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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0423**

State of Minnesota,
Respondent,

vs.

Israel Davis,
Appellant.

**Filed August 27, 2018
Affirmed
Cleary, Chief Judge**

Stearns County District Court
File No. 73-CR-15-9239

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

Janelle P. Kendall, Stearns County Attorney, Carl Ole Tvedten, Assistant County Attorney,
St. Cloud, Minnesota (for respondent)

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

Considered and decided by Peterson, Presiding Judge; Cleary, Chief Judge; and
Schellhas, Judge.

UNPUBLISHED OPINION

CLEARY, Chief Judge

On appeal after remand for resentencing, appellant Israel Davis challenges the
imposition of consecutive sentences for his convictions for promotion of prostitution and

sex trafficking in violation of Minn. Stat. § 609.322, subd. 1a (2012), arguing that his total sentence of 276 months is unreasonable and exaggerates the criminality of his conduct. Because the district court properly exercised its discretion by imposing consecutive sentences, we affirm.

FACTS

Appellant recruited B.R., an adult female, to work as a prostitute in 2014. In the six months after meeting appellant, B.R. engaged in prostitution for appellant nearly every day. Appellant arranged hotel rooms for B.R. to engage in prostitution, advertised her as a prostitute on an internet website, communicated with potential customers, managed interactions between B.R. and customers, and provided her with alcohol and drugs. Appellant received more than half of the proceeds of each transaction. B.R. stated that appellant controlled her throughout their relationship, threatened her on multiple occasions, and once grabbed her by the throat and squeezed it. B.R. ended her arrangement with appellant in July of 2014.

In March of 2014, appellant recruited J.R., an adult female, to work as a prostitute. Appellant and J.R. used methamphetamine together and J.R. agreed to engage in prostitution for appellant. Appellant told J.R. that she could earn \$800 per day as a prostitute and asked her to provide him with pictures to be used in an advertisement. J.R. provided appellant with pictures and watched him place an advertisement with her picture on an internet website. A few days later, J.R. met appellant at a hotel and appellant gave her a script to read when communicating with potential customers. J.R. stated that calls

were placed to appellant's phone in response to the advertisement and she became frightened, refused to answer the calls, fled the motel, and later contacted the police.

In 2015, B.R. provided a statement to law enforcement about appellant's previous involvement in sex trafficking. Later that year, law enforcement arrested appellant while executing an unrelated search warrant. Appellant was charged with ten counts¹ related to the sex trafficking of B.R. and J.R.

J.R. testified at trial. Prior to trial, she was contacted by a friend of appellant's, who offered her \$1,000 not to testify. After a court trial, the district court found appellant guilty of six of the charges against him and sentenced him for two convictions of second-degree solicitation, inducement, and promotion of prostitution in violation of Minn. Stat. § 609.322, subd. 1a. Appellant was sentenced on one conviction for his conduct involving B.R. and one conviction for his conduct involving J.R.

Minn. Stat. § 609.322, subd. 1a carries a penalty of imprisonment up to 15 years. Minn. Stat. § 609.322, subd. 1a. But if aggravating factors are present, the penalty can be up to 25 years. *Id.*, subd. 1(b) (2012). A district court may impose an aggravated sentence if: the defendant has committed a prior human-trafficking-related offense; the offense involved a victim who suffered bodily harm during the commission of the offense; the offense involved a time period lasting longer than 180 days; or the offense involved more than one victim. *Id.* The district court determined that aggravating factors were present

¹ The complaint was later amended to 14 counts of engaging in prostitution and promoting prostitution, but four of the counts were dismissed when a third victim failed to appear at trial.

with respect to both of appellant's offenses, finding that B.R. suffered bodily harm during the offense and that multiple victims were involved. The district court imposed aggravated sentences, adding 48 months to the presumptive sentence for each conviction. The district court sentenced appellant to 228 months on the second-degree sex-trafficking count related to B.R., and to a sentence of 96 months on the second-degree sex-trafficking count related to J.R.

The district court also determined that consecutive sentences were appropriate, stating that:

[Appellant] trafficked B.R. for a long period of time and . . . attempted to do the same with [J.R.]. And although there was only one incident of physical violence, I do find it egregious that [appellant] would take B.R. at a time when she had been sober for a year and offer her meth and the life [appellant] put her through for those six months.

The district court also noted appellant's attempt to convince J.R. not to testify against him in determining that a consecutive sentence was appropriate.

