STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0592

State of Minnesota,
Respondent,

vs.

Michael Anthony Lee,
Appellant.

Filed May 19, 2025
Reversed and remanded
Larson, Judge

Carlton County District Court
File No. 09-CR-22-2121

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

Lauri A. Ketola, Carlton County Attorney, Jeffrey L.H. Boucher, Chief Deputy County Attorney, Carlton, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Leah C. Graf, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Slieter, Judge; and Larson, Judge.

SYLLABUS

For purposes of permissive consecutive sentencing under the Minnesota Sentencing Guidelines 2.F.2.a(1)(i) (Supp. 2021), a "prior felony sentence" does not include a conditional-release term.

OPINION

LARSON, Judge

Appellant Michael Anthony Lee challenges the district court's decision to impose a sentence consecutive to prison time served following revocation of conditional release for a prior offense. Specifically, Lee challenges the district court's interpretation of the phrase "prior felony sentence" in Minn. Sent'g Guidelines 2.F.2.a(1)(i) as including a conditional-release term. We conclude that the guideline language is ambiguous. But, after applying the relevant canons of construction, we discern that the phrase "prior felony sentence" in this context does not include a conditional-release term. Accordingly, we reverse and remand for resentencing.

FACTS

Lee is a civilly committed sex offender who is a patient in the Minnesota Sex Offender Program (MSOP) at Moose Lake. At the time of the current offense, Lee had served his term of imprisonment and supervised release in connection with a prior assault of an MSOP employee but was still serving a term of conditional release. The current offense occurred on June 30, 2022, when Lee struck an MSOP employee and made intimidating statements. In response, the Minnesota Department of Corrections (DOC) held a conditional-release-violation hearing on July 19, 2022, revoked Lee's conditional release, and returned Lee to a DOC facility for 365 days with the possibility of returning to MSOP early for good behavior.

On December 5, 2022, while Lee was serving his revocation term at the DOC facility, respondent State of Minnesota charged Lee with fourth-degree assault on a secure-

treatment-facility employee, under Minn. Stat. § 609.2231, subd. 3a(b)(1) (2020), and threats of violence, under Minn. Stat. § 609.713, subd. 1 (2020), for the same conduct underlying the revocation of his conditional release. At his plea hearing, pursuant to a plea agreement, Lee pleaded guilty to assault and the state dismissed the threats-of-violence charge. The parties agreed to discuss whether sentencing should be consecutive or concurrent and any applicable jail credit for Lee's incarceration due to the conditional-release violation at the sentencing hearing. The district court held Lee's sentencing hearing approximately four months later. At the sentencing hearing, after listening to the parties' arguments and accepting Lee's guilty plea, the district court determined that the sentencing guidelines allowed for permissive consecutive sentencing. Accordingly, the district court sentenced Lee to one year and one day on the assault charge, to be served consecutively to the time he served for his conditional-release violation.

Lee appeals.

ISSUES

For purposes of permissive consecutive sentencing under Minn. Sent'g Guidelines 2.F.2.a(1)(i), does the phrase "prior felony sentence" include a conditional-release term?

ANALYSIS

Lee challenges the district court's decision to impose a permissive consecutive sentence. Lee argues that the phrase "prior felony sentence" in guideline 2.F.2.a(1)(i) plainly does not include a conditional-release term or, if the guideline is ambiguous, that the canons of construction indicate that the Minnesota Sentencing Guidelines Commission

(the commission)[1] did not intend to include a conditional-release term within the meaning of this phrase. The state disagrees, arguing the phrase "prior felony sentence" in guideline 2.F.2.a(1)(i) plainly includes a conditional-release term and, even if it does not, the canons of construction show the commission intended to include a conditional-release term. We review de novo the legal interpretation of the sentencing guidelines. *State v. Strobel*, 932 N.W.2d 303, 306 (Minn. 2019).

To address this legal question, we begin with a broad explanation of the relevant sentencing law and guidelines, and then proceed to interpret guideline 2.F.2.a(1)(i).

A.

The Minnesota Sentencing Guidelines govern sentences for felony offenses. Minn. Stat. § 244.09, subd. 5; *see also State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016) ("The Minnesota Sentencing Guidelines establish presumptive sentences for felony offenses."). The purpose of the guidelines "is to establish rational and consistent sentencing standards that promote public safety, reduce sentencing disparity, and ensure that the sanctions imposed for felony convictions are proportional to the severity of the conviction offense and the [defendant's] criminal history." Minn. Sent'g Guidelines 1.A (Supp. 2021); *see also State v. Misquadace*, 644 N.W.2d 65, 68 (Minn. 2002). "Accordingly, the primary

[1] The legislature provides the commission with the authority to "promulgate Sentencing Guidelines for the district court." Minn. Stat. § 244.09, subd. 5 (2024). Accordingly, except for modifications to the sentencing-guidelines grid, the commission may modify the guidelines in accordance with the commission's procedural rules and without legislature approval. *Id.*, subd. 11 (2024). "Therefore, our objective when interpreting the Guidelines is to effectuate the intent of the [commission]." *State v. Woolridge Carter*, 9 N.W.3d 839, 843 (Minn. 2024).

relevant sentencing criteria are the offense of conviction and the [defendant's] criminal history." *State v. Jackson*, 749 N.W.2d 353, 357 (Minn. 2008) (quotation omitted).

