

STATE OF MINNESOTA  
IN COURT OF APPEALS

January 16, 2023

**OFFICE OF  
APPELLATE COURTS**

State of Minnesota,

Plaintiff - Respondent,

vs.

Donalonte Jamar Wade,

Defendant - Appellant.

APPELLANT'S SENTENCING APPEAL BRIEF AND ADDENDUM

Keith M. Ellison  
Minnesota State Attorney General  
1800 Bremer Tower  
445 Minnesota Street  
St. Paul, Minnesota 55101

Mary Moriarty  
Hennepin County Attorney  
Jason Heaser  
Assistant Hennepin County Attorney  
C-2000 Government Center  
300 South Sixth Street  
Minneapolis, MN 55487

FRANCIS WHITE LAW, P.L.L.C.  
By: Francis Herbert White III  
Attorney for Appellant  
8362 Tamarack Village, Suite 119-220  
Woodbury, Minnesota 55125  
Tel: (651) 829-1431  
francis.white@franciswhitelaw.com  
Attorney Register Number: 0398886

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## STATEMENT OF THE CASE

This is a sentencing appeal from the Hennepin County District Court, the Honorable Peter Cahill, Judge Presiding.

On July 28, 2022, Defendant-Appellant entered into a plea agreement with the State of Minnesota.<sup>1</sup> Under the terms of the plea agreement the State and Defendant agreed that in exchange for a plea of guilty to one count to Aggravated Robbery in the 1<sup>st</sup> Degree (felony)<sup>2</sup>, the State would dismiss several other pending cases.<sup>3</sup> The State further agreed to refrain from prosecuting Defendant for two additional potential charges.<sup>4</sup> Defendant would be released to Electronic Home Monitoring pending sentencing in order to seek medical treatment for his knee. Defendant would then be sentenced to 92 months.<sup>5</sup> An additional provision, taken orally, was that Defendant would remain return for sentencing and not violate the conditions of release.<sup>6</sup> Should Defendant fail to return for sentencing, or abide by the conditions of release, Defendant would be sentenced to the “top of the box” penalty of 123 months.<sup>7</sup>

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<sup>1</sup> The State of Minnesota was represented in front of the District Court by Assistant Hennepin County Attorney Jason M. Heaser, Esq.

<sup>2</sup> Pursuant to Minn. Stat. § 609.245.1

<sup>3</sup> Those case numbers are: 27-CR-21-14208, 27-CR-21-8539, 27-CR-21-8550, 27-CR-21-2658, 13-CR-22-557, 27-VB-10-410109205, 27-VB-21-63483, 27-VB-17-251380, 27-VB-10-410109985, 27-VB-11-411102871, 27-VB-17-271116, and 27-VB-10-410110066.

<sup>4</sup> Those Hennepin County Attorney Case Numbers are 21A07496 and 21A07505

<sup>5</sup> Add. At 6:14-19.

<sup>6</sup> Add. at 1

<sup>7</sup> Add. at 6:5-13.

On August 10, 2022, Defendant was arrested in Isanti County.<sup>8</sup> Defendant has pled Not Guilty in this matter, and it remains pending. Defendant was remanded into custody and has remained in custody since.

On August 19, 2022, Defendant appeared for the previously scheduled sentencing hearing before the Honorable Daniel C. Moreno. The District Court, the State, and the Defendant agreed that a transcript of the July 28, 2022, plea hearing was necessary, as the written plea agreement did not include any language permitting an enhanced sentence for violating the conditions of release. A transcript was subsequently ordered and distributed.<sup>9</sup>

On September 13, 2022, over the objections of Defendant's counsel, the District Court, the Honorable Peter Cahill, Judge Presiding, sentenced Defendant to the "top of the box" 123 months. Defendant objected to the District Court's determination that mere criminal charges and/or an allegation that Defendant violated the terms of Electronic Home Monitoring satisfied the conditions precedent necessary to impose the additional 31 months of incarceration.<sup>10</sup>

On December 12, 2022, Defendant filed and served his Notice of Appeal.

### **STATEMENT OF FACTS**

Defendant-Appellant is an African American man.

On or about July 16, 2021, Defendant was alleged to have committed first-degree aggravated robbery in Brooklyn Park, Minnesota. The State filed their complaint in this matter on July 29, 2021.<sup>11</sup> Defendant was taken into custody on August 9, 2021. On

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<sup>8</sup> Isanti County District Court File No. 30-CR-22-628

<sup>9</sup> Add. at 6-22.

<sup>10</sup> MNCIS Doc. ID #64 at 3:10 – 4:17.

<sup>11</sup> MNCIS Doc. ID #1.

