STATE OF MINNESOTA
IN COURT OF APPEALS
A09-354

State of Minnesota,
Respondent,

vs.

Steven Todd Parker,
Appellant.

Filed November 10, 2009
Affirmed
Worke, Judge

Dakota County District Court
File No. 19-K1-05-002937

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

James C. Backstrom, Dakota County Attorney, Kevin J. Golden, Assistant County Attorney, Dakota County Judicial Center, 1560 Highway 55, Hastings, MN 55033 (for respondent)

Marie L. Wolf, Interim Chief Appellate Public Defender, Susan Andrews, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Schellhas, Presiding Judge; Worke, Judge; and Ross, Judge.

U N P U B L I S H E D O P I N I O N

WORKE, Judge

Appellant challenges his sentence following remand from this court, arguing that his sentence is not the product of a thoughtful decision but, rather, that of a statute that does not require restraint in sentencing a career offender. We affirm.

D E C I S I O N

Appellant Steven Todd Parker challenges his 360-month prison sentence, which is a departure from the presumptive sentence based on the career-offender statute. This court reviews a district court's departure from the guidelines for an abuse of discretion. *State v. Geller*, 665 N.W.2d 514, 516 (Minn. 2003). "A court abuses its discretion when it acts . . . in contravention of the law." *State v. Mix*, 646 N.W.2d 247, 250 (Minn. App. 2002), *review denied* (Minn. Aug. 20, 2002).

Appellant was originally sentenced in 2007 after a jury found him guilty of first-degree burglary, two counts of second-degree burglary, theft of a motor vehicle, and fleeing a police officer. *See State v. Parker*, No. A07-0968, 2008 WL 2965925, at *1 (Minn. App. Aug. 5, 2008). The district court enhanced appellant's sentence based on the jury finding that appellant is a career offender and additional findings made by the district court. *Id.* at *9. Appellant challenged his sentences and this court remanded, instructing the district court to (1) limit its departure to appellant's admissions and jury findings and (2) not impose a consecutive sentence for the theft-of-a-motor-vehicle conviction. *Id.* at *11. The district court resentenced appellant to 240 months in prison on his first-degree-burglary conviction, 120 months in prison on one of his second-

degree-burglary convictions, 60 months in prison on his theft-of-motor-vehicle conviction, and 36 months in prison on his fleeing-a-police-officer conviction. The sentences on the theft and fleeing convictions were to be served concurrently. The district court based the enhanced sentences on the jury finding that appellant is a career offender and the career-offender statute, which allows the district court to impose the statutory maximum sentence on each count. *See* Minn. Stat. § 609.1095, subd. 4 (2006) (permitting a district court to impose the statutory maximum sentence if the jury finds that the offender is a career offender, i.e., has five or more prior felony convictions, and that the present felony was committed as part of a pattern of criminal conduct). The district court in resentencing appellant followed the specific instructions from this court. Therefore, the district court did not abuse its discretion.

Although the district court resentenced appellant according to the remand instructions, appellant, nevertheless, argues that the sentences imposed were excessive because the only aggravating factor the jury found was that he is a career offender. Appellant contends that his sentences are excessive and urges us to exercise our authority to modify his sentences. *See* Minn. Stat. § 244.11, subd. 2(b) (2006) (providing this court with authority to direct entry of an appropriate sentence if we determine that a "sentence is inconsistent with statutory requirements, unreasonable, inappropriate, excessive, unjustifiably disparate, or not warranted by the findings of fact issued by the district court"). The state counters that we should decline to exercise our authority for two reasons. The state first argues that appellant's claim is barred by *State v. Knaffla*, 309 Minn. 246, 243 N.W.2d 737 (1976). Appellant raised this argument in his first appeal

and this court declined to exercise its authority because the case was remanded for resentencing. *See Parker*, 2008 WL 2965925, at *11; *Knaffla*, 309 Minn. at 252, 243 N.W.2d at 741 (stating that all matters raised or known and not raised at the time of direct appeal will not be considered in a subsequent matter). Because appellant is challenging a resentence, we will address his claim.

The state also argues that we should decline to modify appellant's sentences because they are supported by his criminal history and the jury finding that he is a career offender. We agree. Appellant argues that sentencing as a career offender punishes him for his record instead of the manner in which he committed the crime. But legislatively created sentencing enhancements such as the career-offender statute may be used to increase sentences beyond a double-durational departure in the absence of severe aggravating circumstances. *Neal v. State*, 658 N.W.2d 536, 545 (Minn. 2003). The jury found that appellant is a career offender. Under Minn. Stat. § 609.1095, subd. 4, a district court may impose the statutory maximum sentence if the jury finds that the offender is a career offender; the statute does not require the fact-finder to consider additional aggravating factors related to the present offense. *See id.* Therefore, appellant's argument that he should have been sentenced based on the manner in which he committed the present offenses is meritless when the district court sentenced appellant as a career offender.

Appellant also points out that this court emphasized prudence in resentencing on remand. *See Parker*, 2008 WL 2965925, at *11. The district court acknowledged this, but determined that, under the circumstances, the resentences were appropriate. We

conclude that the district court appropriately resentenced appellant. Appellant has a lengthy criminal history. The jury heard evidence regarding multiple convictions over the past 20 years, all involving burglaries, thefts, and fleeing police officers. Appellant admitted to committing 12 felonies—a 1983 burglary conviction; assaulting a police officer in 1989; two counts of second-degree burglary in 1990; felony theft in 1992; receiving stolen property and fleeing a police officer in 1995; three counts of second-degree burglary in April 1999; first-degree burglary in June 1999; and second-degree burglary in December 2001. Appellant also admitted to committing hundreds of unprosecuted burglaries. Appellant had 14 criminal-history points prior to sentencing on the current offenses, ten of which were for burglaries.

Additionally, appellant has not been deterred by previous prison sentences. Following the imposition of his initial 456-month sentence, appellant asked the district court, "[f]or how long? Four hundred—how many months?" The district court repeated appellant's sentence, to which appellant replied: "You think that will change anything?" Appellant posed an interesting question considering that he had served at least ten prison sentences and had yet to be deterred. Moreover, at his resentencing hearing, appellant's presentence investigation was updated because since his initial sentence, appellant was convicted of three additional first-degree-burglary offenses, all of which he committed while out on bail for the current offenses.

In his pro se reply brief, appellant challenges the computation of his criminal-history points. The state did not raise this issue in its brief, and a reply brief is limited to matters raised in the state's brief. *See* Minn. R. Civ. App. P. 128.02, subd. 4. Moreover,

appellant admitted to the offenses used in calculating his criminal-history score and he admitted that he qualifies as a career offender.

Affirmed.