Based on these two primary sentencing factors, the guidelines inform the district court on appropriate presumptive sentences to impose. *See* Minn. Sent'g Guidelines 1.B.13, 4.A-C (Supp. 2021); *see also* Minn. Stat. § 244.09, subd. 5. Some guideline sentences provide for a "presumptive stayed sentence" that places the defendant on probation.[2] *See* Minn. Sent'g Guidelines 1.B.13.a(2), 3.A, 4.A-C (Supp. 2021). Other guideline sentences provide for a "presumptive commitment" to DOC, to serve an executed sentence in a correctional facility. *See* Minn. Sent'g Guidelines 1.B.13.a(1), 4.A-C; *see also* Minn. Stat. §§ 609.11, subd. 9, .135, subd. 1 (2024); *State ex rel. Duncan v. Roy*, 887 N.W.2d 271, 276 (Minn. 2016). When the guidelines provide a sentencing range, the district court has discretion to pronounce any sentence within that range. *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014) (quoting Minn. Sent'g Guidelines 2.D.1 (2012)).

When the district court imposes an executed sentence, the "sentence consists of two parts: (1) a specified minimum term of imprisonment that is equal to two-thirds of the executed sentence and (2) a specified maximum supervised release term that is equal to one-third of the executed sentence." Minn. Stat. § 244.101, subd. 1 (2024); *see also* Minn. Sent'g Guidelines 1.B.7 (Supp. 2021) (defining "executed sentence" as "the total period of time for which an inmate is committed to the custody of the [DOC]" and "consist[ing] of

[2] "Probation" is supervision in the community subject to conditions imposed by the district court when the defendant does not receive an executed sentence. *See* Minn. Stat. §§ 609.02, subd. 15, .135, subd. 1(a)(2) (2024).

two parts: a minimum term of imprisonment and a maximum period of supervised release"). Minnesota law requires DOC to "release [defendants] after they serve their term of imprisonment" and to "supervise [defendants] during their period of supervised release." *State ex rel. Marlowe v. Fabian*, 755 N.W.2d 792, 795 (Minn. App. 2008); *see also* Minn. Stat. §§ 243.05, subds. 2, 6, 244.05, subd. 1, .101, subds. 1-2 (2024); *State v. Snyder*, 984 N.W.2d 590, 593 (Minn. App. 2023), *aff'd*, 2 N.W.3d 302 (Minn. 2024). If a defendant violates a condition of their supervised release, DOC may revoke supervised release and reincarcerate the defendant for a period not to exceed the time remaining in the defendant's executed sentence. Minn. Stat. § 244.05, subd. 3 (2024); *see also Snyder*, 984 N.W.2d at 593.

Separate from a period of imprisonment and supervised release, certain offenses require that the commissioner of corrections place the defendant on conditional release for a specific time-period following their release from prison. *See, e.g.*, Minn. Stat. §§ 169A.276, subd. 1(d), 609.3455, subds. 6-7 (2024); Minn. Sent'g Guidelines 2.E.3 (Supp. 2021). Although distinct from the supervised-release term, DOC "administers a conditional-release term under the same provisions governing supervised release." *Snyder*, 984 N.W.2d at 593. And "[a] violation of any conditional-release provision may result in DOC reincarcerating the defendant for a time, up to and including the expiration of the conditional-release term." *Id.*; *see also* Minn. Stat. §§ 169A.276, subd. 1(d), 609.3455, subd. 8(c) (2024).

In addition to providing guidance on the appropriate length of sentences, the guidelines also provide detailed instructions for sentencing a defendant who is convicted

of multiple offenses. *See* Minn. Sent'g Guidelines 2.F (Supp. 2021). If a defendant has convictions for multiple offenses, sentences are imposed concurrently or consecutively. *See id.*; *see also* Minn. Stat. § 609.15 (2024) (providing, in part, that the district court "shall specify whether the [multiple] sentences shall run concurrently or consecutively," and describing appropriate follow-up conditions based on the district court's decision). "When the [district] court orders sentences to be 'concurrent,' the [district] court is ordering that multiple sentences be served at the same time." Minn. Sent'g Guidelines 1.B.2 (Supp. 2021). "When the [district] court orders sentences to be 'consecutive,' the [district] court is ordering that multiple sentences be served one after the other . . . ." Minn. Sent'g Guidelines 1.B.3 (Supp. 2021); *see also State v. Rannow*, 703 N.W.2d 575, 577-79 (Minn. App. 2005).

