

*This opinion is nonprecedential except as provided by  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  
A24-1734**

Vyacheslav Eugeniy Bondarenko, petitioner,  
Appellant,

vs.

State of Minnesota,  
Respondent.

**Filed June 9, 2025  
Affirmed  
Larkin, Judge**

Scott County District Court  
File No. 70-CR-15-293

Cathryn Middlebrook, Chief Appellate Public Defender, Chelsie M. Willett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Ronald Hocesvar, Scott County Attorney, Elisabeth M. Johnson, Assistant County Attorney, Shakopee, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Larson, Judge; and Bentley, Judge.

**NONPRECEDENTIAL OPINION**

**LARKIN**, Judge

Appellant challenges the revocation of his probation and execution of his stayed prison sentences, arguing that the district court lacked authority to revoke his probation because his probation period had expired. We affirm.

## **FACTS**

On July 10, 2015, the district court granted appellant Vyacheslav Eugeni Bondarenko a downward dispositional departure, pronounced concurrent sentences of 58 months for first-degree aggravated robbery and 33 months for kidnapping, and placed him on probation for 20 years.

In December 2016, a probation-violation report was filed with the district court, alleging that Bondarenko had failed to remain law abiding, had consumed alcohol and non-prescribed drugs, and had not complied with random chemical testing. Bondarenko admitted that he violated probation. The district court reinstated Bondarenko's probation and ordered him to serve 45 days in jail.

In March 2023, an additional probation-violation report was filed with the district court, alleging that Bondarenko had failed to remain law abiding, had pending charges in Scott and Dakota counties, and had been convicted of misdemeanor theft, felony theft, and felony fleeing a peace officer in a motor vehicle. On March 30, 2023, the district court revoked Bondarenko's probation, issued a warrant for his arrest, and extended his probation period until his violation hearing. On April 13, 2023, at a contested revocation hearing, Bondarenko admitted that he violated his probation by not remaining law-abiding, and the district court scheduled a disposition hearing.

Effective August 1, 2023—after Bondarenko's contested revocation hearing, but before his disposition hearing—the statute governing the maximum length of felony probation periods was amended to provide that, except for certain listed felonies that are inapplicable here, “if the conviction is for a felony, the stay shall be for not more than five

years or the maximum period for which the sentence of imprisonment might have been imposed, whichever is less.” Minn. Stat. § 609.135, subd. 2(a) (Supp. 2023); *see* 2023 Minn. Laws ch. 52, art. 6, § 13, at 924 (stating that the change applies to sentences announced on or after August 1, 2023). The 2023 session laws provide that the new time limits are retroactive and that anyone placed on probation prior to August 1, 2023, is eligible for resentencing under certain conditions. 2023 Minn. Laws ch. 52, art. 6, § 14, at 924. The 2023 session laws also provide that the probation period “for any person who is eligible for resentencing under paragraph (a) who has served five or more years of probation for a felony violation . . . as of August 1, 2023, shall be considered to have expired on October 1, 2023,” unless certain conditions are met. *Id.*

On October 9, 2023, Bondarenko appeared for his disposition hearing. The district court ordered execution of his stayed prison sentences and committed him to the custody of the commissioner of corrections.

Bondarenko petitioned for postconviction relief. He claimed that, under the 2023 session laws, he was eligible for resentencing and that his probation expired on October 1, 2023. He argued that he should have been discharged from supervision before his sentences were executed on October 9, 2023, and that the district court lacked authority to revoke his stayed sentences after his probation expired on October 1, 2023. Bondarenko asked the postconviction court to vacate the order executing his sentences and to immediately release him from custody. The postconviction court denied relief.

Bondarenko appeals.

## DECISION

Under Minnesota’s postconviction statutes, a person convicted of a crime may seek relief by filing a petition claiming that the conviction “violated the person’s rights under the Constitution or laws of the United States or of the state.” Minn. Stat. § 590.01, subd. 1(1) (2024). “The person seeking postconviction relief bears the burden of establishing by a preponderance of the evidence that his claims merit relief.” *Crow v. State*, 923 N.W.2d 2, 10 (Minn. 2019).

We review the denial of a postconviction petition for an abuse of discretion. *Colbert v. State*, 870 N.W.2d 616, 621 (Minn. 2015). The postconviction 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. Nicks*, 831 N.W.2d 493, 503 (Minn. 2013) (quotation omitted).

Bondarenko contends that the postconviction court abused its discretion in denying relief, arguing that the district court did not have authority to revoke his probation on October 9, 2023, because his probation had expired on October 1, 2023, under the 2023 Minnesota Session Laws.

Minn. Stat. § 609.135, subd. 2(a) (2022), provides that, with certain exceptions inapplicable here, the probation period for a felony “shall be for not more than four years or the maximum period for which the sentence of imprisonment might have been imposed, whichever is longer.” Effective August 1, 2023, a probation period “shall be for not more than *five* years or the maximum period for which the sentence of imprisonment might have been imposed, *whichever is less*.” Minn. Stat. § 609.135, subd. 2(a) (emphasis added).

