STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0762

State of Minnesota,
Respondent,

vs.

Tramaine Smith, a/k/a Darryl Green,
Appellant.

Filed June 19, 2017
Affirmed
Bjorkman, Judge

Hennepin County District Court
File No. 27-CR-13-34512

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

Michael O. Freeman, Hennepin County Attorney, Elizabeth R. Johnston, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Hooten, Judge; and Reyes, Judge.

U N P U B L I S H E D O P I N I O N

BJORKMAN, Judge

Appellant challenges the denial of his petition for postconviction relief in this controlled-substance case, arguing that he is entitled to be resentenced in accordance with the 2016 Minnesota Drug Sentencing Reform Act (the DSRA). We affirm.

FACTS

A jury found appellant Tramaine Smith a/k/a Darryl Green[1] guilty of second-degree controlled-substance crime and fifth-degree controlled-substance crime in connection with an incident that occurred on October 13, 2013. On February 10, 2016, the district court sentenced Green to 92 months in prison on the second-degree controlled-substance offense. Green appealed. This court subsequently stayed the appeal to allow Green to pursue postconviction relief.

In his postconviction petition, Green argued that he is entitled to be resentenced under the DSRA because his conviction was not final when the DSRA went into effect. The district court denied the petition after concluding that the DSRA does not apply to crimes committed prior to August 1, 2016, the date the DSRA went into effect. This court then dissolved the stay of Green's appeal.

D E C I S I O N

Green was convicted of second-degree controlled-crime based on his possession of 7.3 grams of cocaine. On the date of the offense, possession of more than six grams of

[1] During the district court proceedings, appellant indicated Darryl Green is his true name.

cocaine constituted second-degree controlled-substance crime. Minn. Stat. § 152.022, subd. 2(a)(1) (2012). The legislature subsequently enacted the DSRA. *See* 2016 Minn. Laws ch. 160, §§ 1-22, at 576-92. Under the mitigated provisions of the DSRA, possession of 7.3 grams of cocaine is a fourth-degree controlled-substance crime. Minn. Stat. § 152.024, subd. 2(2) (2016). Green contends that the DSRA applies retroactively because his conviction was not final on the act's effective date. We are not persuaded.

The retroactivity of a statute is a question of statutory interpretation, which we review de novo. *State v. Basal*, 763 N.W.2d 328, 335 (Minn. App. 2009). As a general rule, "[n]o law shall be construed to be retroactive unless clearly and manifestly so intended by the legislature." Minn. Stat. § 645.21 (2016). When a law is amended, "the new provisions shall be construed as effective only from the date when the amendment became effective." Minn. Stat. § 645.31 (2016).

In *State v. Coolidge*, the supreme court established an exception to this general rule, holding that "a statute mitigating punishment is applied to acts committed before its effective date, as long as no final judgment has been reached." 282 N.W.2d 511, 514 (Minn. 1979). A judgment of conviction is final when direct appeals are exhausted or the time for filing a direct appeal has expired. *State v. Losh*, 721 N.W.2d 886, 893-94 (Minn. 2006).

The *Coolidge* exception to the rule against retroactivity has since been narrowed. In *Edstrom v. State*, the supreme court held that *Coolidge* does not apply to statutes containing a contrary statement of intent from the legislature. 326 N.W.2d 10, 10 (Minn. 1982). This court has since addressed the application of *Coolidge* and *Edstrom* in two

published opinions. In *State v. McDonnell*, we concluded that changes to an impaired-driving statute did not apply retroactively because the legislature indicated that the amendment would be "effective August 1, 2003, and appl[y] to violations committed on or after that date." 686 N.W.2d 841, 846 (Minn. App. 2004), *review denied* (Minn. Nov. 16, 2004). In *Basal*, we determined that language indicating that a 2007 statutory amendment "would become effective on January 1, 2008," was equivalent to the language at issue in *Edstrom*. 763 N.W.2d at 336. We concluded that the legislature had clearly expressed that it "did not intend for the amendment to apply to conduct occurring before the effective date." *Id.*

As in *McDonnell*, the legislature clearly stated that it did not intend the DSRA to apply retroactively. The DSRA provides that the amended Minn. Stat. § 152.024, subd. 2(2) "is effective August 1, 2016, and applies to crimes committed on or after that date." 2016 Minn. Laws ch. 160, § 6, at 583. Green acknowledges that this court found such language to be sufficient to establish the legislature did not intend for an amendment to be retroactive in *McDonnell*. But he argues that such language "merely restates the general rule that new laws are not retroactive" and is insufficient to establish such an intent. In essence, Green asks this court to overturn *McDonnell*. But we are bound by our published opinions. *State v. M.L.A.*, 785 N.W.2d 763, 767 (Minn. App. 2010), *review denied* (Minn. Sept. 21, 2010). And our jurisprudence is consistent with *Edstrom*. Because the legislature clearly stated that the DSRA does not apply retroactively, Green is not entitled to be resentenced.

Affirmed.