February 27, 2022, the State filed motions *in limine* seeking to include 911 transcripts as well as video evidence acquired by the responding officers.<sup>12</sup> On April 21, 2022, the Defendant filed motions *in limine* seeking to exclude the evidence proffered by the State above.<sup>13</sup> The Hennepin County District Court, the Honorable Hilary L. Caliguri, Judge Presiding, granted in part, and denied in part, the parties' motions *in limine*.<sup>14</sup> Defendant was released from custody on August 3, 2022, following the plea hearing on July 28, 2022.<sup>15</sup> Defendant's conditions of release included being subjected to Electronic Home Monitoring and to remain law-abiding.<sup>16</sup>

After negotiations between counsel, Defendant-Appellant entered into a plea agreement with the State of Minnesota.<sup>17</sup> Under the terms of the plea agreement, the State and Defendant agreed that in exchange for a plea of guilty to one count to Aggravated Robbery in the 1<sup>st</sup> Degree (felony)<sup>18</sup>, the State would dismiss several other pending cases.<sup>19</sup> The State further agreed to refrain from prosecuting Defendant for two additional potential charges.<sup>20</sup> Defendant would be released subject to Electronic Home Monitoring pending sentencing in order to seek medical treatment for his knee. After Defendant received

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<sup>12</sup> MNCIS Doc. ID #23.

<sup>13</sup> MNCIS Doc. ID #24.

<sup>14</sup> MNCIS Doc. ID #29.

<sup>15</sup> MNCIS Doc. ID #43.

<sup>16</sup> MNCIS Doc. ID #43.

<sup>17</sup> MNCIS Doc. ID #39.

<sup>18</sup> Pursuant to Minn. Stat. § 609.245.1

<sup>19</sup> Those case numbers are: 27-CR-21-14208, 27-CR-21-8539, 27-CR-21-8550, 27-CR-21-2658, 13-CR-22-557, 27-VB-10-410109205, 27-VB-21-63483, 27-VB-17-251380, 27-VB-10-410109985, 27-VB-11-411102871, 27-VB-17-271116, and 27-VB-10-410110066.

<sup>20</sup> Those Hennepin County Attorney's Office Case Numbers are 21A07496 and 21A07505

surgery for his knee, Defendant would then be sentenced to 92 months in prison.<sup>21</sup> An additional provision, taken orally on the record, was that Defendant would return for sentencing and not violate any conditions of release.<sup>22</sup> Should Defendant fail to return for sentencing, or abide by the conditions of release, Defendant would be sentenced to the “top of the box” penalty of 123 months.<sup>23</sup>

On August 10, 2022, Defendant was arrested in Isanti County on suspicion of possession of controlled substances in the fifth degree and other misdemeanors.<sup>24</sup> Defendant has pled Not Guilty in this matter, and it remains pending. Defendant was remanded into custody and has remained in the custody of the State since.

On August 19, 2022, Defendant appeared in Hennepin County District Court, the Honorable Daniel C. Moreno, Judge Presiding, for the previously scheduled sentencing hearing. The District Court, the State, and the Defendant agreed that a transcript of the July 28, 2022, plea hearing was necessary, as the written plea agreement did not include any language permitting an enhanced sentence for violating the conditions of release. A transcript was subsequently ordered and distributed.<sup>25</sup>

On September 13, 2022, over the objections of Defendant’s counsel, the District Court, the Honorable Peter Cahill, Judge Presiding, sentenced Defendant to the “top of the box” 123 months. Defendant objected to the District Court’s determination that mere criminal charges and/or an allegation that Defendant violated the terms of Electronic Home

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<sup>21</sup> Add. At 6:14-19.

<sup>22</sup> Add. at 1

<sup>23</sup> Add. at 6:5-13.

<sup>24</sup> Isanti County District Court File No. 30-CR-22-628

<sup>25</sup> Add. at 6-22.

Monitoring satisfied the conditions precedent necessary to impose the additional 31 months of incarceration.<sup>26</sup>

This Appeal follows.

## LEGAL ISSUES

**I. Did the District Court violate the Defendant's right to Due Process under the Fourteenth Amendment to United States Constitution, and under Article 1, Section 7 of the Minnesota Constitution when it imposed an additional 31 months of confinement upon mere criminal charges and allegations of noncompliance from an administrative agency?**

This issue was raised at the hearing.<sup>27</sup> The district court held that it

“took judicial notice of Conditional Release Violation Report, which is docket number 45 in your case 21-14122, which not only provides that you are arrested on new charges of Possession of Methamphetamine, but also driving when you don't have a license. ... [a]nd, on top of that, you failed to abide by the electronic monitoring guidelines, you failed to return from the furlough that you were given. It's then when they investigated and try to contact you that they found you were in the Isanti County jail. So, in addition to new charges, you have also violated the conditions of release by ... you violated the terms of your electronic monitoring provisions, and accordingly that alone is as violation of conditional release and permits us to move forward. ... You are committed to the custody of the commissioner of corrections for 123 months.”<sup>28</sup>

Apposite Cases:

State v. Sargent, 968 N.W.2d 32 (Minn. 2021).

Inapposite Cases:

State v. Dillon, 529 N.W.2d 387 (Minn. App. 1995) (*remanded on other grounds*, 532 N.W.2d 558 (Minn. 1995)).

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<sup>26</sup> MNCIS Doc. ID #64 at 3:10 – 4:17.

<sup>27</sup> MNCIS Doc. ID #64 at 3:10 – 4:17.

<sup>28</sup> MNCIS Doc. ID #64 at 8:20 – 9:25.



