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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2273**

State of Minnesota,
Appellant,

vs.

Jeremy John Richard Combel,
Respondent.

**Filed October 28, 2008
Reversed and remanded
Stoneburner, Judge**

Isanti County District Court
File No. 30CR061765

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Jeffrey Edblad, Isanti County Attorney, Thomas D. Wedes, Assistant County Attorney, 555 18th Avenue Southwest, Cambridge, MN 55008 (for appellant)

Lawrence Hammerling, Chief Appellate Public Defender, James R. Peterson, Assistant Public Defender, Suite 300, 540 Fairview Avenue North, St. Paul, MN 55104 (for respondent)

Considered and decided by Stoneburner, Presiding Judge; Shumaker, Judge; and Stauber, Judge.

UNPUBLISHED OPINION

STONEBURNER, Judge

Appellant State of Minnesota challenges the district court's sua sponte grant of a stay of adjudication to respondent who pleaded guilty to a crime for which the presumptive guidelines sentence is 68 months in prison and the mandatory statutory sentence is 36 months. The prosecutor objected to the stay. The district court specifically found that there was no abuse of prosecutorial discretion. Because existing caselaw holds that the district court lacks inherent authority to stay adjudication over the prosecutor's objection without a finding of clear abuse of the prosecutorial charging function, we reverse and remand.

FACTS

Respondent Jeremy John Richard Combel pleaded guilty to one count of second-degree controlled-substance crime in violation of Minn. Stat. § 152.022, subd. 2(1) (2006). Combel entered a straight plea to the charge but notified the district court that he would be arguing for a downward-dispositional departure from the presumptive-guidelines sentence of 68 months in prison and the mandatory statutory sentence of 36 months in prison. Combel also admitted violating probation on two prior drug-related convictions.

At the sentencing hearing, the district court, sua sponte, stayed adjudication and placed Combel on 40 years probation with conditions. The prosecutor, who had argued for imposition of the guidelines sentence, objected to the stay of adjudication. The district court made a record that the stay was not pursuant to Minn. Stat. § 152.18

(2006),¹ the stay was granted over the prosecutor’s objection, and there was no evidence of prosecutorial abuse. The district court stated that it was exercising its inherent authority based on its finding of extraordinary circumstances consisting of Combel’s “apparent, complete turnaround” in his life that would make three years of imprisonment a miscarriage of justice. This appeal followed.

D E C I S I O N

A sentencing court’s departure from sentencing guidelines is reviewed for abuse of discretion. *State v. Geller*, 665 N.W.2d 514, 516 (Minn. 2003). In *State v. Krotzer*, 548 N.W.2d 252, 254–55 (Minn. 1996), the supreme court rejected the state’s argument that a district court violated separation of powers principles by staying adjudication. The supreme court, noting that the district court apparently “strongly disagreed with the prosecutor’s decision” to charge Krotzer and “felt that justice would not be served by giving Krotzer a criminal record,” held that the district court’s decision to stay adjudication over the prosecutor’s objection was supported by the special circumstances of the case and “fell within the ‘inherent judicial power’ we have repeatedly recognized, and was necessary to the furtherance of justice in Krotzer’s case.” *Id.*

The supreme court later clarified its *Krotzer* ruling, stating:

It was not our intention that mere disagreement by the trial court with the prosecutor’s exercise of the charging discretion would constitute “special circumstances.” Rather, it was our intention that the inherent judicial authority recognized in that case be relied upon *sparingly* and only for

¹ Minn. Stat. § 152.18, subd. 1, permits a stay of adjudication for some first-time drug offenders, but Combel had two prior drug-related convictions and was not eligible for a stay under this statute.

the purpose of avoiding an injustice resulting from the prosecutor's *clear abuse of discretion* in the exercise of the charging function.

State v. Foss, 556 N.W.2d 540, 541 (Minn. 1996).

Subsequently, the supreme court addressed the issue of whether a district court has the inherent authority to stay adjudication over a prosecutor's objection where there is no abuse of discretion in the prosecutor's exercise of the charging function. *State v. Lee*, 706 N.W.2d 491, 495 (Minn. 2005). The district court in *Lee* specifically found no prosecutorial abuse of charging discretion but stayed adjudication of Lee's driving-related charges to prevent loss of his driving privileges, which were necessary to Lee's continued employment. *Id.* at 493.

Lee argued that a district court can stay adjudication over a prosecutor's objection when either special circumstances exist or the prosecutor has abused prosecutorial discretion in charging. *Id.* at 495. The supreme court rejected this argument, noting its citation in *Krotzer* to established separation-of-powers rules providing that "absent evidence of selective or discriminatory prosecutorial intent, or an abuse of prosecutorial discretion, the judiciary is powerless to interfere with the prosecutor's charging authority." *Id.* at 496 (quoting *Krotzer*, 548 N.W.2d at 254 (citing *Bordenkircher v. Hayes*, 434 U.S. 357, 364, 98 S. Ct. 663, 668–69 (1978))). The supreme court also stated that it is not possible "to read *Foss* as permitting a stay of adjudication whenever there are *either* special circumstances *or* an abuse of the charging function." *Lee*, 706 N.W.2d at 496. The supreme court affirmed "the standard [] announced in *Foss*—clear abuse of

the prosecutorial charging function must be found by the court before it may order a stay of adjudication over the prosecutor's objection." *Id.*

Because the district court in this case specifically found that there was no abuse of the prosecutorial charging function, the district court was without authority to stay adjudication over the prosecutor's objection. We therefore reverse and remand for the imposition of an appropriate sentence.

Reversed and remanded.