"Generally, when [a defendant] is convicted of multiple current offenses, or when there is a prior felony sentence that has not expired or been discharged, concurrent sentencing is presumptive." Minn. Sent'g Guidelines 2.F; *see also* Minn. Stat. § 609.15, subd. 1(a) (stating that "sentences shall run concurrently" if district court does not specify otherwise). But under limited circumstances, the district court may impose a consecutive sentence. *See Rannow*, 703 N.W.2d at 577. "Consecutive sentences are a more severe sanction because the intent is to confine the [defendant] for a longer period than under concurrent sentences." Minn. Sent'g Guidelines cmt. 2.F.01. Because consecutive sentences are a more severe sanction, the guidelines specify when consecutive sentencing is *required* (presumptive), and when the district court has *discretion* to impose a consecutive sentence (permissive). *See* Minn. Sent'g Guidelines 2.F.1-2. At issue in this

case is the guideline regarding permissive consecutive sentences.[3] *See* Minn. Sent'g Guidelines 2.F.2.

Functionally, when consecutive sentences are imposed, the service of the second term of imprisonment begins at the end of imprisonment arising from the first sentence. *See* Minn. Sent'g Guidelines 2.F. The comments to guideline 2.F provide the district court with further guidance on how to implement consecutive sentences in various contexts. For example, if the imposed "sentence is executed consecutively to another executed sentence on the same day and before the same court, the [DOC] aggregates the separate durations into a single fixed sentence." Minn. Sent'g Guidelines cmt. 2.F.02. If, however, the "two sentences are executed on different days or before different courts, the second sentence is consecutive to the first." Minn. Sent'g Guidelines cmt. 2.F.03. And if "the [defendant] has not yet been placed on supervised release for the first sentence at the time the second sentence is executed, then the terms of imprisonment will be aggregated" and the supervised-release terms for both sentences "will run at the same time as each other" after the second term of imprisonment is served. *Id.* But if a defendant "has already been placed on supervised release by the time the second, consecutive sentence is executed, . . . the first supervised release term stops running" while the defendant serves the second term of imprisonment. Minn. Sent'g Guidelines cmt. 2.F.04. The remaining balance of the first supervised-release term is then served at the same time as the second supervised-release term, after the term of imprisonment is completed. *Id.*

[3] Lee's sentence does not qualify for presumptive consecutive sentencing. *See* Minn. Sent'g Guidelines 2.F.1.

With this overview in mind, we analyze the guideline language at issue in this appeal.

B.

The parties contest the meaning of guideline 2.F.2.a(1)(i) and whether it allowed the district court to impose a permissive consecutive sentence in this case. To analyze this issue, we apply the principles of statutory interpretation. *See Woolridge*, 9 N.W.3d at 843. Our objective when interpreting the sentencing guidelines is to effectuate the intent of the commission. *Id.* When interpreting the guidelines, we presume the commission acted with "full knowledge of existing law, including the common law." *Id.* (emphasis omitted) (quoting *Comm'r of Revenue v. Dahmes Stainless, Inc.*, 884 N.W.2d 648, 656 (Minn. 2016)). "We also presume that plain and unambiguous language in the Guidelines manifests the intent of the Commission." *Id.* Only when the language is subject to more than one reasonable interpretation may we "consider extrinsic sources and canons." *Id.* at 844.

To analyze whether a sentencing guideline is plain and unambiguous, we analyze "the [guideline's] text, structure, and punctuation" and use the canons of interpretation. *State v. Pakhnyuk*, 926 N.W.2d 914, 921 (Minn. 2019); *see also State v. Riggs*, 865 N.W.2d 679, 682 n.3 (Minn. 2015) (distinguishing between preambiguity "canons of interpretation" and postambiguity "canons of construction"). The preambiguity canons of interpretation include the ordinary-meaning canon, *see Riggs*, 865 N.W.2d at 682, the whole-statute canon, *see Riggs*, 865 N.W.2d at 683, the canon against surplusage, *see State*

v. Thompson, 950 N.W.2d 65, 69 (Minn. 2020), and the presumption of consistent usage, *see State v. Schmid*, 859 N.W.2d 816, 822-23 (Minn. 2015).

As relevant here, guideline 2.F.2.a(1)(i) provides:

> a. Criteria for Imposing a Permissive Consecutive Sentence. Consecutive sentences are permissive (may be given without departure) only in the situations specified in this section.
>
> (1) Specific Offenses; Presumptive Commitment. Consecutive sentences are permissive if the presumptive disposition for the current offense(s) is commitment . . . and paragraph (i) . . . applies. . . .
>
> (i) Prior Felony Sentence. A current felony conviction for a crime on the list in section 6 of offenses eligible for permissive consecutive sentences may be sentenced consecutively to a *prior felony sentence* that has not expired or been discharged if the prior felony conviction:
>
> (a) is for a crime on the list in section 6 of offenses eligible for permissive consecutive sentences; or
>
> (b) is from a jurisdiction other than Minnesota and would be equivalent to a crime on the list in section 6.
>
> The presumptive disposition for the prior offense(s) must also be commitment as outlined in section 2.C.

