STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0692

Bryan Morgan Holl, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed October 21, 2024
Reversed and remanded
Harris, Judge

Itasca County District Court
File No. 31-CR-17-794

Bryan Holl, Moose Lake, Minnesota (pro se appellant)

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Jacob Fauchald, Itasca County Attorney, Todd S. Webb, Chief Assistant County Attorney, Grand Rapids, Minnesota (for respondent)

Considered and decided by Smith, Tracy M., Presiding Judge; Larkin, Judge; and Harris, Judge.

NONPRECEDENTIAL OPINION

HARRIS, Judge

Self-represented appellant challenges an order denying his motion to correct his sentence, arguing that the district court abused its discretion and erred by sentencing him with a criminal-history score that included custody-status points. We reverse his sentence

and remand for resentencing and imposition of the guideline sentence without the custody-status points.

FACTS

In April 2019, a jury found appellant Bryan Holl guilty of five counts of criminal sexual conduct involving his stepdaughter.[1] The jury found that all five counts occurred from April 2012 through November 2014.[2] The victim was nine in April 2012 and eleven in November 2014. Holl appealed his conviction and sentence, and the matter was remanded to the district court for resentencing.[3]

On May 6, 2022, the district court amended Holl's sentence. The district court vacated Holl's convictions on counts 1, 3, and 5, and sentenced Holl to an executed sentence of 60 months' imprisonment on count 2 and 234 months on count 4. The

---

[1] Count 5 involved multiple acts committed over an extended period of time in violation of Minnesota Statutes section 609.343, subdivision 1(h)(iii) (2010). The remaining counts involved single incidents of sexual contact. Count 1 charged Holl with second-degree sexual conduct based on Holl's description of an incident that occurred during a deer scouting trip. Minn. Stat. § 609.343, subd. 1(g) (2010). Counts 2 and 3 charged Holl under the same statute for incidents that occurred at the residence on the couch and in the bedroom. *Id.* Count 4 charged Holl with first-degree criminal sexual conduct based on the incident referenced in count 3. Minn. Stat. § 609.342, subd. 1(a) (2010).

[2] The amended complaint alleged offense dates of April 19, 2012, to November 1, 2014, for all counts. At trial, Holl's defense counsel objected to instructing the jury on a two-year date range, while at the same time attaching a specific incident to each count. The state argued that under *State v. Rucker*, 752 N.W.2d 538, 547-49 (Minn. App. 2008), the state did not need to prove specific dates, so long as it proved the abuse occurred within a reasonable amount of time. The district court instructed the jury that the date range was "2012 through 2014" on all counts.

[3] *See State v. Holl*, 949 N.W.2d 461 (Minn. App. 2020) (affirming in part, reversing in part, and remanding to the district court for resentencing because the evidence was insufficient to corroborate Holl's confession to count 1 and the district court erred by entering convictions on counts 3 and 5), *aff'd*, 966 N.W.2d 803 (Minn. 2021).

sentencing worksheet assigned a custody-status point to each count because Holl was on probation between July 24, 2007, and September 15, 2014, for felony DWI. The district court determined that Holl's criminal-history score was two criminal-history points on count 2, and four criminal-history points on count 4.

On October 24, 2023, Holl filed a motion to correct his sentence pursuant to Minnesota Rule of Criminal Procedure 27.03, subdivision 9. In part, Holl argued that (1) the record did not establish the current offense date within the range as charged, and (2) a factfinding hearing was necessary to determine whether Holl was discharged from probation before committing the offenses because Holl completed probation within the offense-date range.[4] Holl requested a hearing (1) to determine the correct offense date and resentence without the custody-status point and (2) to determine whether the district court violated *Blakely v. Washington*, 542 U.S. 296 (2004). Following a motion hearing, the district court denied Holl's motion to correct his sentence and determined that the offense date was April 19, 2012, and Holl was on probation when he committed the offenses. The district court also determined there was no *Blakely* violation. Holl appeals.

[4] Holl also requested relief under the amelioration doctrine. See *State v. Kirby*, 899 N.W.2d 485, 488-90 (Minn. 2017) (holding that under the common law amelioration doctrine, an amendment in the law that mitigates punishment may be applied to acts committed before that amendment's effective date in cases that are not yet final when the change in law takes effect). Holl argued that the 2019 Minnesota Sentencing Guidelines modified the decay of a prior conviction and requires findings of fact or an admission of a current offense to determine if the defendant was discharged from probation before committing the current offenses. The district court determined that Holl did not meet the requirements under Minnesota Sentencing Guidelines 2.B.1.c. (Supp. 2019), and Holl does not challenge this decision on appeal.

