STATE OF MINNESOTA
IN COURT OF APPEALS
A16-2074

Lonnell Javey Powell, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed July 17, 2017
Affirmed
Reilly, Judge

Hennepin County District Court
File No. 27-CR-11-27891

Lonnell J. Powell, Rush City, Minnesota (pro se appellant)

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

Michael O. Freeman, Hennepin County Attorney, Michael Richardson, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Cleary, Chief Judge; Johnson, Judge; and Reilly, Judge.

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

REILLY, Judge

Pro se appellant asks us to reverse the denial of his motion to correct sentence, which the district court treated as a postconviction petition. We conclude that Powell's sentencing challenge may not be treated as a postconviction petition but, because the challenge is meritless, we affirm.

FACTS

In September 2011, appellant Lonnell Javey Powell shot and killed a man. After a bench trial, Powell was convicted of second-degree murder (intentional) and sentenced to 439 months in prison. We affirmed Powell's conviction and sentence in an unpublished opinion. *State v. Powell*, No. A12-1593, 2013 WL 4504364, at *3–6 (Minn. App. Aug. 26, 2013), *review denied* (Minn. Nov. 12, 2013).

In May 2016, Powell filed a pro se motion to correct sentence. The motion repeatedly invokes Minn. R. Crim. P. 27.03, subd. 9, and does not cite any statute regarding postconviction relief. The motion requests a modification of Powell's sentence to "at most 366 months," arguing that the 439-month sentence was an upward durational departure that required but lacked a jury finding or Powell's admission of aggravating factors. The district court denied the motion as a petition for postconviction relief that is untimely, procedurally barred, and meritless. Powell appeals.

D E C I S I O N

"The court may at any time correct a sentence not authorized by law." Minn. R. Crim. P. 27.03, subd. 9. Appellate courts apply an abuse-of-discretion standard to the denial of a motion to correct sentence, reviewing legal conclusions de novo and factual findings for clear error. *Townsend v. State*, 834 N.W.2d 736, 738 (Minn. 2013).

A motion to correct sentence may be based on a claim that the sentence was imposed in violation of the Sixth Amendment and *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004), in that the sentence was imposed absent a required jury finding or admission by the defendant. *Reynolds v. State*, 888 N.W.2d 125, 130 (Minn. 2016). A filing that

raises such a claim and invokes Minn. R. Crim. P. 27.03, subd. 9, is a motion to correct sentence and may not be treated as a petition for postconviction relief. *See id.* at 129 & n.2, 130, 132 (concluding that the district court erred by treating respondent's filing as a postconviction petition where the filing invoked Minn. R. Crim. P. 27.03, subd. 9, and raised a claim that respondent's sentence included a ten-year conditional-release term absent the required jury finding or admission by respondent).

A motion to correct sentence is not subject to the two-year limitations period on postconviction petitions. *Id.* at 128, 133. Neither are claims that are properly raised in a motion to correct sentence subject to procedural bar under the *Knaffla* rule. *See Washington v. State*, 845 N.W.2d 205, 211 (Minn. App. 2014) (stating that this court has declined to apply the procedural bar under *Knaffla* to a motion to correct a sentence under rule 27.03, subd. 9).

In this case, the district court treated Powell's motion to correct sentence as a petition for postconviction relief, even though the motion repeatedly invokes Minn. R. Crim. P. 27.03, subd. 9, and is based on a Sixth Amendment/*Blakely* claim that Powell's sentence was an upward durational departure that required but lacked a jury finding or Powell's admission of aggravating factors. The court thereby erred. *See Reynolds*, 888 N.W.2d at 129 n.2 (declining the state's invitation to adopt a definitive standard of review when examining a district court's decision to treat a rule 27.03, subd. 9, motion to correct sentence as a petition for postconviction relief because, regardless of the standard applied, the district court erred by treating respondent's motion as a petition for postconviction

relief). Powell's motion to correct sentence was neither untimely nor procedurally barred, contrary to the court's conclusions below.

But we nevertheless affirm on the alternative ground that Powell's sentencing challenge fails on its merits. Powell had a criminal-history score of three at the time of sentencing for second-degree murder (intentional). Any sentence between 312 and 439 months therefore was not a departure as to Powell. *See* Minn. Sent. Guidelines IV (2010) (establishing that a district court judge may sentence a defendant with a criminal-history score of three and convicted of second-degree murder (intentional) to 312 to 439 months in prison without departing from the sentencing guidelines). Because the district court imposed a presumptive sentence, no jury finding or admission by Powell was required. *See State v. Rourke*, 773 N.W.2d 913, 919 (Minn. 2009) (explaining that, under *Blakely*, any facts that are "necessary to support a sentence exceeding the maximum authorized by the facts established by a . . . guilty verdict must be admitted by the defendant or proved to a jury beyond a reasonable doubt" and stating that "the maximum sentence authorized by a . . . guilty verdict is the top of the presumptive sentencing range provided in the Minnesota Sentencing Guidelines' grid").

Affirmed.