

*This opinion will be unpublished and  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  
A09-1992**

State of Minnesota,  
Respondent,

vs.

Juan Cerna,  
Appellant.

**Filed May 18, 2010  
Affirmed  
Johnson, Judge**

Clay County District Court  
File No. 14-CR-09-159

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

Brian J. Melton, Clay County Attorney, Matthew D. Greenley, Assistant County Attorney, Moorhead, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Benjamin J. Butler, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

## **UNPUBLISHED OPINION**

**JOHNSON**, Judge

Juan Cerna challenges the sentence that was imposed on him following his conviction of a third-degree controlled-substance crime. The district court imposed an executed sentence of 27 months of imprisonment because Cerna previously had been adjudicated delinquent of a second-degree controlled-substance crime in an extended-jurisdiction juvenile (EJJ) proceeding. The district court relied on a statute that requires a prison sentence of at least two years if a person previously was convicted of a felony-level controlled-substance crime. On appeal, Cerna argues that the adjudication of delinquency in the EJJ proceeding is not a prior conviction for purposes of determining his sentence. We conclude that the mandatory-minimum statute applies and, therefore, affirm.

### **FACTS**

In June 2009, a Clay County jury found Cerna guilty of a third-degree controlled-substance crime, in violation of Minn. Stat. § 152.023, subd. 1(1) (2008), based on evidence that he sold cocaine to a confidential informant in June 2008. A pre-sentence investigation revealed that, in June 2005, Cerna was adjudicated delinquent of a second-degree controlled-substance crime in an EJJ proceeding. The juvenile court imposed an adult sentence of 48 months of imprisonment but stayed the sentence and placed Cerna on probation until he turned 21 years of age. The district court never executed Cerna's adult sentence because Cerna satisfied the conditions of his probation.

At Cerna's sentencing hearing in this case in July 2009, the state argued that, in light of the EJJ adjudication, Cerna is subject to the mandatory-minimum sentence contained in the following statute: "If the conviction is a subsequent controlled substance conviction, a person convicted under subdivision 1 or 2 shall be committed to the commissioner of corrections for not less than two years . . . ." Minn. Stat. § 152.023, subd. 3(b) (2008). If Cerna's conviction is a "subsequent controlled substance conviction," his presumptive sentence would be a stayed sentence of 27 months, Minn. Sent. Guidelines IV, V (2008); if it is not, his presumptive sentence is an executed sentence of 27 months, Minn. Sent. Guidelines IV, V.

The district court concluded that Cerna's EJJ adjudication is a prior conviction for purposes of the mandatory-minimum sentence in section 152.023, subdivision 3(b). Accordingly, the district court imposed an executed sentence of 27 months of imprisonment. Cerna appeals.

## **DECISION**

Cerna argues that the district court erred by concluding that his EJJ adjudication is a prior conviction for purposes of section 152.023, subdivision 3(b), and by imposing an executed sentence of 27 months of imprisonment. He asks this court to reverse the sentence imposed by the district court and to remand for resentencing. We apply a *de novo* standard of review to the district court's interpretation and application of the statute, which presents a question of law. *State v. Murphy*, 545 N.W.2d 909, 914 (Minn. 1996).

The starting point for our analysis is the mandatory-minimum-sentence provision of the statute he was convicted of violating, which provides: "If the conviction is a

subsequent controlled substance conviction, a person convicted under subdivision 1 or 2 shall be committed to the commissioner of corrections for not less than two years . . . .” Minn. Stat. § 152.023, subd. 3(b). Cerna contends that his EJJ adjudication is not a prior conviction that would make his current conviction a “subsequent controlled substance conviction.”

The term “subsequent controlled substance conviction” is defined by statute to mean

that before commission of the offense for which the person is convicted under this chapter, the person received a disposition for a felony-level offense under section 152.18, subdivision 1, was convicted in Minnesota of a felony violation of this chapter or a felony-level attempt or conspiracy to violate this chapter, or was convicted elsewhere for conduct that would have been a felony under this chapter if committed in Minnesota.

Minn. Stat. § 152.01, subd. 16a (2008). To determine whether Cerna’s EJJ adjudication is within the scope of section 152.01, subdivision 16a, it is necessary to refer to the provisions of chapter 260B, which concern adjudications in juvenile delinquency cases. *State v. Jiles*, 767 N.W.2d 27, 29 (Minn. App. 2009), *review denied* (Minn. Aug. 26, 2009). The pertinent section of chapter 260B states, in relevant part:

No adjudication upon the status of any child in the jurisdiction of the juvenile court shall operate to impose any of the civil disabilities imposed by conviction, nor shall any child be deemed a criminal by reason of this adjudication, nor shall this adjudication be deemed a conviction of crime, *except as otherwise provided in this section or section 260B.255*. An extended jurisdiction juvenile conviction shall be treated in the same manner as an adult felony criminal conviction for purposes of the Sentencing Guidelines.

