

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1468**

State of Minnesota,
Appellant,

vs.

Warren Dale Speldrick,
Respondent.

**Filed April 21, 2009
Reversed and remanded
Worke, Judge**

Dakota County District Court
File No. 19-KX-07-002178

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

James C. Backstrom, Dakota County Attorney, Vance B. Grannis, III, Assistant County Attorney, Dakota County Judicial Center, 1560 Highway 55, Hastings, MN 55033 (for appellant)

Lawrence Hammerling, Chief Appellate Public Defender, Cathryn Middlebrook, Assistant State Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for respondent)

Considered and decided by Worke, Presiding Judge; Hudson, Judge; and Connolly, Judge.

UNPUBLISHED OPINION

WORKE, Judge

In this sentencing appeal, the state argues that the district court failed to impose the mandatory minimum sentence required under Minn. Stat. § 152.025, subd. 3(b) (2006) given respondent's prior controlled-substance-crime convictions. Because the district court erred, we reverse and remand.

DECISION

Respondent Warren Dale Speldrick was convicted of fifth-degree controlled substance crime. *See* Minn. Stat. § 152.025, subd. 2(1) (2006) (stating that a person is guilty of fifth-degree controlled substance crime if the person unlawfully possesses one or more mixtures containing methamphetamine). Respondent has two prior controlled-substance-crime convictions. The state argues that respondent's prior convictions require the district court to impose the mandatory minimum sentence. Respondent argues that the district court was within its discretion to sentence him to a stay of execution and place him on probation because there are mitigating factors that make the mandatory minimum sentence too harsh. "Whether Minn. Stat. § 152.025, subd. 3(b), requires a mandatory minimum term of incarceration is a question of statutory construction which this court reviews de novo." *State v. Bluhm*, 676 N.W.2d 649, 651 (Minn. 2004).

Under Minn. Stat. § 152.025, subd. 3(b), "[i]f the conviction is a subsequent controlled substance conviction, a person convicted under subdivision 1 or 2 shall be committed to the commissioner of corrections or to a local correctional authority for not less than six months nor more than ten years." Additionally, when an individual is

sentenced to a mandatory sentence under Minn. Stat. § 152.025, he is not eligible for probation or supervised release until he has served the full term of imprisonment. Minn. Stat. § 152.026 (2006). The Minnesota Supreme Court held that Minn. Stat. § 152.025, subd. 3(b) requires a mandatory minimum period of incarceration. *Bluhm*, 676 N.W.2d at 654. In *Bluhm*, the defendant pleaded guilty to a subsequent fifth-degree controlled substance crime. *Id.* at 650. The district court ordered Bluhm to serve six months in jail. *Id.* at 651. This court reversed, holding that Minn. Stat. § 152.025, subd. 3(b), did not mandate that Bluhm serve six months in jail. *Id.* The supreme court reversed, holding that the statutory language is clear and unambiguous and concluded that “shall is mandatory.” *Id.* at 652 (quotation omitted). The supreme court further stated that the legislature clearly intended the sanction to be mandatory and that the court’s interpretation was consistent with caselaw providing that probation is an authorized disposition unless the statute specifically excludes the consideration of probation. *Id.* at 653; *see State v. Childers*, 309 N.W.2d 37, 38 (Minn. 1981) (holding that a district court is not precluded from imposing probation when the sentencing statute does not explicitly exclude the consideration of probation).

Here, respondent was convicted of fifth-degree controlled substance crime. Respondent has two prior controlled-substance-crime convictions. Thus, the district court was required to impose the mandatory minimum sentence. Respondent argues that mitigating factors here support the sentence imposed by the district court. Specifically, respondent contends that only a trace amount of methamphetamine was found and the district court acknowledged that the amount found was most likely left over from

respondent's prior conviction and that respondent had paid his debt to society. But under the statute, the district court is not permitted to rely on mitigating factors in sentencing. And, arguably, there were mitigating factors in *Bluhm*, but the supreme court held that the mandatory minimum sentence must be imposed. 676 N.W.2d at 651 (stating that between the time of the offense and the guilty plea, the defendant had successfully completed chemical dependency treatment and, prior to sentencing, had returned to high school and earned her high school diploma). Therefore, even if the sentence is harsh under the circumstances, the district court was required to impose the mandatory minimum sentence.

Reversed and remanded.