DECISION

Holl argues that the district court erred by applying one custody-status point to each count when it calculated his criminal-history score. "[A] sentence based on an incorrect criminal history score is an illegal sentence." *State v. Maurstad*, 733 N.W.2d 141, 147 (Minn. 2007). The Minnesota Sentencing Guidelines provide that an offender is assigned one custody-status point if, when the offense was committed, the offender was "under some form of criminal justice custody," such as on probation. Minn. Sent'g Guidelines 2.B.2.a-b, 2.B.201 (Supp. 2011). The state must prove a custody-status point applies and must do so by a fair preponderance of the evidence. *State v. Maley*, 714 N.W.2d 708, 711 (Minn. App. 2006). "Fair preponderance of the evidence means that [a fact] must be established by a greater weight of the evidence. It must be of a greater or more convincing effect and . . . lead you to believe that it is more likely that the claim . . . is true than . . . not true." *Id.* at 712 (quoting *State v. Wahlberg*, 296 N.W.2d 408, 418 (Minn. 1980)). When reasonable doubt exists as to when a defendant's criminal act occurred, the issue should be resolved in the defendant's favor. *State v. Goldenstein*, 505 N.W.2d 332, 347-48 (Minn. App. 1993), *rev. denied* (Minn. Oct. 19, 1993); *see* Minn. Sent'g Guidelines cmt. 2.A.02 (Supp. 2011) (stating the date of offense is important because the date of offense might determine whether a custody-status point should be assigned). "The district court's

determination of a defendant's criminal-history score will not be reversed absent an abuse of discretion."[5] *Maley*, 714 N.W.2d at 711.

I. The district court abused its discretion when it applied a custody-status point to Holl's criminal-history score.

Holl argues that the state did not prove the custody-status point applied because there was a period of time during the offense-date range that he was not on probation. We conclude that the district court abused its discretion for three reasons, which we will discuss in turn.

First, the district court determined that, based on the amended sentencing order, the offense date was April 19, 2012. But the jury did not find that Holl committed the offenses on a specific date. Instead, the jury found that Holl committed multiple separate offenses that occurred sometime in "2012 through 2014."[6] The district court found the offense dates were April 19, 2012, which is the date that corresponds to the start of the offense-date range charged in the complaint but did not consider other facts to determine the specific date of each offense.[7] *See* Minn. Sent'g Guidelines cmt. 2.B.207 (Supp. 2011) ("While the Commission recognizes that its policy for determining the presumptive sentence states that for aggregated offenses, the earliest offense date determines the date of offense, it believes

---

[5] Respondent filed correspondent stating it agrees with the district court's analysis, but did not serve and file a brief, so we review the case on the merits. Minn. R. Civ. App. P. 142.03.

[6] The jury was not asked to determine the dates that Holl assaulted the victim.

[7] Counts 2 and 4 are not continuing offenses and therefore appellant "did not commit a criminal act every day over the period of time he sexually abused the victim." *State v. Woods*, 945 N.W.2d 414, 419 (Minn. App. 2020) (concluding that the same statute for which appellant here was convicted did not constitute a continuing offense as discussed in *State v. Washington*, 908 N.W.2d 601 (Minn. 2018)).

that eligibility for a custody status point should not be limited to the offender's status at the time of the earliest date of offense.").

Second, the district court determined that Holl was on probation when he committed the offenses because he testified as such at the first sentencing hearing on June 17, 2019. At the sentencing hearing, Holl moved for a downward dispositional departure and testified in support of his motion. The following exchange occurred during cross-examination:

> STATE: Okay. Is it true, Mr. Holl, that you have previously been convicted for a felony DWI?
> HOLL: Yes.
>
> STATE: And that was back in 2009?
> HOLL: Yes.
>
> STATE: Do you remember how long your probationary term was at that time?
> HOLL: Seven years.
>
> . . . .
>
> STATE: And that seven-year period included 2012 to 2014, is that right?
> HOLL: Yes.
>
> STATE: And that's the time period where you were abusing [victim], right?
> HOLL: Yes.
>
> . . . .
>
> STATE: And so you would agree that while you were on felony supervision, you were actively violating the law.
> HOLL: Yes

In his testimony, Holl did not admit to committing the offenses on a specific date, but stated generally that he was on probation between 2012 and 2014, and that he was abusing the

victim during this time period. Because Holl was discharged from probation on September 15, 2014, this testimony does not on its own establish that Holl was on probation when the offenses occurred.

Third, the district court determined, "there is no uncertainty as to whether [Holl] was discharged from probation before the date of the current offense." There is no uncertainty that Holl was on probation in April of 2012. But the record does not establish a specific date of each offense sufficient for the district court to determine whether a custody-status point applies during sentencing.

