

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0997**

State of Minnesota,
Respondent,

vs.

Vanik Carlence Pierre,
Appellant.

**Filed April 28, 2025
Reversed and remanded
Bentley, Judge**

Jackson County District Court
File No. 32-CR-23-219

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

Kristi Meyeraan, Jackson County Attorney, Jackson, Minnesota; and

Travis J. Smith, Special Assistant County Attorney, Smith & Johnson, Slayton, Minnesota
(for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Harris, Presiding Judge; Ede, Judge; and Bentley, Judge.

NONPRECEDENTIAL OPINION

BENTLEY, Judge

In this appeal from a guilty plea and final judgment of conviction for first-degree burglary, appellant Vanik Carlence Pierre argues that the district court erred by including two prior non-Minnesota convictions in his criminal-history score at sentencing.

Respondent State of Minnesota concedes that the district court erred in this respect and agrees that the matter should be reversed and remanded for resentencing. After independently reviewing the record in this case, we agree that the state did not prove that the prior Florida convictions should be included in Pierre's criminal-history score and that the district court erred in considering them. We therefore reverse and remand for resentencing.

FACTS

The state charged Pierre with one count of first-degree burglary under Minn. Stat. § 609.582, subd. 1(a) (2022), two counts of felony domestic assault under Minn. Stat. § 609.2242, subd. 4 (2022), and two counts of felony violation of a domestic-abuse no-contact order under Minn. Stat. § 629.75, subd. 2(d)(1) (2022).

Pierre entered into a plea agreement with the state. Pursuant to the agreement, Pierre would plead guilty to first-degree burglary and admit to probation violations in two prior criminal files, and Pierre's stayed sentences for the two prior criminal files would be executed. In exchange, the state would dismiss the remaining charges. The parties agreed that Pierre's sentence would be no greater than 98 months and that he would be permitted to argue for a lesser duration. Pierre waived his right to a jury trial and the district court accepted his guilty plea.

Prior to sentencing, the department of corrections submitted a pre-sentence investigation (PSI) report to the district court. The PSI report included criminal-history points for two prior felony convictions in Florida, which added two and one-half points to Pierre's criminal-history score. Pierre's final criminal-history score was five points,

leading to a presumptive sentencing range of 84 to 117 months. The PSI report recommended a sentence in the middle of that range—98 months.

At sentencing, Pierre argued for a sentence of 84 months, whereas the state argued for 98 months. Neither the parties nor the district court contested the applicability of the prior Florida convictions. The district court sentenced Pierre to 98 months.

Pierre appeals.

DECISION

Pierre argues on appeal that the district court erred by sentencing him based on an incorrect criminal-history score. Pierre contends that the state “did not prove that either offense would be defined as a felony in Minnesota . . . or that [Pierre] had received a Minnesota felony-level sentence.”

In lieu of a brief, the state filed correspondence “conced[ing] that the district court erred” by including felony points for the Florida convictions because “the record is insufficient to allow the district court to determine that the Florida offenses would be defined as felonies in Minnesota or that the sentences [Pierre] received in Florida for those offenses would be felony level sentences under Minnesota [law].” The parties agree that the appropriate remedy is to remand for resentencing with the opportunity for the state to develop the record. We agree with the parties.

“We review determinations of a defendant’s criminal history score for abuse of discretion.” *State v. Edwards*, 900 N.W.2d 722, 727 (Minn. App. 2017), *aff’d mem.*, 909 N.W.2d 594 (Minn. 2018). “A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record.” *State v.*

Hallmark, 927 N.W.2d 281, 291 (Minn. 2019) (quotation omitted). Whether the district court based its decision on an erroneous view of the law, including its interpretation of the Minnesota Sentencing Guidelines, is a question of law that we review de novo. *See State v. Scovel*, 916 N.W.2d 550, 554 (Minn. 2018). Moreover, “a sentence based on an incorrect criminal history score is an illegal sentence,” and review of a criminal-history score calculation cannot be waived. *State v. Maurstad*, 733 N.W.2d 141, 147 (Minn. 2007). Therefore, even if the defendant did not object to the error, “[w]hen a defendant’s sentence is based on an incorrect criminal-history score, [the] case must be remanded for resentencing.” *State v. Woods*, 945 N.W.2d 414, 416-17 (Minn. App. 2020).

The Minnesota Sentencing Guidelines “provide uniform standards for the inclusion and weighting of criminal history information that are intended to increase the fairness and equity in the consideration of criminal history.” *State v. Reece*, 625 N.W.2d 822, 824 (Minn. 2001) (quotation omitted). Under the guidelines, a defendant’s presumptive sentencing range is determined based on the severity level of the offense and the defendant’s criminal-history score. Minn. Sent’g Guidelines 2 (Supp. 2023). An offender’s criminal-history score is the sum of the points assigned to their eligible prior felonies, custody status at the time of the offense, prior misdemeanors and gross misdemeanors, and prior juvenile adjudications. Minn. Sent’g Guidelines 2.B (Supp. 2023).

The guidelines provide that a non-Minnesota offense may be counted as a felony for criminal-history-score purposes only if, “based on the elements of the prior non-Minnesota offense,” it would “both be defined as a felony in Minnesota, and the offender received a sentence of 366 days or more, which includes the equivalent of a stay of

imposition.” Minn. Sent’g Guidelines 2.B.5.b (Supp. 2023); *see also State v. Pruitt*, 16 N.W.3d 856, 860 (Minn. App. 2025). The burden is on the state to “show that a prior conviction qualifies for inclusion within the criminal-history score.” *Williams v. State*, 910 N.W.2d 736, 740 (Minn. 2018).

Here, the state acknowledges that it failed to prove at sentencing that Pierre’s prior Florida convictions satisfy the conditions in guidelines section 2.B.5.b, such that the prior convictions could be counted towards Pierre’s criminal-history score. The district court therefore abused its discretion in basing Pierre’s sentence on an unsubstantiated criminal-history score.

The appropriate remedy in this circumstance is to reverse Pierre’s sentence and remand for further proceedings. Because Pierre did not contest the inclusion of the Florida convictions in his criminal-history score at the time of sentencing, the state on remand “is permitted to further develop the sentencing record so that the district court can appropriately make its determination.” *State v. Outlaw*, 748 N.W.2d 349, 356 (Minn. App. 2008), *rev. denied* (Minn. July 15, 2008).

Reversed and remanded.