Minn. Stat. § 260B.245, subd. 1(a) (2008) (emphasis added).

Cerna relies on the main clause of the first sentence quoted above, which generally provides that a juvenile adjudication shall not be deemed a conviction of a crime. Cerna also contends that the exception contained in the last clause of the first sentence (which is highlighted above) does not apply. To determine whether that exception applies, we must refer to the following provision of section 260B.255: “A violation of a state or local law or ordinance by a child before becoming 18 years of age is not a crime unless the juvenile court,” among other things, “convicts the child as an extended jurisdiction juvenile *and subsequently executes the adult sentence.*” Minn. Stat. § 260B.255, subd. 1 (2008) (emphasis added). Cerna accurately states that, in the prior EJJ proceeding, the adult sentence that was imposed on him was not executed. We agree with Cerna that the first sentence of section 260B.245, subdivision 1(a), does not support the district court’s conclusion that his prior EJJ adjudication is within the scope of section 152.01, subdivision 16a, so as to trigger the mandatory-minimum-sentence provision of section 152.023, subdivision 3(b).

But the state relies on the second sentence of section 260B.245, subdivision 1(a), which provides, “An extended jurisdiction juvenile conviction shall be treated in the same manner as an adult felony criminal conviction for purposes of the Sentencing Guidelines.” Minn. Stat. § 260B.245, subd. 1(a). The state contends that, in light of this court’s opinion in *Jiles*, the second sentence of section 260B.245, subdivision 1(a), must be applied to the mandatory-minimum-sentence provision of section 152.023, subdivision 3(b). The state’s argument has merit. The issue in *Jiles* was practically identical to the

issue in this case, notwithstanding the fact that the defendant in *Jiles* was convicted of and sentenced for a firearms offense. *See* 767 N.W.2d at 29-30 (analyzing Minn. Stat. § 609.11, subd. 8(a), (b) (2006)). The defendant in *Jiles* had a previous EJJ adjudication for a similar offense. *Id.* at 28. We considered whether the defendant's prior EJJ adjudication should be treated like an adult conviction for purposes of the mandatory-minimum-sentence provision of section 609.11, subdivision 8(b). *Id.* at 29. We relied on section 260B.245, subdivision 1(a), to conclude that the prior EJJ adjudication was a prior conviction for purposes of section 609.11, subdivision 8(b), reasoning as follows:

Although the mandatory minimum sentence at issue in this case is found in a statute and not in the sentencing guidelines, *there is no compelling reason for treating the statute differently from the guidelines.* In addition, the EJJ statute, Minn. Stat. § 260B.130, subds. 4, 5 (2006), does not seem to distinguish between “adjudication” and “conviction” or indicate a step that must occur before an “adjudication” becomes a “conviction.”

*Id.* (emphasis added).

This case is practically indistinguishable from *Jiles*. In *Jiles*, as in this case, a statute provided that a prior conviction for a similar crime required a mandatory-minimum sentence. *See id.* (analyzing Minn. Stat. § 609.11, subd. 8(b)). In *Jiles*, the defendant relied on section 260B.245, subdivision 1(a), and this court decided the case based on the second sentence of that statute. *Id.* In this case, Cerna also relies on section 260B.245, subdivision 1(a). In light of *Jiles*, it is necessary to refer to the second sentence of section 260B.245, subdivision 1(a), to determine whether Cerna's prior EJJ adjudication should be treated as an adult conviction for purposes of the applicable

mandatory-minimum-sentence statute. *See id.* As in *Jiles*, “there is no compelling reason for treating the statute differently from the guidelines.” *Id.* Thus, the district court did not err by concluding that Cerna’s EJJ adjudication is a prior conviction pursuant to section 152.01, subdivision 16a, and that Cerna is subject to the mandatory-minimum sentence of section 152.023, subdivision 3(b). *See id.* at 30.

Cerna contends that *Jiles* must be distinguished from this case because, in *Jiles*, we also relied on a statute that explicitly prohibits a person with an EJJ adjudication for a crime of violence from possessing a firearm. *See id.* But section 624.713 was not determinative in *Jiles*; it merely provided additional support for the conclusion that a prior EJJ adjudication is a prior conviction for purposes of the mandatory minimum-sentence provision of section 609.11, subdivision 8(b). *See id.* This court’s analysis of section 260B.245, subdivision 1(a), was sufficient to resolve the issue. *See id.* at 29. We are bound by the *Jiles* court’s interpretation of section 260B.245, subdivision 1(a).

In sum, the district court did not err by concluding that Cerna’s prior EJJ adjudication is a prior conviction for purposes of section 152.023, subdivision 3(b), and by imposing an executed sentence of 27 months of imprisonment, which is consistent with the applicable statutory-mandatory-minimum sentence of two years of imprisonment.

**Affirmed.**