(Emphasis added.)[4]

Lee argues that the phrase "prior felony sentence" unambiguously excludes a period of conditional release. While acknowledging that the guidelines do not define the phrase "prior felony sentence," Lee points to two definitions to support his plain-language

[4] Lee's convictions for fourth-degree assault qualify for permissive consecutive sentencing under Minn. Sent'g Guidelines 6 (Supp. 2021).

interpretation. First, Lee highlights that the guidelines define "[s]tayed sentences . . . as a stay of imposition or a stay of execution." *See* Minn. Sent'g Guidelines 1.B.19 (Supp. 2021). Second, Lee underscores that the guidelines define an "executed sentence . . . as the total period of time for which an inmate is . . . (sent to prison). . . . [T]he sentence consists of two parts: a minimum term of imprisonment and a maximum period of supervised release." *See* Minn. Sent'g Guidelines 1.B.7. According to Lee, because the defined terms that contain the word "sentence" do not contemplate a conditional-release term, the plain language of the phrase "prior felony sentence" does not include a conditional-release term.

Lee further argues that application of the whole-statute canon demonstrates that the phrase "prior felony sentence" does not include conditional release. *See Woolridge*, 9 N.W.3d at 845 (noting whole-statute canon is a preambiguity canon). The whole-statute canon "provides that a [guideline] should be read and construed as a whole so as to harmonize and give effect to all its parts." *State v. Johnson*, 995 N.W.2d 155, 160 (Minn. 2023). Specifically, Lee points to the introduction of guideline 2.F to support his interpretation:

> Generally, when [a defendant] is convicted of multiple current offenses, or when there is a prior felony sentence that has not expired or been discharged, concurrent sentencing is presumptive.
>
> This section sets forth the criteria for imposing consecutive sentences. Imposition of consecutive sentences in any situation not described in this section is a departure. When the court imposes consecutive sentences, the court must sentence the offenses in the order in which they occurred.

> If two or more sentences are consecutively *executed* at the same time and by the same court, the Commissioner of Corrections must aggregate the sentence durations into a single fixed sentence. The aggregate term of imprisonment must be served before the aggregate *supervised release* period.
>
> If a sentence is *executed* consecutively to an earlier *executed* sentence (*executed* at an earlier time or by a different court), and the [defendant] has not yet been placed on *supervised release* for the earlier *executed* sentence, the Commissioner of Corrections must aggregate both terms of imprisonment into a single, fixed term of imprisonment. The [defendant] will serve the longer of the two *supervised release* terms.
>
> If a sentence is *executed* consecutively to an earlier *executed* sentence after the *supervised release* date for the earlier sentence, any remaining *supervised release* term from the earlier *executed* sentence is tolled while the [defendant] serves the consecutive term of imprisonment. The [defendant] will serve what remains of the previously tolled *supervised release* term or the *supervised release* term for the consecutive sentence, whichever is longer.

Minn. Sent'g Guidelines 2.F (emphases added).

Lee highlights that guideline 2.F specifically references executed sentences and supervised release numerous times but "makes no provision for the imposition of a consecutive sentence while the defendant is subject only to a term of conditional release." According to Lee, this leads to only one reasonable interpretation, that a "prior felony sentence" does not include conditional release.

The state offers a competing plain-language interpretation of "prior felony sentence," arguing that the phrase includes a conditional-release term. To support its plain-language interpretation, the state relies on appellate-court decisions concluding that a

conditional-release term is a mandatory part of a "sentence" in other contexts.[5] For example, in *State v. Brown*, the supreme court noted that "[t]he guidelines referred to the requirement that an executed sentence for Brown's offense include the conditional release term," when assessing whether Brown entered a voluntary and intelligent plea. 606 N.W.2d 670, 672, 673 n.3, 674-75 (Minn. 2000). And in *Stone v. State*, we described conditional release as "a mandatory aspect of the sentence to be imposed by the district court," when deciding whether the imposition of a conditional-release term needed to be submitted to the jury and proved beyond a reasonable doubt. 675 N.W.2d 631, 634-35 (Minn. App. 2004) (citing *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000)).

We discern that both parties present reasonable interpretations of the phrase "prior felony sentence." Starting with the state's proposed interpretation, it is reasonable that "prior felony sentence" includes conditional release under the guidelines when we apply the ordinary-meaning canon. *See Riggs*, 865 N.W.2d at 682 (noting the preambiguity canon that we construe "words and phrases . . . according to rules of grammar and according to their common and approved usage" (quoting Minn. Stat. § 645.08(1) (2014))). Looking at the dictionary definition of the word "sentence," a "sentence" broadly means "the punishment imposed on a criminal wrongdoer." *Black's Law Dictionary* 1636 (11th ed. 2019) (defining sentence); *see also State v. Jama*, 923 N.W.2d 632, 636 (Minn. 2019)

[5] The state relies, in part, on our previous decision in *State v. Bissell*, that focused its interpretation on the phrase "discharge from or expiration of the sentence." No. A17-1804, 2018 WL 4690065 (Minn. App. Oct. 1, 2018), *rev. denied* (Minn. Dec. 18, 2018); *see also* Minn. Sent'g Guidelines 2.B.1(c) (2016). But *Bissell* is not binding and did not interpret the phrase "prior felony sentence."

