STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0078

State of Minnesota,
Respondent,

vs.
Darren Ray Liimatainen,
Appellant.

Filed February 12, 2008
Affirmed
Wright, Judge

St. Louis County District Court
File No. K8-03-601071

John Stuart, State Public Defender, Cathryn Middlebrook, Assistant State Public Defender, 2221 University Avenue Southeast, Suite 425, Minneapolis, MN 55414 (for appellant)

Lori Swanson, Attorney General, James B. Early, Assistant Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

Melanie Ford, St. Louis County Attorney, St. Louis County Courthouse, 100 North Fifth Avenue West, Duluth, MN 55802 (for respondent)

Considered and decided by Wright, Presiding Judge; Peterson, Judge; and Huspeni, Judge.*

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

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

WRIGHT, Judge

Appellant challenges the district court's denial of his motion for sentence correction, arguing that his sentence was based on an erroneous calculation of his criminal-history score. We affirm.

FACTS

In January 2004, Liimatainen pleaded guilty to first-degree felony driving while impaired (DWI), Minn. Stat. §§ 169A.20, subds. 1(1), 3, .24, subd. 1(1) (2002). The district court sentenced Liimatainen to the presumptive guidelines sentence of 54 months' imprisonment based on a severity level of seven and a criminal-history score of three. Liimatainen's criminal-history score included one point for a 1989 felony conviction of unauthorized use of a motor vehicle (UUMV), Minn. Stat. § 609.55 (1988), for which he received a stay of imposition of sentence.

On October 2, 2006, Liimatainen moved the district court pro se to correct his sentence under Minn. R. Crim. P. 27.03, subd. 9. The district court denied his motion. On November 20, 2006, Liimatainen again moved the district court pro se to correct his sentence, arguing that the district court erred by assigning him a felony point in his criminal-history score for the UUMV conviction. Liimatainen maintained that, because the district court stayed the imposition of his sentence for the UUMV conviction and he served less than two years on probation, his criminal-history score for this offense should reflect a misdemeanor disposition. He sought a modification of his criminal-history score to two and, consequently, a reduction of his sentence from 54 months' imprisonment to

48 months' probation, the presumptive guidelines sentence for a two-point criminal-history score. The district court denied Liimatainen's motion. This appeal followed.

D E C I S I O N

The district court may "correct a sentence not authorized by law." Minn. R. Crim. P. 27.03, subd. 9. A motion for sentence correction is "addressed to the district court's discretion." *State v. Cook*, 617 N.W.2d 417, 419 (Minn. App. 2000), *review denied* (Minn. Nov. 21, 2000). We will not reverse the district court's denial of a motion for sentence correction if the denial represents a proper exercise of the district court's discretion and the original sentence was authorized by law. *Miller v. State*, 714 N.W.2d 745, 747 (Minn. App. 2006). A sentence is unauthorized by law when it is contrary to the requirements of the applicable sentencing statute. *Cook*, 617 N.W.2d at 419. The interpretation of sentencing statutes presents a question of law, which we review de novo. *State v. Borrego*, 661 N.W.2d 663, 666 (Minn. App. 2003).

The Minnesota Sentencing Guidelines define an offender's criminal-history score based on the offender's prior felony record, custody status at the time of the offense, prior misdemeanor and gross-misdemeanor record, and, for young-adult felons, prior juvenile record. Minn. Sent. Guidelines II.B (Aug. 2003). All felony convictions are weighted from one-half to two points, depending on the severity level of the offense; and misdemeanor and gross-misdemeanor convictions are assigned units, four of which equal one point in the criminal-history calculation. Minn. Sent. Guidelines II.B.1, 3. The sentencing guidelines then set forth a defendant's presumptive sentence based on the

criminal-history score and the severity level of the offense being sentenced. Minn. Sent. Guidelines II. (Aug. 2003).

Under the sentencing guidelines, the district court assigns criminal-history points according to this calculus "for every felony conviction . . . for which a stay of imposition of sentence was given before the current sentencing." Minn. Sent. Guidelines II.B.1. Because the severity level of an offense derives from the conviction, not the sentence, the offense of conviction is the relevant factor when assigning criminal-history-score weights. Minn. Sent. Guidelines II.A, B.1.a (Aug. 2003).