The 2023 amendment applies retroactively, and anyone who was placed on probation prior to August 1, 2023, is eligible for resentencing if certain conditions are met. 2023 Minn. Laws ch. 52, art. 6, § 14, at 924. In addition, the probation period “for any person who is eligible for resentencing under paragraph (a) who has served five or more years of probation for a felony violation . . . as of August 1, 2023, shall be considered to have expired on October 1, 2023,” unless certain exceptions apply. *Id.*

Although Minn. Stat. § 609.135, subd. 2(a) (2022), which governs the maximum length of felony probation periods, was amended in 2023, Minn. Stat. § 609.14, subd. 1 (2022), which governs the district court’s authority to revoke probation and execute a stayed sentence, did not substantively change.<sup>1</sup> *See State v. Redford*, 986 N.W.2d 257, 261 (Minn. App. 2023) (“The district court’s authority to revoke a stayed sentence is governed by Minn. Stat. § 609.14, subd. 1.”). Both the 2022 and 2023 versions of Minn. Stat. § 609.14, subd. 1, provide that a district court may revoke a defendant’s probation as follows:

When it appears that the defendant has violated any of the conditions of probation or intermediate sanction, or has otherwise been guilty of misconduct which warrants the imposing or execution of sentence, the court may without notice revoke the stay and direct that the defendant be taken into immediate custody.

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<sup>1</sup> In 2023, an additional sentence was added to the statute. *See* Minn. Stat. § 609.14, subd. 1 (Supp. 2023) (“Revocation shall only be used as a last resort when rehabilitation has failed.”). However, because this change is not retroactive and applies only to violations occurring on or after August 1, 2023, it is inapplicable here. 2023 Minn. Laws ch. 52, art. 17, § 32, at 1114. Additionally, in 2024, some minor word changes were made to the subdivision; these changes are irrelevant here. *See* Minn. Stat. § 609.14, subd. 1 (2024).

Minn. Stat. § 609.14, subd. 1(a) (2022); Minn. Stat. § 609.14, subd. 1(a) (Supp. 2023).

Additionally, a district court may initiate probation revocation proceedings within six months after probation expires:

When it appears that the defendant violated any of the conditions of probation during the term of the stay, but the term of the stay has since expired, the defendant’s probation officer or the prosecutor may ask the court to initiate probation revocation proceedings under the Rules of Criminal Procedure at any time within six months after the expiration of the stay.

Minn. Stat. § 609.14, subd. 1(b) (2022); Minn. Stat. § 609.14, subd. 1(b) (Supp. 2023).

To initiate revocation proceedings, the district court must “issue an order revoking the stay of execution” of sentence and “direct that the defendant be taken into immediate custody.” *Redford*, 986 N.W.2d at 262. The district court retains authority to revoke a defendant’s probation if revocation is timely initiated under Minn. Stat. § 609.14, subd. 1(a), (b). *See id.* at 259, 263.

Notwithstanding the provisions of section 609.135 or any law to the contrary, after proceedings to revoke the stay have been initiated by a court order revoking the stay and directing either that the defendant be taken into custody or that a summons be issued in accordance with paragraph (a), *the proceedings to revoke the stay may be concluded and the summary hearing provided by subdivision 2 may be conducted after the expiration of the stay or after the six-month period set forth in paragraph (b). The proceedings to revoke the stay shall not be dismissed on the basis that the summary hearing is conducted after the term of the stay or after the six-month period.* The ability or inability to locate or apprehend the defendant prior to the expiration of the stay or during or after the six-month period shall not preclude the court from conducting the summary hearing unless the defendant demonstrates that the delay was purposefully caused by the state in order to gain an unfair advantage.

Minn. Stat. § 609.14, subd. 1(c) (2022) (emphasis added).

In this case, the postconviction court properly applied the law. The postconviction court found that, pursuant to the 2023 Minnesota Session Laws, Bondarenko's probation expired on October 1, 2023. However, it determined that the district court had initiated revocation proceedings before Bondarenko's probation expired, by ordering that his "stay be revoked" and issuing a warrant for his arrest on March 30, 2023, which met the initiation requirements of Minn. Stat. § 609.14, subd. 1(a). Thus, the district court retained authority to revoke Bondarenko's probation and to execute his stayed prison sentences after his probation period expired on October 1, 2023.

The postconviction court further reasoned that a district court retains jurisdiction to revoke a defendant's probation if the revocation is initiated within six months of the expiration of probation. *See* Minn. Stat. § 609.14, subd. 1(b); *Redford*, 986 N.W.2d at 259, 263. Bondarenko acknowledges that the district court "retains jurisdiction for up to six months after expiration" of probation. But he asserts that the district court lacked authority here for two reasons: (1) "as of October 1, 2023, his probation had expired" and (2) "his original sentence exceeded the maximum allowed under the amended statute." He asserts that his probation "did not merely expire, his twenty-year probation [period] was rendered illegal once the amended statute went into effect." But Bondarenko does not provide legal authority to support that assertion.

An assignment of error based on mere assertion and not supported by legal authority or argument is waived unless prejudicial error is obvious on mere inspection. *State v.*

*Wembley*, 712 N.W.2d 783, 795 (Minn. App. 2006), *aff'd on other grounds*, 728 N.W.2d 243 (Minn. 2007). For the reasons that follow, we discern no obvious prejudicial error.

Although caselaw provides that “if the court finds a statute unconstitutional, the statute is not a law; it is just as inoperative as had it never been enacted,” those are not the circumstances here. *McGuire v. C & L Rest. Inc.*, 346 N.W.2d 605, 614 (Minn. 1984). And as the state points out, the session laws say that a probation term generally “shall be considered to have *expired* on October 1, 2023.” 2023 Minn. Laws ch. 52, art. 6, § 14, at 924 (emphasis added). The session laws do not state that a probation term is rendered “unconstitutional” or “illegal.” There is no reason to believe that the legislature intended the word “expired” to have a different meaning in the session laws than it has in the statute governing probation revocation proceedings. Moreover, nothing in the session laws indicates that a statutorily modified probation period is to be treated any differently than any other probation period when applying the law governing revocation proceedings.

In sum, the postconviction court properly applied the law, and Bondarenko has not shown a basis to reverse the denial of his request for relief.

**Affirmed.**