("In determining the plain and ordinary meaning of a word or phrase, we may consider dictionary definitions."). And, as the state points out, appellate courts have specifically applied this broader conception of a "sentence" to conditional release in contexts outside the sentencing guidelines. *See State v. Jones*, 659 N.W.2d 748, 752-53 (Minn. 2003) (concluding district court's imposition of mandatory-conditional release term does not require any additional fact finding); *State v. Calmes*, 632 N.W.2d 641, 648-49 (Minn. 2001) (holding defendant's due-process rights were not violated when district court amended defendant's sentence to include conditional-release term); *State v. Jumping Eagle*, 620 N.W.2d 42, 44-45 (Minn. 2000) (determining that sentencing court must either modify sentence or allow guilty plea to be withdrawn when defendant is subject to mandatory conditional release that effectively increases their sentence beyond court-accepted plea agreement); *Kubrom v. State*, 863 N.W.2d 88, 92 (Minn. App. 2015) ("When a statute mandates a period of conditional release, any sentence that omits the conditional-release period is unauthorized."); *Stone*, 675 N.W.2d at 634-35 (concluding conditional-release period is part of a defendant's maximum penalty, and does not unlawfully extend a sentence past crime's statutory maximum sentence).[6]

[6] To support its proposed interpretation if the statute is ambiguous, the state also relies on *Engquist v. Loyas*, 803 N.W.2d 400, 404-05 (Minn. 2011), for the proposition that "[t]he prior construction canon provides that the Court's prior interpretations of a statute guide the Court in determining its meaning." But in *Engquist*, and the cases it cites, the supreme court relied on prior interpretations of the *same statute*, not the meaning of the same words in different contexts. *See id.* at 404-06; *see also Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 172 (Minn. 2010) (interpreting statutory phrase "without notice" consistent with prior caselaw regarding same statute); *Sandal v. Tallman Oil Co.*, 214 N.W.2d 691, 692-93 (Minn. 1974) (analyzing prior interpretations of same statutory

But, as the supreme court has noted, "the dictionary is not foolproof or failsafe." *State v. Scovel*, 916 N.W.2d 550, 555 (Minn. 2018). And, in our precedential caselaw, we have specifically observed that the word "sentence" can have different meanings. In *Pageau v. State*, we addressed "whether 'stacked' probationary periods automatically result when a district court pronounces a stayed consecutive sentence." 820 N.W.2d 271, 275 (Minn. App. 2012). To resolve this question, we had to decide "whether the term 'sentence' is clearly defined as including a probationary period imposed as a condition of a stayed sentence, so that a district court's designation of the sentence as consecutive applies to both the period of incarceration and the period of probation." *Id.* at 276. Like here, the state argued that we could rely on "the commonly-understood definition" that a "sentence" includes probation and other conditions. *Id.* We disagreed, observing that the legislature does not have a consistent definition of the word "sentence." *Id.* at 276-77. We specifically noted that the legislature, at times, includes probation in its usage of the word "sentence," and, in other circumstances, excludes probation. *Id.* Therefore, we concluded that the statute did not clearly define the word "sentence." *Id.* at 277.

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phrase to determine if circumstances warranted an exception under same statute in immediate case); *Zochrison v. Redemption Gold Corp.*, 274 N.W. 536, 540 (Minn. 1937) (distinguishing case from other caselaw that interpreted and applied same statute); *Allen v. Indep. Sch. Dist. No. 17*, 216 N.W. 533, 534 (Minn. 1927) (relying on stare decisis to apply same construction of statute that court previously interpreted in a different case). Here, the cases the state relies upon to assist our court in interpreting the phrase "sentence" did not interpret the phrase in the context of the guidelines. And because there are no prior decisions interpreting the guideline language at issue here, we do not apply the prior-construction canon.

After applying the whole-statute canon, we reach a similar determination in this case. The introductory language in guideline 2.F indicates that the guideline describes "the criteria for imposing consecutive sentences" and notes that the "[i]mposition of consecutive sentences in any situation not described in this section is a departure." Thereafter, guideline 2.F explains the process a district court should use when imposing consecutive sentences, including specific examples for how a district court should impose consecutive sentences when a person is on supervised release. But it provides no guidance on how a district court should impose a sentence when the person is only serving a conditional-release term. *See* Minn. Sent'g Guidelines 2.F. Given that guideline 2.F only explains the application of a consecutive sentence with regard to supervised release and not conditional release, we conclude that Lee presents a reasonable interpretation that "prior felony sentence" in the context of guideline 2.F.2.a(1)(i) does not include a period of conditional release.