Liimatainen was granted a stay of imposition of sentence for the UUMV conviction and placed on probation for three years. Approximately one and one-half years later, the district court found that Liimatainen had violated the conditions of his probation and ordered him to serve a one-year term of incarceration for the probation violation. The district court, however, did not revoke the stay of imposition of sentence. Thus, because the UUMV conviction was a "felony conviction . . . for which a stay of imposition of sentence was given before the [felony DWI] sentencing," the district court correctly assigned Liimatainen one criminal-history point for the UUMV conviction. Minn. Sent. Guidelines II.B.1; *see also* Minn. Sent. Guidelines II.B.1.a., cmt. II.B.101 (noting that district court "should" assign one point for prior UUMV conviction).

Liimatainen further argues that his one-year term of incarceration was commensurate with a gross misdemeanor rather than a felony and that, therefore, he should not have been assessed a felony point for the UUMV conviction. But Liimatainen's argument is premised on a mischaracterization of his term of incarceration.

Liimatainen's one-year term of incarceration was not a sentence. Rather, it was a sanction for violating the conditions of his probation. Thus, it had no bearing on the district court's decision to include the UUMV conviction in his criminal-history score. Liimatainen accurately observes that a prior felony conviction is counted as a misdemeanor or gross misdemeanor if it "resulted in a misdemeanor or gross misdemeanor sentence." Minn. Sent. Guidelines II.B.1.d; *accord* Minn. Stat. § 609.13, subd. 1(1) (2002). But this rule applies only when an offender is convicted of a felony and the district court, in its discretion, imposes a sentence commensurate with a misdemeanor or gross-misdemeanor offense. Minn. Sent. Guidelines II.B.1.d., cmt. II.B.104. This rule is inapplicable here because the district court never imposed a sentence for the UUMV conviction.

Liimatainen reiterates the same argument regarding his one and one-half year probationary period. However, the length of the probationary period associated with the stay of imposition does not change the nature of the underlying conviction from a felony to a misdemeanor. *State v. Dyer*, 438 N.W.2d 716, 720 (Minn. App. 1989), *review denied* (Minn. June 9, 1989).[1] Consequently, Liimatainen's relatively brief probationary period likewise has no bearing on the decision to include the UUMV conviction in his criminal-history score.

In his pro se supplemental brief, Liimatainen argues that his UUMV conviction should have been considered a gross-misdemeanor conviction because the district court,

[1] *Dyer* was abrogated on other grounds by *Richards v. Wisconsin*, 520 U.S. 385, 393-94, 117 S. Ct. 1416, 1421-22 (1997), which held that a blanket no-knock warrant for suspected drug activity, such as the one upheld in *Dyer*, was unconstitutional.

on discharging him from probation in 1991, deemed the UUMV conviction to be a misdemeanor under Minn. Stat. § 609.13, subd. 1(2) (1990).[2] This argument also is without merit. Section 609.13, subdivision 1(2), provides that a felony conviction for which the defendant is placed on and discharged from probation is "deemed to be" a misdemeanor conviction. Minn. Stat. § 609.13, subd. 1(2) (2002). But the district court's classification of the UUMV conviction as a misdemeanor under section 609.13, subdivision 1(2), does not preclude the district court's later decision in a different context to characterize the conviction as a felony. *State v. Clipper*, 429 N.W.2d 698, 701 (Minn. App. 1988). As the *Clipper* court observed, "[t]here is no conflict between the Guidelines and [section] 609.13" because the statute "is silent on the treatment to be afforded the felony conviction for purposes of calculating criminal history points." *Id.*

Under guideline II.B.1, the district court correctly assigned Liimatainen one felony point for the UUMV conviction. In light of the district court's correct calculation of Liimatainen's criminal-history score, the sentence imposed for the felony DWI offense is authorized by law. Liimatainen's challenge to the district court's denial of his motion for sentence correction, therefore, fails.

Affirmed.

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[2] In support of this argument, Liimatainen appended to his pro se supplemental brief several district court orders pertaining to the UUMV conviction. Because these documents were not submitted to the district court with his motion for sentence correction, they are not part of the record on appeal. Minn. R. Civ. App. P. 110.01. We may, however, consider supplementary evidence when it is "documentary evidence of a conclusive nature (uncontroverted) which supports the result obtained in the [district] court." *In re Livingood*, 594 N.W.2d 889, 895-96 (Minn. 1999) (quotation omitted). Because the supplementary evidence Liimatainen proffers comprises publicly available documents of a conclusive nature that support the district court's decision, our consideration of this evidence is permissible.