## **ARGUMENT**

### **I. Standard of Review**

In reviewing the district court's imposition of a "top of the box" sentence for allegedly violating conditions of release, this Court "must first determine the terms of the plea agreement, which involves an issue of fact to be resolved by the district court."<sup>29</sup> After determining the terms of the plea agreement, this Court reviews "[i]ssues involving the interpretation and enforcement of plea agreements, ..., are issues of law that [are reviewed] *de novo*."<sup>30</sup> The Minnesota Supreme Court has directed that "[w]hether a due process violation has occurred presents a question of constitutional law, which we review *de novo*."<sup>31</sup> The Minnesota Supreme Court has also directed that "[t]he interpretation and application of the Minnesota Constitution is a legal question that we review *de novo*."<sup>32</sup>

### **II. The District Court violated the Fourteenth Amendment to the United States Constitution and Article 1, Section 7 of the Minnesota Constitution by imposing a "top of the box" sentence without holding an evidentiary hearing on whether the plea agreement had been breached by Appellant.**

The U.S. Constitution requires that "[n]o state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; ...."<sup>33</sup> Similarly, the Minnesota Constitution requires that "[n]o person shall be ... deprived of life, liberty or property without due process of law."<sup>34</sup>

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<sup>29</sup> State v. Landwehr, 2022 WL 17747868 at \*2 (Minn. App. Dec. 19, 2022).

<sup>30</sup> State v. Brown, 606 N.W.2d 670, 674 (Minn. App. 2000) (internal citations omitted).

<sup>31</sup> State v. Beecroft, 813 N.W.2d 814, 836 (Minn. 2012).

<sup>32</sup> State v. Castillo-Alvarez, 836 N.W.2d 527, 534 (Minn. 2013).

<sup>33</sup> U.S. Const., amend. XIV, §1.

<sup>34</sup> Minn. Const. art. 1, §7.

The Minnesota Supreme Court has previously acknowledged that “[i]f a probationer’s willful violation of a term of probation does not constitute criminal contempt, then an individual who is *merely accused* of a crime (and still presumed innocent) should likewise not be subject to criminal contempt charges for violating a condition of pretrial release.”<sup>35</sup>

In the instant case, Defendant-Appellant raised Due Process concerns before the District Court at the sentencing hearing.<sup>36</sup> Defendant-Appellant concedes that Hennepin County Community Correction and Rehabilitation submitted a Conditional Release Violation Report.<sup>37</sup> This report *alleged* a violation of Defendant-Appellant’s conditions of release. However, such a violation was not proven through any form of testimony; rather, the district judge took judicial notice of the report and treated it as conclusive proof of the alleged violation rather than the allegation it was.<sup>38</sup>

The State argued in the District Court that:

Defendant was in violation of his conditional release ... given that a finding of a conditional release violation in the instance of a conditional release warrant can be done along the lines of probable cause. And in this instance, a judge in Isanti County has determined that the Defendant violated the law sufficiently under probable cause termination in signing the Complaint against Defendant. Defendant has violated the conditions of release, therefore, triggering the extended negotiation parameters which allow the state to request top of the box.<sup>39</sup>

However, the flaw in the State’s logic is that the triggering mechanism cannot be as low as probable cause when the breach subjects Appellant to a loss of his liberty interest

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<sup>35</sup> State v. Sargent, 968 N.W.2d 32, 40 (Minn. 2021) (emphasis in original).

<sup>36</sup> MNCIS Doc. ID #64 at 3:10 – 4:17.

<sup>37</sup> MNCIS Doc. ID #45.

<sup>38</sup> MNCIS Doc. ID #64 at 8:20 – 9:25.

<sup>39</sup> MNCIS Doc. ID #64 at 5:18 – 6:3.

protected under the Fourteenth Amendment of the U.S. Constitution and Article 1 of the Minnesota Constitution and, on a federal level, appears to require a stronger showing of at least preponderance of the evidence.<sup>40</sup> Since no evidence was adduced in regards to the alleged violation on the record, there cannot be the required showing of preponderant evidence.<sup>41</sup> Judicial notice of the report cannot satisfy the burden of proof required since the judicial notice increased Defendant-Appellant's sentence by almost three years, thus substantially more than the mandatory minimum that was approved as not falling afoul of Apprendi, and its progeny, by the Supreme Court of the United States.<sup>42</sup>

### CONCLUSION

Here, the District Court had to do no more than wait for the conclusion of the Isanti County case to establish that the plea agreement had been breached or hold an evidentiary hearing on the alleged violation of the conditions of release. Instead, the Defendant-Appellant's Due Process rights were violated by the District Court's rush to impose the "top of the box" sentence the State so earnestly desired.

For the reasons as more fully stated herein, Appellant respectfully requests this Honorable Court to:

- a) REVERSE the sentencing order of the Hennepin County District Court; and
- b) REMAND this case to the Hennepin County District Court with an Order to hold an evidentiary hearing on whether the plea agreement was breached in this matter.

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<sup>40</sup> See generally Apprendi v. New Jersey, 530 U.S. 466 (2000).

<sup>41</sup> See United States v. Haymond, 139 S. Ct. 2369, 2379-83 (2019).

<sup>42</sup> See United States v. Haymond, 139 S. Ct. 2369, 2379-83 (2019).