At trial, the victim testified to multiple instances of sexual abuse that began when she was eight and continued until she was 13. The victim also testified about an incident in the bedroom and an incident on the couch. An investigator testified that he interviewed Holl and Holl disclosed four times that he abused the victim, but Holl did not disclose specific dates. Holl stated that the abuse started when the victim was around ten years old, and the last incident occurred when the victim was around 11. Holl told the interviewer he was about 90% honest during the interview and the investigator concluded that it seemed like Holl was "holding back" during the interview. The investigator used the victim's school records to determine that the abuse started when the victim was nine. The jury found that count 2 corresponded to the couch incident and count 4 corresponded to the bedroom incident. At sentencing, the district court determined that the incidents occurred in the order charged in the complaint.[8] Overall, there was limited evidence produced at

[8] Holl's defense counsel disagreed with this determination, arguing that the order in which the incidents occurred was not clear.

trial related to the approximate dates of each offense, and we conclude that the record is insufficient to establish the specific dates of each offense within the offense-date range found by the jury.

II. The district court violated *Blakely* by independently determining the dates of each offense.

Holl argues under *Blakely* that the district court erred by applying the custody-status points to his criminal-history score because the jury did not determine the dates of each offense. 542 U.S. at 303. A *Blakely* violation occurs when the district court determines "any disputed fact essential to increase the ceiling of a potential sentence, including factual findings related to offense dates, without the defendant waiving the right to a jury's determination on that issue." *State v. Reimer*, 962 N.W.2d 196, 198 (Minn. 2021) (quotation omitted). We review a *Blakely* violation under a harmless-error standard. *State v. DeRosier*, 719 N.W.2d 900, 904 (Minn. 2006). "An error is not harmless if there is any reasonable doubt the result would have been different if the error had not occurred." *Id.*

The district court determined that, under *State v. Brooks*, 690 N.W.2d 160, 163 (Minn. App. 2004), *Blakely* did not apply to Holl's case. We disagree. While "*Blakely* does not mandate that a jury find, or a defendant admit, the existence of a custody status point," the district court cannot make independent findings that increase a defendant's sentence. *Id.* at 163-64; *see Blakely*, 542 U.S. at 304 ("When a judge inflicts punishment that the jury's verdict alone does not allow, the jury has not found all the facts which the law makes essential to the punishment, and the judge exceeds his proper authority." (quotation omitted)).

Holl's *Blakely* rights are directly implicated here. In *Woods*, we held that the 2019 sentencing guidelines required findings of fact or admission regarding the current offense date to determine whether the appellant was discharged from probation before the current offense was committed. 945 N.W.2d at 420-21. Like in *Woods*, it is necessary to find the specific date of each offense before the district court can determine whether custody-status points apply because Holl was not on probation for the entirety of the offense-date range. If the jury found the offenses occurred after September 15, 2014—the date Holl was discharged from probation—Holl would not receive a custody-status point, reducing the presumptive sentence. *See DeRosier*, 719 N.W.2d at 901 (reversing and remanding appellant's sentence because the jury did not find an offense date and the district court determined a date of offense that increased appellant's sentence in violation of *Blakely*).

Here, the jury found Holl guilty of multiple separate offenses, occurring sometime between 2012 and 2014. The jury was never asked to determine a specific date of any of the offenses. The jury made no specific findings that any of Holl's acts of criminal sexual conduct occurred on April 19, 2012. The district court independently determined the offense dates and sentenced Holl as if the single incidents of criminal sexual conduct occurred before September 15, 2014, although the evidence at trial did not clearly address the dates of each offense. *See Goldenstein*, 505 N.W.2d at 348 (holding that district court erred by sentencing as though a single incident of sexual misconduct occurred after August 1, 1989, when offense-date range was May 1987 through May 1990 and no trial testimony addressed date of offense). This erroneous determination increased Holl's sentence in violation of *Blakely*. And, although Holl testified at the sentencing hearing that

he was on probation between 2012 and 2014 and abusing the victim during this time, Holl never waived his *Blakely* rights to have the fact finder make findings on the date of the offense for the purpose of increasing his criminal-history score by a custody-status point. *DeRosier*, 719 N.W.2d at 902 ("[A] defendant's *Blakely* rights can only be waived if the waiver is knowing, intelligent, and voluntary.").

In sum, there was no evidence presented at trial that Holl committed any act of criminal sexual conduct on April 19, 2012, and the evidence did not conclusively show that the offenses occurred before mid-September 2014. The district court erred in determining the date of Holl's offense without receiving Holl's *Blakely* waiver. The district court's independent determination of the offense dates increased Holl's sentence in violation of *Blakely*. Because there is uncertainty in the record as to when the offenses were committed, there is reasonable doubt that the outcome would be different had the error not occurred, and the *Blakely* violation is not harmless. Therefore, we reverse and remand for resentencing. Because assigning custody-status points requires findings of fact regarding the offense dates to determine whether Holl was discharged from probation before the offenses were committed, and because the district court record fails to establish specific offense dates within the date range charged, on remand the district court shall impose the presumptive sentence without assigning custody-status points.

Reversed and remanded.