In response to our request for supplemental briefing, the state argues that Lee's interpretation is not reasonable if we apply two preambiguity canons of interpretation: the presumption of consistent usage and the canon against surplusage. *See Thompson*, 950 N.W.2d at 69-70 (analyzing these canons as "intrinsic canons" to determine whether phrase at issue was plain and unambiguous in light of entire statute). We are not persuaded that either makes Lee's interpretation unreasonable.

Beginning with the presumption of consistent usage, "when different words are used in the same context, we may assume the words have different meanings." *State v. Culver*, 941 N.W.2d 134, 139 (Minn. 2020); *see also Transp. Leasing Corp. v. State*, 199

N.W.2d 817, 819 (Minn. 1972) ("Distinctions of language in the same context must be presumed intentional and must be applied consistent with that intent."). The state argues that Lee's interpretation of "prior felony sentence" conflicts with this canon because it requires the phrase to have the same meaning as "executed sentence" and "term of imprisonment." We disagree. As Lee asserted at oral argument, under Lee's proposed interpretation, "prior felony sentence" does not encompass conditional release, but it might encompass other situations, such as when a person has a stayed sentence. *See* Minn. Sent'g Guidelines 1.B.19. In fact, at least one guideline specifically contemplates a circumstance where this might occur. Minn. Sent'g Guidelines 2.F.2.a(2)(i) (allowing permissive consecutive sentencing when a defendant "is convicted of felony escape from lawful custody . . . and the [defendant] did not escape from an executed term of imprisonment, disciplinary confinement, or reimprisonment"). Thus, the presumption of consistent usage does not aid our evaluation of the plain meaning.

Moving to the canon against surplusage, it "favors giving each word or phrase in a statute a distinct, not an identical, meaning." *Thompson*, 950 N.W.2d at 69 (quotation omitted). The state argues that Lee does not present a reasonable interpretation because applying his proposed meaning of "prior felony sentence" to exclude conditional release makes the phrase "expired or been discharged" in guideline 2.F.2.a(1)(i) superfluous. We disagree. As both parties admit, a sentence is not "expired or discharged" when a defendant remains on supervised release because DOC may revoke supervised release and reincarcerate the defendant for the time remaining on the executed sentence if the defendant violates a supervised-release term. *See* Minn. Stat. § 244.05, subd. 3; *Snyder*, 984 N.W.2d

at 593. Thus, Lee's interpretation does not make the phrase "expired or been discharged" superfluous.

Because both Lee and the state present reasonable interpretations of guideline 2.F.2.a(1)(i), we conclude that the phrase "prior felony sentence" is ambiguous. *See Woolridge*, 9 N.W.3d at 844.

C.

Having determined that guideline 2.F.2.a(1)(i) is ambiguous, we now turn to the canons of construction to discern the commission's intent. *See State v. Stewart*, 923 N.W.2d 668, 677, 679-80 (Minn. App. 2019) (looking to canons of construction to interpret an ambiguous sentencing guideline in accordance with commission's intent), *rev. denied* (Minn. Apr. 16, 2019). In the context of the guidelines, we may consider the circumstances of the guidelines' enactment, prior versions of the guidelines, the guidelines' purpose, and the consequences of a particular interpretation to ascertain the commission's intention. *See* Minn. Stat. § 645.16 (2024) (listing factors to consider for determining legislature's intention "[w]hen the words of a law are not explicit"); *Pakhnyuk*, 926 N.W.2d at 924 (listing factors to consider to ascertain legislature's intent); *Scovel*, 916 N.W.2d at 556 (explaining that we may consider circumstances of guidelines' enactment and "former law" if guidelines are ambiguous). We may also consider "legislative history," including publicly available documents regarding the commission's deliberations, *Scovel*, 916 N.W.2d at 557-58, 557 n.12, and commission policy and official interpretations, *State v. Campbell*, 814 N.W.2d 1, 5 (Minn. 2012). Upon considering these sources, we conclude that the "better" interpretation of the phrase "prior felony sentence" in the context of

guideline 2.F.2.a(1)(i) is the one advanced by Lee: that a "prior felony sentence" does not include a conditional-release term. *See State v. Hayes*, 826 N.W.2d 799, 804-05 (Minn. 2013) (resolving ambiguity by determining which interpretation of ambiguous language is "better"); *see also In re Civ. Commitment of Benson*, 12 N.W.3d 711, 716-17 (Minn. 2024) (assessing the "better" interpretation of an ambiguous statute).