Dated: January 16, 2023

Respectfully submitted,

FRANCIS WHITE LAW, PLLC

s/Francis Herbert White III

By: Francis Herbert White III

8362 Tamarack Village

Suite 119-220

Woodbury, Minnesota 55125

Tel: (651) 829-1431

Fax: (651) 714-7119

francis.white@franciswhitelaw.com

Atty. Reg. No. 0396779

ATTORNEYS FOR APPELLANT

**CERTIFICATE OF LENGTH**

I HEREBY CERTIFY, pursuant to Minn. R. Civ. App. P. 132.01, subd. 3, that the Appellant's Brief was prepared using Microsoft Word 365. I certify that this brief contains 2,222 words. This brief was prepared in 13-point Times New Roman font.

*s/ Francis Herbert White III*

Francis Herbert White III (0396779)

**FILED**

January 26, 2023

**OFFICE OF  
APPELLATE COURTS**

A22-1762

STATE OF MINNESOTA  
IN COURT OF APPEALS

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STATE OF MINNESOTA,

Respondent,

vs.

DONALONTE JAMAR WADE,

Appellant.

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**RESPONDENT'S BRIEF**

FRANCIS WHITE LAW, PLLC

OFFICE OF THE HENNEPIN  
COUNTY ATTORNEY

MARY F. MORIARTY  
Hennepin County Attorney

By: FRANCIS WHITE III  
Attorney for Appellant  
Atty. License No.: 398886

By: SARAH J. VOKES  
Assistant County Attorney  
Atty. License No.: 387661

8362 Tamarack Village, Suite 119-220  
Woodbury, Minnesota 55125  
Phone: (651) 829-1431

C-2000 Government Center  
Minneapolis, MN 55487  
Phone: (612) 543-1168  
FAX: (612) 348-6028

**ATTORNEYS FOR APPELLANT**

**ATTORNEYS FOR RESPONDENT**

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## LEGAL ISSUE

- I. Did the district court sentence Appellant consistent with the conditional plea agreement – which called for a bottom-of-the-box sentence if Appellant complied with conditional release and a top-of-the-box sentence if he did not – and did Appellant’s sentence violate his right to due process?

*Ruling below:*

The district court found Appellant had violated his conditional release and therefore, consistent with the agreement, imposed a top-of-the-box guidelines sentence. The district court was not asked to rule on whether this sentence violated due process.

*Apposite Authorities:*

*State v. Montez*, 899 N.W.2d 200 (Minn. Ct. App. 2017)

*State v. Batchelor*, 786 N.W.2d 319 (Minn. Ct. App. 2010)

## STATEMENT OF FACTS

In July 2021, Appellant was charged with one count of first-degree aggravated robbery. (Doc. Index #1.) On July 16, 2021, Appellant went to the victim's apartment building, despite an active Domestic Abuse No Contact Order (DANCO) prohibiting him from having contact with her. (Doc. Index #1.) He confronted the victim because she had changed the locks to her apartment. (Doc. Index #1.) When the victim tried to run out of the apartment, Appellant picked her up and pulled her away from the door. (Doc. Index #1.) He physically trapped her in her apartment and stole her keys. (Doc. Index #1.) Neighbors heard the victim's cries for help and called the police. (Doc. Index #1.) Upon arrival, officers observed visible marks on the victim's arm and chest. (Doc. Index #1.)

On July 28, 2022, Appellant entered into a plea agreement with the State. (Plea Tr. 2.<sup>1</sup>) The terms of the negotiation included that Appellant would plead guilty to first-degree aggravated robbery, and the State would dismiss several other pending cases.<sup>2</sup> (Plea Tr. 3.) The State agreed Appellant would be conditionally

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<sup>1</sup> "Plea Tr." refers to the transcript of the plea hearing held on July 28, 2022, before the Honorable Peter A. Cahill. The transcript does not appear to have been filed with the court but is included in Appellant's addendum on pages 2-17.

<sup>2</sup> The State agreed to dismiss multiple felonies: 27-CR-21-2658 (felony domestic assault), 27-CR-21-8539 (felony domestic assault and felony fleeing in a motor vehicle), 27-CR-21-8550 (felony DANCO violation), and 27-CR-21-14208 (felony DANCO violation). The State also dismissed numerous driving citations: 27-VB-21-63483, 27-VB-17-251380, 27-VB-10-410109985, 27-VB-11-411102871, 27-VB-17-271116, 27-VB-10-410110066, 27-VB-10-410109205, as well as a felony domestic assault by strangulation case in Chisago County, 13-CR-22-557.

released on electronic home monitoring (EHM) once Appellant submitted verification of a medical procedure he needed. (Plea Tr. 3.) The agreed-upon sentence was a conditional one: if Appellant complied with the terms of conditional release and appeared for sentencing, the State agreed to a bottom-of-the-box sentence of 92 months; if Appellant violated conditional release or failed to appear for sentencing, the district court would impose a top-of-the-box sentence of 123 months.<sup>3</sup> (Plea Tr. 3-5.) The district court explicitly told Appellant, “if you fail to come back or you violate conditions of release, then the Court would impose the top of the box, which is 123, I believe.” (Plea Tr. 5.) Appellant agreed to those terms. (Plea Tr. 5.) Appellant pleaded guilty to first-degree aggravated robbery. (Plea Tr. 6.) He waived his trial rights and entered a factual basis to the charge. (Plea Tr. 6-13.). The parties anticipated Appellant would be released on EHM once he submitted proof of his medical appointment. (Plea Tr. 13.) A sentencing hearing was scheduled for August 11, 2022. (Plea Tr. 14.)

