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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0625**

Lovell Nahmor Oates,
a/k/a Lovell Oates-Ali, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed December 17, 2012
Affirmed
Klaphake, Judge***

Hennepin County District Court
File No. 27-CR-98-124740

Lovell Nahmor Oates, Moose Lake, Minnesota (pro se appellant)

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

Michael O. Freeman, Hennepin County Attorney, Linda K. Jenny, Assistant County
Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Stoneburner, Presiding Judge; Larkin, Judge; and
Klaphake, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

KLAPHAKE, Judge

Appellant challenges the district court's order denying his motion to correct his sentence under Minn. R. Crim. P. 27.03, subd. 9. Because this court has decided the legal issues that appellant raises in this appeal when addressing his previous postconviction appeals, his claims are barred by the doctrine of "law of the case," and the district court did not abuse its discretion by denying appellant's motion to correct his sentence. We affirm.

DECISION

"The court may at any time correct a sentence not authorized by law." Minn. R. Crim. P. 27.03, subd. 9. "On appeal from the district court's denial of a rule 27.03 motion, this court will not reevaluate a sentence if the [district] court's discretion has been properly exercised and the sentence is authorized by law." *Anderson v. State*, 794 N.W.2d 137, 139 (Minn. App. 2011) (quotation omitted), *review denied* (Minn. Apr. 27, 2011). The doctrine of law of the case "provides that when a court decides upon a rule of law, that decision should continue to govern the *same issues* in subsequent stages in the *same case*." *Lynch v. State*, 749 N.W.2d 318, 321 (Minn. 2008) (quotation omitted).

The facts giving rise to appellant Lovell Oates's convictions of second-degree murder and four counts of second-degree assault concern a 1998 shooting incident at a Minneapolis nightclub. *State v. Oates*, 611 N.W.2d 580, 582-84 (Minn. App. 2000), *review denied* (Minn. Aug. 22, 2000). The district court sentenced appellant to 306 months for second-degree murder. *Id.* at 583. The district court also imposed

presumptive 36-month sentences for each count of second-degree assault and ordered appellant to serve two of these sentences concurrently and the remaining two consecutively. *Id.* at 583-84. On direct appeal, this court affirmed appellant's convictions and consecutive sentences on two of the second-degree assault convictions. From 2002 through 2007, appellant filed several petitions for postconviction relief, all of which the district court denied and this court affirmed on appeal. *See Oates v. State*, No. C7-02-2269, 2003 WL 21911197, at *1, 3 (Minn. App. Aug. 12, 2003); *Oates v. State*, No. A04-1749, 2005 WL 1545431, at *1 (Minn. App. July 5, 2005), *review denied* (Minn. Aug. 24, 2005); *Oates v. State*, No. A06-1279 (Minn. App. Aug. 1, 2007) (order op.); *Oates v. State*, No. A07-2169, 2008 WL 5396824, at *2-6 (Minn. App. Dec. 30, 2008), *review denied* (Minn. Mar. 17, 2009).

In 2011, appellant moved to correct or reduce his sentence under Minn. R. Crim. P. 27.03, subd. 9, arguing that the consecutive sentences on two of the second-degree assault convictions were not authorized by law. The district court considered the merits of appellant's motion, and concluded that appellant was sentenced under Minn. Stat. § 609.11, subd. 5(a) (1998), and that appellant's 36-month sentences on these second-degree assault convictions were legal.

Appellant now argues that the court abused its discretion by denying his motion to correct an unauthorized sentence because (1) he was not sentenced under Minn. Stat. § 609.11, subd. 5, but was impermissibly sentenced under Minn. Stat. § 609.11, subd. 4; (2) and if he was sentenced under subdivision 5, the sentence violates his right to due process because the jury made no finding concerning his use of a firearm.

Because this court has previously decided these issues of law, his claims are barred by “law of the case.” This court previously summarized the basis for appellant’s sentences on the second-degree assault convictions:

The [sentencing] court imposed the 36-month mandatory minimum sentence for each of [appellant]’s convictions of second-degree assault. *See* Minn. Stat. § 609.11, subds. 5, 9 (1998). When a statute provides for a mandatory minimum sentence, the presumptive sentence is the mandatory minimum duration or the duration under the guidelines grid, whichever is longer. Minn. Sent. Guidelines II.E. Because the 36-month mandatory minimum is longer than the 21-month sentence under the guidelines grid, the 36-month sentence imposed for each second-degree assault offense is the presumptive guidelines sentence.

That the [sentencing] court ordered [appellant] to serve two of the 36-month sentences consecutively was not an upward departure because the consecutive sentences were permissive. Minn. Sent. Guidelines II.F.

Oates, 2005 WL 1545431, at *4. Thus, we held that appellant was sentenced pursuant to section 609.11, subdivision 5. *Id.* at *3-4. Moreover, section 609.11, subdivision 4, applies to a defendant convicted of a crime in subdivision 9 who used “a dangerous weapon other than a firearm” at the time of the offense. It is undisputed that appellant used a firearm to accomplish the second-degree murder offense.

Appellant also argues that if he were sentenced under section 609.11, subdivision 5, his sentence violates due process because it increased his penalty without having the jury determine his use of the firearm. *See Blakely v. Washington*, 542 U.S. 296, 301-04, 124 S. Ct. 2531, 2536-37 (2004) (holding that facts supporting an increased sentence beyond the statutory maximum must be found by the jury and proven beyond a

reasonable doubt). Appellant's argument challenges his sentence as a violation of his right to trial by jury, which is a legal issue this court previously considered and rejected.

In a previous appeal, we considered appellant's argument that his sentence violated his right to a jury trial under *Blakely*. *Oates*, 2005 WL 1545431, at *3-4. We recognized that *Blakely* does not apply to permissive consecutive sentencing for crimes against persons, and held that appellant (1) did not receive an upward durational departure; (2) received the mandatory 36-month minimum sentence for each conviction of second-degree assault pursuant to Minn. Stat. § 609.11, subds. 5, 9; and (3) received permissive consecutive sentences on two of the 36-month sentences. *Id.* We also held that to the extent appellant challenged his sentence under *Apprendi*, "his claim is procedurally barred." *Id.* at *4 n.4.

In a subsequent appeal, this court held:

The jury was instructed regarding the elements of assault with a dangerous weapon, which in this case was a firearm. Thus, by returning guilty verdicts on the assault charges, the jury found beyond a reasonable doubt that [appellant] assaulted the victims with a dangerous weapon, a firearm. To the extent that the 36-month sentence for the assault convictions were dictated by section 609.11, the sentence imposed was based on jury findings, not on a judicial finding under section 609.11. Accordingly, [appellant]'s *Blakely* claim is without merit.

Oates, No. A06-1279 (order op.). Further, we considered the merits of appellant's later claim that the 2006 amendment to section 609.11 requiring a finding that a defendant used a firearm or dangerous weapon be made by the jury violated *Blakely*. *Oates*, 2008 WL 5396824, at *2-3. In that appeal, we held that the amendment did not establish a

meritorious *Blakely*-based claim for appellant because (1) appellant did not receive an upward departure in his sentence, and (2) the jury made the dangerous-weapon finding concerning appellant's use of a firearm using the standard of proof beyond a reasonable doubt because it returned a guilty verdict on the assault charges. *Id.*

Because we have already considered, addressed, and ruled on appellant's current legal claims that his sentence violates due process and the right to trial by jury, appellant's claims are barred by the doctrine of "law of the case." The district court did not abuse its discretion by denying appellant's motion for correction or reduction of sentence.

Affirmed.