Appellant challenged his conviction and sentence on multiple grounds. In an unpublished decision, this court affirmed his convictions but reversed and remanded his sentence after determining that the district court's reliance on the same factor—the presence of multiple victims—as the grounds for the imposition of an aggravated presumptive sentence for his conviction related to J.R., and permissive consecutive sentences violates the principle that the district court may not impose a sentence that punishes a defendant twice for the same conduct. *State v. Davis*, No. A16-1245, 2017 WL 3013214, at *4 (Minn. App. July 17, 2017), *review denied* (Minn. Sept. 27, 2017).

However, this court explicitly found that the district court acted within its discretion when it imposed permissive consecutive sentences based on appellant's conduct and on the sentences of similarly situated offenders. *Id.*

On remand, the district court explained that it intended to:

[F]ollow the directions of the appellate court as I understand them. The appellate court said it was inappropriate to consider the fact that there were multiple victims and, therefore . . . I should not have sentenced [appellant] to the 96 months and I'm going to take the appellate court decision into account in resentencing. . . .

I'm not going to do anything to address the sentence that was already pronounced on [the count involving B.R.] other than to take that into account when I aggregate the sentences. For the reasons I stated . . . back at the original sentencing on May 5, 2016, I continue to believe that this is an appropriate case for a permissive consecutive sentencing.

But in calculating the amount of that sentence, I'm not going to take into account or consider multiple victims because that's already a factor in the decision to make them permissively consecutive.

The district court recalculated appellant's presumptive sentence for the count related to J.R. to be 48 months based on a modified criminal-history score of zero and the offense-severity level of B. The district court sentenced appellant to a term of 228 months for his conviction on the count involving B.R. and 48 months for his conviction on the count involving J.R., to be served consecutively. This appeal follows.

DECISION

We review the district court's imposition of consecutive sentences for a clear abuse of discretion. *State v. Smith*, 541 N.W.2d 584, 589 (Minn. 1996). "A district court's

decision regarding permissive, consecutive sentencing will not be disturbed unless the resulting sentence unfairly exaggerates the criminality of the defendant's conduct." *State v. Rhoades*, 690 N.W.2d 135, 139 (Minn. App. 2004). We look to "past sentences imposed on other offenders when determining the propriety of consecutive sentencing." *State v. Richardson*, 670 N.W.2d 267, 284 (Minn. 2003). Consecutive sentencing for appellant's sex-trafficking convictions with multiple convictions is "permissive and within the broad discretion of the [district] court." *Id.*; Minn. Sent. Guidelines 2.F.2.a(1)(ii) (2012 & Supp. 2013). Both of appellant's sentences on remand were within the range set by the sentencing guidelines. Minn. Sent. Guidelines 2.G.9.a., 4.B. (2012 & Supp. 2013).

This court previously determined that the imposition of consecutive sentences was a proper exercise of the district court's discretion based on the facts of this case and the sentences of similarly situated offenders. *Davis*, 2017 WL 3013214, at *4. The sole reason that appellant's sentence was reversed was due to the district court's reliance on the multiple-victims factor to impose both an aggravated sentence and consecutive sentences. On remand, the district court corrected its error and relied on the presence of multiple victims solely to support the imposition of consecutive sentences. Accordingly, the district court did not abuse its discretion by imposing an aggravated sentence of 228 months for appellant's sex trafficking of B.R. and the presumptive sentence of 48 months for his sex trafficking of J.R., to be served consecutively.

Appellant argues that his consecutive sentences are unreasonable because his crimes involved adults and one of the victims did not actually engage in sexual conduct. But as the district court found, appellant's conduct was "egregious." Appellant lured both B.R.

and J.R. into prostitution by providing them with access to methamphetamine, and preyed on their status as drug addicts. Appellant exerted control over B.R. through intimidation and at least one instance of physical violence. While under appellant's control, B.R. engaged in prostitution almost daily for six months. And while J.R. never engaged in any acts of prostitution, the statutes prohibiting the promotion of prostitution and sex trafficking are focused on appellant's knowing promotion of prostitution and sex trafficking, not on the actions of his victims. *See* Minn. Stat. § 609.321, subds. 7, 7a (2012) (defining “[p]romotes the prostitution of an individual” and “[s]ex trafficking.”). Appellant knowingly sex trafficked and promoted the prostitution of J.R.: he recruited her to work as a prostitute; brought her to a location to engage in prostitution; advertised her as a prostitute; and instructed her how to handle calls related to that advertisement.

Based on these facts, appellant's consecutive sentences are not unreasonable and do not unfairly exaggerate the criminality of his conduct. The district court did not abuse its discretion by imposing consecutive sentences totaling 276 months.

Affirmed.