On August 3, 2022, consistent with the plea agreement, Appellant was conditionally released on EHM. (Doc. Index #43.) The conditions of release included obeying all laws; attending all court appearances and any appointments with probation; not possessing any weapons; having no contact with the victim;

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<sup>3</sup> First-degree aggravated robbery is a level 8 offense, and Appellant had a criminal history score of 7 points. (Doc. Index #7.) The presumptive sentence is 108 months, with a range of 92-129 months. (Doc. Index #7.) At the later sentencing hearing, the State noted that the district court had stated an incorrect number of 123 months as the top-of-the-box (rather than the actual number of 129 months), but the State honored the agreement as stated at the plea hearing.

complying with supervision by a conditional release officer; and complying with the rules of EHM. (Doc. Index #43.) The district court approved a medical furlough for surgery at 1 p.m. on August 16, 2021. (Doc. Index #43.)

On August 10, 2022, Appellant was given a furlough from EHM. (Doc. Index #45.) He failed to return from this EHM furlough. (Doc. Index #45.) Appellant sent an email to EHM staff that he was running late because he was pulled over for expired tabs. (Doc. Index #45.) EHM staff later learned he was cited by North Branch police department for expired tabs on that date. (Doc. Index #45.) Later that day, at around 5:31pm on August 10, 2022, in Cambridge, Isanti County, Minnesota, Appellant was again stopped by police officers for driving with expired tabs. (Doc. Index #3, 30-CR-22-628.) Ultimately, methamphetamine was found in Appellant's car when it was subsequently searched by police in the course of the traffic stop. (Doc. Index #3, 30-CR-22-628.)

Based on that information, a conditional release violation report was filed in Hennepin County the following morning on August 11, 2022. (Doc. Index #45.) A warrant was issued, revoking Appellant's conditional release for failing to abide by the terms of EHM and for failing to remain law abiding. (Doc. Index #47.) Later that afternoon, Appellant was charged in Isanti County with felony possession of controlled substance crime,<sup>4</sup> along with three misdemeanor offenses – driving after

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<sup>4</sup> The top count was initially charged as a gross misdemeanor but was amended to a felony the following day. (See Doc. Index #1 and #3, 30-CR-22-628.)

revocation, possession of a hypodermic needle, and possession of drug paraphernalia. (Doc. Index #3, 30-CR-22-628.)

On August 19, 2022, Appellant appeared in Hennepin County for sentencing on the first-degree aggravated robbery charge.<sup>5</sup> This hearing was held before a different district court judge than the judge who presided over the plea hearing. On August 19, 2022, Appellant’s counsel made a “motion on the record to continue [the] sentencing hearing and for release pending sentencing.” (Doc. Index #54.<sup>6</sup>) The district court denied Appellant’s “motion for release pending sentencing.” (Doc. Index #55.) The district court “made oral findings on the record that [Appellant] violated the terms of his conditional release by failing to remain law abiding and by failing to return to EHM after he was granted a furlough from EHM.” (Doc. Index #56.) During this hearing, the parties discussed ordering a transcript to clarify the plea agreement because the two possible sentences from the plea agreement – 92 months versus 123 months – were not contained in the written plea petition. (Sent. Tr. 3, 5<sup>7</sup>; *see* Doc. Index #39.) A sentencing hearing was then scheduled before the judge of record on September 13, 2022.

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<sup>5</sup> Appellant did not order the transcript of the hearing on August 19, 2022 held before the Honorable Daniel Moreno. (*See* Doc. Index #63, wherein Appellant only ordered the transcript from the September 13, 2022 sentencing hearing).

<sup>6</sup> Although there is currently no transcript, MNCIS contains notes entered as Doc. Index #54, #55, and #56 from the August 19, 2022 hearing.

<sup>7</sup> “Sent Tr.” refers to the transcript of the September 13, 2022 plea hearing before the Honorable Peter A. Cahill, judge of district court. This transcript was filed and is available at Doc. Index #64.

On September 13, 2022, a sentencing hearing was held before the original judge of record who heard the plea. (Sent. Tr. 1-11.) The State asked the district court to impose a sentence of 123 months in accordance with the plea agreement. (Sent. Tr. 6.) Appellant's counsel agreed that the transcript reflected an agreement that the court would impose a top-of-the-box sentence of 123 months if Appellant violated the terms of conditional release. (Sent. Tr. 3.) Instead, Appellant's counsel argued that the fact that Appellant was charged with a new crime should not be considered a violation of conditional release since he had not yet been convicted of the new crime. (Sent. Tr. 3-4.) Counsel argued that Appellant should not be considered to have violated the terms of the plea agreement until and unless he is convicted of the new crime. (Sent. Tr. 4.)