We begin by evaluating the circumstances of enactment. The guidelines were first enacted in 1980 and contained a consecutive sentencing provision. Minn. Sent'g Guidelines 2.F (1980). The 1980 version of the guidelines stated that a district court could impose a consecutive sentence only in limited circumstances, including "[w]hen a *prior felony sentence* for a crime against a person ha[d] not expired or been discharged and one or more of the current felony convictions [was] for a crime against a person, and when the sentence for the most severe current conviction [was] executed according to the guidelines." *Id.* (emphasis added). The 1980 version of the guidelines also provided that "service of the sentence for the current conviction shall commence upon the completion of any incarceration arising out of the prior sentence" for defendants "who, while on probation, parole, or supervised release, commit[ted] a new offense for which a consecutive sentence [was] imposed." *Id.*

Thus, the 1980 version of the guidelines contained the "prior felony sentence" language and contemplated permissive consecutive sentencing when the defendant was on "probation, parole, or supervised release," but made no mention of conditional release. *Id.* Indeed, it was not until 1992 that the legislature first enacted a law requiring a conditional-

release term.[7] *See Brown*, 606 N.W.2d at 672 n.2 (discussing codification history). Consequently, at the time the commission originally used the phrase "prior felony sentence," it could not have encompassed a conditional-release term because that concept did not exist in Minnesota law. Said another way, in 1980 when the commission originally used the phrase "prior felony sentence," it did not intend to include a "then-nonexistent" conditional-release term. *See State v. Willis*, 898 N.W.2d 642, 646 n.5 (Minn. 2017) (reasoning that, because statutory right to restitution hearing did not exist when rule of evidence was promulgated, it was "unlikely that the drafters" of the rule "intended" a term within the rule to "encompass the then-nonexistent" hearing). The lack of change to the language once the legislature imposed conditional-release obligations therefore indicates that the commission did not intend to refer to conditional release when it used that phrase. *Cf. Engquist*, 803 N.W.2d at 406 (reasoning that, when the legislature fails to act following a court's interpretation of a statute, "we assume that the Legislature has acquiesced in our interpretation").

We next consider the history of the consecutive sentencing provision, specifically that the commission has historically identified conditional release as something different than a "prior felony sentence" within guideline 2.F in prior versions of the guidelines. In 2008, the commission amended Minn. Sent'g Guidelines 2.F.1 (2008) to add a defendant's

[7] The legislature later enacted additional conditional-release periods. *See* 2006 Minn. Laws ch. 260, art. 1, §§ 38, at 729-30; 39, at 730 (use of minors in a sexual performance and child pornography); 2005 Minn. Laws ch. 136, art. 17, § 11, at 1128-29 (fourth-degree assault); 2005 Minn. Laws ch. 136, art. 3, § 8, at 947-48 (failure to register); 2001 Minn. Laws 1st Spec. Sess. ch. 9, art. 19, § 9, at 2699-2700 (felony DWI).

status on "conditional release" as a circumstance that triggered a presumptive consecutive sentence. In doing so, the commission demonstrated its specific intent that consecutive sentences should apply in the context of conditional release by explicitly using that phrase within the guideline. This language remained until 2015. Minn. Sent'g Guidelines 2.F.1.a(1)(iv) (Supp. 2015). In 2016, the commission removed this language from guideline 2.F.1 and added the current language that contemplates consecutive sentences to an earlier executed sentence only when the defendant is serving the earlier term of imprisonment or when the defendant is on supervised release. Minn. Sent'g Guidelines 2.F & 2.F.1.a(1) (2016).[8] This evolution of the guidelines as they relate to consecutive sentences demonstrates that when the commission stated that a felony sentence

[8] The commission's deliberative process when making this change to the guidelines also supports Lee's proposed interpretation. While discussing consecutive sentencing, the commission referred to "conditional release" as "a third period of time at issue," and one proposal considered "eliminat[ing] presumptive consecutive sentencing for offenses committed on supervised or conditional release" because of the speculation it invited. Minn. Sent'g Guidelines, *Consecutive Supervised Release Presentation* 2, 14 (Oct. 16, 2014), https://mn.gov/sentencing-guidelines/assets/Consecutive%20Supervised%20Release%20Presentation_tcm30-31712.pdf [https://perma.cc/8646-LFVQ]. Later, in its modification report to the legislature, the commission explained that they "adopted uniform standards establishing how consecutive supervised release terms are to be served" and resolved the speculation issue by "eliminating presumptive consecutive sentencing for [defendants] on supervised release or conditional release." Minn. Sent'g Guidelines Comm'n, *Report to the Legislature* 18-19 (Jan. 15, 2016), https://mn.gov/sentencing-guidelines/assets/MN%20Sentencing%20Guidelines%20Comm%202016%20Report%20to%20the%20Legislature1_tcm30-114326.pdf [https://perma.cc/R5VH-BBQT]. The commission noted that "[t]he [district] [c]ourt may sentence permissively under qualifying conditions," *id.* at 82, but did not add conditional-release language to guideline 2.F.2, *id.* at 89-90. Therefore, the commission's deliberative process shows the commission was aware of the issues conditional release posed to implementing consecutive sentences, and yet added no language to address the issue in their attempt to create "uniform standards"—further supporting the conclusion that they did not intend to include conditional release within guideline 2.F.2.a(1)(i).

could be executed consecutively to a prior offense if the "prior felony sentence . . . has not expired or been discharged," and did so without any reference to a conditional-release term, the commission did not intend to apply the guideline to conditional release. Minn. Sent'g Guidelines 2.F.2.a(1)(i).

