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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-2232**

State of Minnesota,
Appellant,

vs.

Anthony Matthew Pearson,
Respondent.

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

Dakota County District Court
File No. 19-K0-07-3484

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

James C. Backstrom, Dakota County Attorney, Nicholas A. Hydukovich, Assistant County Attorney, Dakota County Judicial Center, 1560 West Highway 55, Hastings, MN 55033 (for appellant)

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

Considered and decided by Worke, Presiding Judge; Minge, Judge; and Collins, Judge.*

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

UNPUBLISHED OPINION

WORKE, Judge

Following the district court's stay of adjudication of respondent's sentence for third-degree controlled-substance crime, the state argues that the district court was without statutory authority to grant the stay. We reverse and remand.

DECISION

Appeals from stays of adjudication in felony cases are treated as sentencing appeals. *State v. Allinder*, 746 N.W.2d 923, 925 (Minn. App. 2008). Generally, a reviewing court will not reevaluate a sentencing court's disposition if "discretion has been properly exercised and the sentence is authorized by law." *State v. Eaton*, 292 N.W.2d 260, 267 (Minn. 1980). Statutory interpretation is a question of law that this court reviews de novo. *State v. Zacher*, 504 N.W.2d 468, 470 (Minn. 1993).

Respondent Anthony Matthew Pearson pleaded guilty to third-degree controlled-substance crime. Over the state's objection, the district court stayed adjudication of respondent's sentence pursuant to Minn. Stat. § 152.18 (2006), stating that it was doing so because respondent had no prior drug offenses. After a person has pleaded guilty to certain offenses, the district court may, without entering a judgment of guilty, defer proceedings and place the person on probation. Minn. Stat. § 152.18, subd. 1. The offenses listed under this statute include fourth-degree controlled-substance crime—possession; fifth-degree controlled-substance crime—possession and other crimes; and possession of schedule V controlled substance, possession of marijuana in a motor vehicle, and possession or sale of a small amount of marijuana. *Id.* The language of

Minn. Stat. § 152.18, subd. 1 does not apply to a plea of guilty to third-degree controlled-substance crime. Therefore, the district court did not have discretion to stay adjudication of respondent's sentence. And even though the district court stated that the stay of adjudication was ordered because respondent did not have any prior drug offenses and that he was just "dumb" and "trying to make . . . easy money[,]" the district court did not find that substantial and compelling circumstances existed to warrant a downward departure from the presumptive sentence. In fact, the district court acknowledged that the stay was not authorized by statute and that, if appealed, would result in reversal. We reverse and remand for resentencing.

Reversed and remanded.