The district court found that Appellant violated conditional release based on being arrested on new charges, driving without a license, driving with expired tabs, failing to abide by EHM guidelines, and failing to return from a furlough he was given. (Sent. Tr. 8-9.) The district court noted that the EHM violations alone – regardless of the new charges – would be sufficient to find Appellant had violated the terms of conditional release. (Sent. Tr. 9.) The district court sentenced Appellant to 123 months according to the plea agreement. (Sent. Tr. 9.)

This appeal follows.

## ARGUMENT

### **THE DISTRICT COURT PROPERLY SENTENCED APPELLANT IN ACCORDANCE WITH THE TERMS OF THE PLEA AGREEMENT, WHICH DID NOT VIOLATE APPELLANT'S RIGHT TO DUE PROCESS.**

On appeal, Appellant argues that the district court violated his right to due process at sentencing. To the contrary, the district court followed the terms of the valid conditional plea agreement Appellant entered with the State. Because this sentence did not violate the plea agreement and did not violate Appellant's right to due process, this Court should affirm.

#### **A. Standard of Review.**

"The interpretation and enforcement of plea agreements present issues of law subject to de novo review." *State v. Montez*, 899 N.W.2d 200, 203 (Minn. Ct. App. 2017) (citing *State v. Rhodes*, 675 N.W.2d 323, 326 (Minn. 2004)). What the parties agreed to in the plea agreement is a question of fact for the district court, and such findings of fact are reviewed for clear error. *State v. Robledo-Kinney*, 615 N.W.2d 25, 32 (Minn. 2000). "Whether due process is required in a particular case is a question of law, which we review de novo." *State v. Batchelor*, 786 N.W.2d 319, 322 (Minn. Ct. App. 2010)

#### **B. Appellant Entered into a Valid Conditional Plea Agreement and Was Properly Sentenced Consistent with that Agreement.**

"In determining whether a plea agreement was violated, courts look to what the parties to the plea bargain reasonably understood to be the terms of the agreement." *State v. Brown*, 606 N.W.2d 670, 674 (Minn. 2000) (internal quotation

marks and brackets removed). An unqualified promise made as part of a plea agreement must be honored. *See State v. Kunshier*, 410 N.W.2d 377, 379 (Minn. Ct. App. 1987). “If a plea agreement includes an unconditional promise of a particular sentence or sentencing range and the sentencing court considers the defendant’s post-plea acts and imposes a more severe sentence, the defendant ‘retain[s] his right to withdraw his guilty plea and stand trial.’ ” *Montez*, 899 N.W.2d at 203 (*quoting Kunshier*, 410 N.W.2d at 380). However, when a plea agreement is conditional, including conditions of post-plea conduct, a district court does not err by imposing sentences in accordance with these types of conditional plea agreements. *See, e.g., Montez*, 899 N.W.2d at 203 and *Batchelor*, 786 N.W.2d at 323.<sup>8</sup>

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<sup>8</sup> This Court has also addressed similar claims with pleas conditioned on post-plea conduct in a number of nonprecedential cases. *See, e.g., State v. Beaulieu*, No. A16-1493, 2017 WL 2535711 (Minn. Ct. App. June 12, 2017) (affirming a longer sentence based on violating conditional release, a term of the plea agreement, and rejecting a due process claim); *State v. Crenshaw*, No. A12-1909, 2013 WL 6223401 (Minn. Ct. App. Dec. 2, 2013) (affirming a longer sentence when a defendant violated the plea agreement condition of remaining law abiding and rejecting a due process claim); *State v. Spriggs*, No. A11-209, 2012 WL 118234 (Minn. Ct. App. Jan. 17, 2012) (affirming the district court’s denial of a plea withdrawal motion when the defendant received a higher sentence for failing to comply with conditions as outlined in the plea agreement); *State v. Buckhanan*, No. A07-2230, 2009 WL 510945 (Minn. Ct. App. Mar. 3, 2009) (affirming a sentence when the defendant did not receive an unqualified promise but instead voided a plea agreement by failing to appear at sentencing); *State v. Wimberly*, No. A07-396, 2008 WL 706964, at \*4 (Minn. Ct. App. Mar. 18, 2008) (affirming an increased sentence when the defendant did not comply with a term of the plea agreement that he cooperate with a PSI); *State v. Kempf*, No. A06-315, 2007 WL 2302438 (Minn. Ct. App. Aug. 14, 2007) (affirming the district court’s denial of a plea withdrawal motion when the defendant violated the conditions required for a lesser sentence). Nonprecedential opinions cited in this brief are for persuasive value only.



