying the motion, the appeal was expedited and assigned to the special term panel to consider on the merits. We reverse and remand.

FACTS

Appellant was arrested on October 2, 2007, for driving while intoxicated (DWI). He was subsequently charged with driving after cancellation and two counts of felony DWI: test refusal and operating a motor vehicle under the influence of alcohol. On November 13, 2007, appellant pleaded guilty to test refusal.

On December 12, 2007, the district court sentenced appellant to 36 months in prison, stayed, and placed him on probation for five years. On May 11, 2009, the court revoked probation and executed the sentence. The mandatory five-year conditional release term was not ordered or mentioned at sentencing or at the probation violation hearing when appellant's sentence was executed. *See* Minn. Stat. § 169A.276, subd. 1(d) (2006).

In a letter dated August 9, 2012, the Department of Corrections (DOC) notified the district court that it had failed to include the mandatory five-year conditional release term as part of appellant's sentence. The court filed an amended warrant of commitment on August 27, 2012, to correct appellant's sentence by adding five years of conditional release.

On December 20, 2013, appellant filed a motion for correction of sentence, claiming that his 36-month sentence expired in March 2012 and that the district court therefore lacked jurisdiction to enter an amended warrant of commitment adding the five-

year conditional release period. The state filed a letter in response to the motion, providing the court with what it characterized as an “undeniably confusing summary of the evidence and documents that have been provided,” and indicating that it did not necessarily oppose appellant’s motion.

In an order filed on March 6, 2014, the district court found that it “did not impose the mandatory five year conditional release required under the statute for the conviction” when appellant was sentenced in December 2007. The court further found that after it received a letter from the DOC records management supervisor in August 2012, the court “reviewed the file and directed an Amended Order Warrant of Commitment be filed imposing the five-year conditional release requirement.” The court concluded that as of August 21, 2012, the date the conditional release term was imposed, appellant “had completed 1,072 days of his 1,095 day sentence.” The court reached that conclusion by adding the time appellant had spent in jail and in DOC custody. The court denied appellant’s request to vacate the five-year conditional release term, concluding that as of August 21, 2012, appellant had not completed his sentence.

This appeal followed. The state filed a letter in lieu of its respondent’s brief, agreeing that this court should vacate the five-year conditional release term because it was not added to appellant’s sentence until August 2012, approximately five months after the sentence expired in March 2012. Appellant filed a motion to expedite the appeal, noting that he is currently being supervised on conditional release and is entitled to immediate discharge from DOC supervision. In an order filed on April 30, 2014, this court granted the motion to expedite and to assign the matter to the special term panel.

DECISION

“Once a sentence has expired, the [district] court no longer has jurisdiction to modify even what may be an unauthorized sentence.” *Martinek v. State*, 678 N.W.2d 714, 718 (Minn. App. 2004) (citing *State v. Purdy*, 589 N.W.2d 496, 498-99 (Minn. App. 1999)). If appellant’s 36-month sentence expired before August 2012, the parties agree that the district court lacked authority to enter the amended warrant of commitment to add the five-year conditional release term. The “expiration of a sentence operates as a discharge that bars further sanctions for a criminal conviction.” *Purdy*, 589 N.W.2d at 498.

In Minnesota, an “executed sentence” means the “total period of time for which an inmate is committed to the custody of the commissioner of corrections.” Minn. Stat. § 244.01, subd. 9 (2012). An executed sentence, for an offense committed after August 1993, consists of two parts: a term of imprisonment that is generally equal to two-thirds of the executed sentence, and a supervised release term generally equal to one-third of the executed sentence. Minn. Stat. § 244.101, subd. 1 (2012); *see also* Minn. Stat. § 244.01, subds. 7, 8 (2012). “The amount of time the inmate serves on supervised release shall be equal in length to the amount of time remaining in the inmate’s executed sentence after the inmate has served the term of imprisonment and any disciplinary confinement period imposed by the commissioner.” Minn. Stat. § 244.05, subd. 1b(a) (2012). Once an inmate completes the terms of imprisonment and supervised release, the inmate’s sentence expires. *See State ex rel. Peterson v. Fabian*, 784 N.W.2d 843, 846 (Minn. App. 2010).

In this case, appellant's 36-month sentence was executed on May 11, 2009, when his probation was revoked. At that time, he had 166 days of jail credit. Appellant served his term of imprisonment and was eventually placed on supervised release. During his supervised release, appellant committed violations of the terms of that release and was jailed or re-imprisoned several times. The time remaining on his executed sentence continued to run not only on days when he was incarcerated, but, in addition, on days when he was on supervised release, with the exception of time periods when he was a fugitive or on "stop time" for DOC warrants.¹ When appellant's jail credit (166 days) is added and periods of stop time (58 days and 44 days) are deducted, his executed sentence expired on or about March 7, 2012.

The district court therefore erred because it only considered time appellant spent in jail or DOC custody and did not include time appellant was on supervised release without a warrant. When properly calculated, appellant's executed sentence expired on or about March 7, 2012. The district court lacked authority in August 2012 to enter an amended warrant of commitment that added the five-year conditional release term to appellant's already expired sentence.

¹ Supervised release is different from conditional release on this point. Conditional release, if imposed, runs concurrently with supervised release if the offender is actually released into the community under supervision. But conditional release stops running if the offender's supervised release is revoked and he is returned to prison. *See State v. Ward*, ___ N.W.2d ___ (Minn. App. Apr. 14, 2014) (concluding that district court erred when it reduced defendant's conditional-release term by amount of time he was originally sentenced to serve on supervised release, even though defendant remained in prison until end of his executed sentence), *pet. for review filed* (Minn. May 12, 2014).

We therefore reverse the district court's order and remand to the district court with directions to vacate the five-year conditional release term from appellant's sentence.

Reversed and remanded.