Reviewing the full sentencing guidelines, we also discern that the commission specifically uses the phrase "conditional release" when it intends a particular guideline to apply. For example, in the section regarding custody-status points, the guidelines specifically discuss the impact of "conditional release following release from an executed prison sentence." Minn. Sent'g Guidelines 2.B.2.a(1). The guidelines also describe the "mandatory" nature of imposing "conditional release terms." Minn. Sent'g Guidelines 2.E.3; *see also* Minn. Sent'g Guidelines 4.B (Supp. 2021) (noting that "conditional release terms" are "controlled by law"). But no such language is present in guideline 2.F, bolstering the conclusion that the commission did not intend to apply permissive consecutive sentences to conditional release.

Finally, the comments to guideline 2.F support Lee's interpretation. Throughout the comments, the commission provides thorough examples of different sentencing scenarios that might occur when imposing a consecutive sentence. *See generally* Minn. Sent'g Guidelines 2.F cmts.[9] Conspicuously absent from the comments are any examples in which the individual is currently on conditional release. The absence of such examples amid a clear attempt to provide illustrative guidance to district courts under various

[9] Some of these comments are illustrated above in Part A.

circumstances further demonstrates that Lee's interpretation is the "better" interpretation. *See Hayes*, 826 N.W.2d at 804-05.

The state makes only one argument to assert that its interpretation is "better." Relying on *Heilman v. Courtney*, the state contends that because "[f]unctionally, conditional release is identical to supervised release," the better interpretation is to give the phrases "supervised release" and "conditional release" the same meaning. 926 N.W.2d 387, 394 (Minn. 2019) (quotation omitted). We acknowledge that there are strong structural similarities between conditional release and supervised release. *See id.*; *see also* Minn. Stat. §§ 169A.276, subd. 1(d) (stating that supervised release provisions govern DOC's administration of conditional-release terms, unless an exception applies), 609.3455, subd. 8(a) (2024) (providing that "conditional release of sex offenders is governed by provisions relating to supervised release," unless an exception applies). But the two are legally separate requirements. *Compare* Minn. Stat. § 244.05, subd. 1 (2024) (outlining that "*every inmate* shall serve a supervised release term upon completion of the inmate's term of imprisonment," unless an exception applies (emphasis added)), *with* Minn. Stat. § 169A.276, subd. 1(d) (requiring commissioner of corrections to place defendant on conditional release if they were committed to DOC "*under this subdivision*" (emphasis added)), *and* Minn. Stat. § 609.3455, subds. 6-7 (requiring commissioner of corrections to impose conditional release when defendant was committed to DOC for violations of specified statutes).

Moreover, the guidelines define supervised release without referencing conditional release. *See* Minn. Sent'g Guidelines 1.B.7.b. And the guidelines identify conditional

release as a mandatory term "that must be served by certain offenders once they are released from prison" without reference to supervised release. *See* Minn. Sent'g Guidelines 2.E.3. This indicates that the commission means different things when they use the two phrases.[10] Further, as set forth in detail above, the history of the guidelines demonstrates that the commission has consistently referred to supervised release and conditional release as separate concepts. *See, e.g.*, Minn. Sent'g Guidelines 2.B.2.a(1) (Supp. 2021) (separately listing supervised release and conditional release). Because our charge is to determine the commission's intent when it used the phrase "prior felony sentence" in guideline 2.F.2.a(1)(i), *see Woolridge*, 9 N.W.3d at 843, we are not persuaded that caselaw assessing legislative intent in a separate context provides the "better" interpretation.

For these reasons, we conclude that, for the purposes of permissive consecutive sentencing under guideline 2.F.2.a(1)(i), the phrase "prior felony sentence" does not include a conditional-release term. Therefore, the district court erred when it imposed a consecutive sentence in this case, as Lee's "prior felony sentence" had expired at the time of sentencing because he had served his term of imprisonment and supervised release.

DECISION

The district court erred when it imposed a permissive consecutive sentence to the time Lee served for revocation of his conditional-release term. The phrase "prior felony sentence" as used in guideline 2.F.2.a(1)(i) does not include a conditional-release term and

[10] It would also be inconsistent with the canon against surplusage to give the two phrases the same meaning. *See Thompson*, 950 N.W.2d at 69.

Lee's prior felony sentence had "expired or been discharged" after he served his term of imprisonment and supervised release. Accordingly, we reverse and remand for resentencing consistent with this opinion.

Reversed and remanded.