In *State v. Montez*, for instance, the defendant entered into a conditional plea agreement. 899 N.W.2d at 202. The defendant pleaded guilty for a particular sentence under conditions that included cooperating with a pre-sentence investigation and remaining law abiding (including not being charged with new crimes). *Id.* In that case, if any of those conditions were violated, then there was no guarantee as to the sentence, and it would be treated like a straight plea to the court. *Id.* Between his plea hearing and his sentencing hearing, the defendant was charged with new felony charges in another county. *Id.* at 203. The district court found the defendant violated the terms of the plea agreement and did not give the defendant the reduced sentence he would have received had he complied with the terms. *Id.* at 203. This Court found that this was not an unconditional promise for a particular sentence. *Id.* at 204. This Court held that “[b]ecause appellant’s plea agreement included conditions and he did not comply with those conditions, the district court had no obligation to impose the sentence in the plea agreement and did not violate the plea agreement by imposing a different sentence.” *Id.*

Like *Montez*, this Court should find that the record indicates Appellant entered into a valid conditional plea agreement. Appellant entered into a conditional plea agreement in which he would receive a bottom-of-the-box 92-month sentence if he complied with the terms of conditional release but would receive a top-of-the-box 123-month sentence if he violated the terms of conditional release before sentencing. The parties both understood compliance with conditional release was a term of the plea agreement; Appellant’s counsel conceded at the sentencing hearing

that those were the terms of the plea agreement as stated on the record by the district court at the plea hearing, prior to Appellant accepting the negotiation. There is no factual dispute that the district court would impose a sentence of 123 months if Appellant either failed to appear for sentencing or violated his conditional release. Because the conditional nature of Appellant's plea agreement was clear and Appellant understood the terms, this Court should find that Appellant entered into a valid conditional plea agreement and affirm the district court's sentencing of Appellant in accordance with these agreed-upon terms.

**C. Appellant's Sentence Did Not Violate Procedural Due Process.**

Appellant now argues his sentence violates procedural due process. Appellant's claim on appeal is that sentencing Appellant to a longer sentence based on pending charges – not convictions – violates due process and that some type of evidentiary hearing should be required to prove Appellant violated the terms of a plea agreement. This Court should reject this argument because (1) it was not properly or adequately raised below; (2) Appellant did not have a protected interest in a lesser sentence; and (3) Appellant received constitutionally sufficient process.

**1. Appellant Forfeited this Claim by Not Raising It Below.**

Appellant's claim on appeal that his right to due process was violated should be deemed forfeited by this Court for failing to make this argument below. At the sentencing hearing, Appellant argued that merely being charged with a new offense should not be considered a violation of the plea agreement's requirement that he comply with conditional release because the new charges were only allegations, not

convictions. (Sent. Tr. 3.) Appellant argued that the top-of-the-box sentence would not be appropriate until Appellant was found guilty of the new charges. (Sent. Tr. 4.) Appellant did not, however, argue that his due process rights were being violated. Because Appellant did not raise a due-process challenge in district court, this argument should be deemed waived. *See, e.g., State v. Beaulieu*, No. A16-1493, 2017 WL 2535711, at \*4 (Minn. Ct. App. June 12, 2017) (where this Court held that “[b]ecause the issue of whether due process necessitated an evidentiary hearing was never presented to or considered by the district court, the issue is forfeited.”) (*citing Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996)).

**2. Appellant Did Not Have a Constitutionally Protected Interest in a Bottom-of-the-Box Sentence.**

If not deemed waived, this Court should reject Appellant’s due process challenge on the merits because the State did not interfere with a protected liberty interest. “A due-process analysis requires courts to consider whether the state has interfered with a party’s liberty or property interest and, if so, whether the procedures provided were constitutionally sufficient.” *Batchelor*, 786 N.W.2d at 322 (*citing Carrillo v. Fabian*, 701 N.W.2d 763, 768 (Minn. 2005)). “A constitutionally-protected liberty interest arises from a legitimate claim of entitlement rather than simply an abstract need or desire or a unilateral expectation.” *Batchelor*, 786 N.W.2d at 322 (*citing Carrillo*, 701 N.W.2d at 768). When a sentence is conditioned on a particular term or condition, there is no liberty interest

in or entitlement to that sentence if the defendant violates the term or condition. *Batchelor*, 786 N.W.2d at 323.

In *State v. Batchelor*, for instance, the defendant pleaded guilty pursuant to an agreement for a 60-month sentence if he appeared for his sentencing hearing and a 161-month sentence if he failed to appear for sentencing. 786 N.W.2d at 321. The defendant failed to appear at sentencing and was sentenced to 161 months. *Id.* On appeal, the defendant raised a due process claim, arguing that a district court should be required to make the findings under *State v. Austin*, 295 N.W.2d 246 (Minn. 1980), to properly find a term of a plea agreement has been violated. 786 N.W.2d at 322. This Court rejected the defendant's due process argument, explaining:

Although appellant surely *desired* a 60-month rather than a 161-month sentence, his plea agreement specifically contemplated a guidelines sentence of 161 months. Because appellant entered a guilty plea in which the reduced sentence was conditioned upon his appearance for sentencing, and because he in fact failed to appear, he had no legitimate claim of entitlement to the reduced sentence.

*Batchelor*, 786 N.W.2d at 323.

Like the defendant in *Batchelor*, Appellant has no legitimate claim of entitlement to the lesser sentence. Appellant wished to receive the bottom-of-the-box sentence of 92 months. But this sentence was conditioned upon him complying with conditional release. Because he violated conditional release, he had no legitimate claim of entitlement to the bottom-of-the-box sentence and was, therefore, not entitled to any greater procedural due process. *See also State v. Crenshaw*, No. A12-1909, 2013 WL 6223401, at \*3 (Minn. Ct. App. Dec. 2, 2013)

(relying on *Batchelor* and concluding a defendant who agreed to a conditional plea agreement had “no legitimate claim of entitlement to the sentence anticipated in the original plea agreement because he failed to abide by the terms of that agreement.”).

### **3. Appellant Received Constitutionally Sufficient Process.**

This Court should also reject Appellant’s due process challenge because this Court’s precedents indicate that more process than Appellant received is not required for a district court to determine whether the terms of the plea agreement have been breached. Appellant argues due process was violated by using new charges – not convictions – to determine the conditions of the plea agreement were violated and by not conducting some sort of evidentiary hearing to prove a violation of the terms of a plea agreement. This Court has previously rejected similar claims.

For instance, in *State v. Montez*, the defendant similarly argued that merely being charged with a new crime should not constitute a violation of the plea agreement because “he had no ability to prevent the state from wrongfully charging him with a crime and thus invalidating his plea agreement.” 899 N.W.2d at 204. This Court rejected that argument. *Id.* Similarly, in a nonprecedential case, *State v. Crenshaw*, one of the terms of the agreement was that the defendant not be charged with any new charges between the plea hearing and sentencing. 2013 WL 6223401 at \*1. The defendant in *Crenshaw* was charged with new crimes between plea and sentencing (but was not yet convicted), and this Court affirmed. *Id.* Like *Montez* and *Crenshaw*, this Court should reject Appellant’s argument that merely being charged with a new offense should not be considered a violation of the plea

agreement. Furthermore, here the district court explicitly found Appellant violated his conditional release by violating the terms of EHM, independent of the new charges he faced in another county.

Additionally, this Court has rejected arguments similar to Appellant's claim that an additional evidentiary hearing was required to find a defendant has violated the terms of the plea agreement. In *Montez*, the defendant argued there was no evidence of his violation of the plea agreement. 899 N.W.2d at 204. There, the district court based its finding of a violation of the plea agreement on information in the PSI filed in that case. *Id.* This court affirmed the district court's reliance on the PSI, which contained the information that the defendant had violated the terms of the plea agreement. *Id.* Likewise, in a nonprecedential case, *State v. Wimberly*, the defendant argued that whether the defendant violated a term of the plea agreement (to cooperate with a PSI) "was a factual issue that required an evidentiary hearing." No. A07-396, 2008 WL 706964, at \*5 (Minn. Ct. App. Mar. 18, 2008). In *Wimberly*, the defendant did not ask for an evidentiary hearing in district court, and this Court affirmed the district court making the determination that the defendant did not cooperate with the PSI without an evidentiary hearing. *Id.* In *Crenshaw*, the defendant argued both in district court and on appeal that he was entitled to an evidentiary hearing. 2013 WL 6223401 at \*4. There, this Court found the process the defendant was afforded was sufficient as the issue – whether the defendant was charged with new crimes – was narrow and "relatively easy to ascertain" based on the record before the district court. *Id.*

Similar to the reliance on a PSI in *Montez*, here the district court based its finding that Appellant violated the terms of his plea agreement (not to violate conditional release) on the contents of a conditional release violation report filed with the court. Like the court in *Montez*, this court should reject the claim that this was not sufficient evidence on which to conclude Appellant violated the terms of his agreement. Like *Wimberly*, here Appellant did not ask for an evidentiary hearing in district court, so this claim should be rejected on appeal. Like *Crenshaw*, the issue before the district court – whether Appellant violated conditional release – was narrow and able to be determined based on the record before the court. This Court’s precedents, as a whole, have consistently rejected claims similar to Appellant’s.

Appellant knowingly entered into a plea agreement with clear conditions: compliance with conditional release would yield a bottom-of-the-box sentence and violations of conditional release would merit a top-of-the-box sentence. Upon violating conditional release, he was properly sentenced in accordance with this plea agreement. Because Appellant did not have a protected liberty interest in a lesser sentence and because Appellant was not entitled to more procedural protections than he received, this Court should affirm.

## CONCLUSION

For the foregoing reasons, Respondent State of Minnesota respectfully requests this Court affirm Appellant's sentence.

DATED: January 26, 2023

Respectfully submitted,

OFFICE OF THE HENNEPIN  
COUNTY ATTORNEY

MARY F. MORIARTY  
Hennepin County Attorney

/s/ Sarah J. Vokes  
By: SARAH J. VOKES  
Assistant County Attorney  
Attorney License No. 387661  
C-2000 Government Center  
Minneapolis, MN 55487  
Telephone: (612) 543-1168  
FAX: (612) 348-6028

ATTORNEYS FOR RESPONDENT



A22-1762  
STATE OF MINNESOTA  
IN COURT OF APPEALS

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State of Minnesota,

Respondent,

vs.

Donalonte Jamar Wade,

Appellant.

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**CERTIFICATION OF BRIEF  
LENGTH**

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds. 1 and 3, for a brief produced with a proportional font. The length of this brief is 3,950 words. This brief was prepared using Microsoft Office 2016, Times New Roman font face size 13.

Dated: January 26, 2023

/s/ Sarah J. Vokes

By: Sarah J. Vokes

Assistant County Attorney

Attorney License No. 387661

C-2000 Government Center

Minneapolis, MN 55487

Phone: (612) 543-1168

FAX: (612) 348-6028