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STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1617

State of Minnesota,
Respondent,

vs.

Erick Carl Longo,
Appellant.

Filed May 28, 2019
Affirmed
Reilly, Judge

Pennington County District Court
File No. 57-CR-15-473

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Seamus P. Duffy, Pennington County Attorney, Stephen Moeller, Assistant County Attorney, Thief River Falls, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rachel F. Bond, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Hooten, Judge; and Reilly, Judge.

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

REILLY, Judge

In this appeal from resentencing, appellant argues that the district court abused its discretion in sentencing. We affirm.

FACTS

In March 2016, the state filed a 14-count complaint against appellant Erick Carl Longo, charging him with racketeering, conspiracy to commit first- and second-degree controlled substance crimes, and first-, second-, third-, fourth- and fifth-degree controlled substance crimes. Following a jury trial, the jury found appellant guilty of nine offenses and the district court sentenced appellant to 84 months for racketeering, 15 months on the fourth-degree controlled substance crime, 110 months on the first-degree sale crime, 134 months on the first-degree sale crime, 129 months on the second-degree controlled substance crime, 18 months on the fifth-degree controlled substance crime, 49 months on the second-degree controlled substance crime, 189 months on the conspiracy to commit a controlled substance crime, and 189 months on the conspiracy to commit a controlled substance crime. The district court ordered the sentences to run concurrently, for a total sentence of 189 months.

Appellant challenged his convictions and sentences on appeal, arguing that the district court abused its discretion by declining to sentence him under the Drug Sentencing Reform Act (the DSRA), and by relying on the *Hernandez* method. *See State v. Longo*, 909 N.W.2d 599, 603-04 (Minn. App. 2018); *see also State v. Hernandez*, 311 N.W.2d 478, 481 (Minn. 1981) (permitting district court to apply increased criminal-history score for the last of several serial convictions that were not part of "a single behavioral incident or course of conduct"). This court affirmed the convictions but reversed and remanded for resentencing, ruling that appellant was entitled to be resentenced in accordance with the DSRA, and concluding that the district court erred by using the *Hernandez* method for both

the racketeering and controlled-substance crimes committed as part of a single behavioral incident. *Longo*, 909 N.W.2d at 613.

During resentencing, the district court sentenced appellant to 117 months for racketeering, 15 months on the fourth-degree controlled substance crime, 90 months on the first-degree sale crime, 69 months on the second-degree controlled substance crime, 12 months and one day on the fifth-degree controlled substance crime, and 27 months on the second-degree controlled substance crime. The district court did not pronounce sentence on the first-degree sale crime or on the conspiracy offenses. The district court ordered the sentences to run concurrently, for a total sentence of 117 months. This appeal follows.[1]

DECISION

I. District Court's Sentencing Decision

Appellant challenges the district court's sentencing decision. We review a sentence imposed by the district court for an abuse of discretion. *State v. Ford*, 539 N.W.2d 214, 229 (Minn. 1995). The Minnesota Sentencing Guidelines limit a district court's sentencing discretion by prescribing a sentencing range that is presumed to be appropriate. *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014). Any number within that range is a presumptive sentence under the guidelines. *State v. Delk*, 781 N.W.2d 426, 428 (Minn. App. 2010), *review denied* (Minn. July 20, 2010). Presumptive sentences are seldom overturned and

[1] The state did not file a brief or otherwise oppose this appeal. This court ordered the appeal to proceed under Minn. R. Civ. App. P. 142.03 (providing that if a respondent fails to file a brief, the case shall be determined on the merits).

we will reverse the imposition of a presumptive sentence only in "rare" cases. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

Racketeering is a severity-level-nine offense and carries a presumptive duration of 98 months' imprisonment, with a lower range of 84 months and an upper range of 117 months. The district court originally sentenced appellant to 84 months for racketeering, which was the lower end of the presumptive sentencing range. On remand, the district court sentenced appellant to 117 months for the same crime. Appellant argues that, although his sentence remained within the presumptive range, the district court abused its discretion by increasing the penalty from the bottom of the box to the top of the box.

Generally, the district court is in the best position to weigh sentencing options. *See Massey v. State*, 352 N.W.2d 487, 489 (Minn. App. 1984), *review denied* (Minn. Oct. 16, 1984). But we recognize the "general rule of law" that, on resentencing after appeal, a district court may not impose a stricter penalty than the one originally imposed. *State v. Pflepsen*, 590 N.W.2d 759, 767-68 (Minn. 1999); *see also State v. Wallace*, 327 N.W.2d 85, 88 (Minn. 1982) (prohibiting district court from imposing "a more severe penalty than the sentence which it previously imposed"); *State v. Prudhomme*, 228 N.W.2d 243, 246 (Minn. 1975) (holding that after a sentence has been set aside, a district court must not resentence defendant to a longer sentence for the same crime); *State v. Holmes*, 161 N.W.2d 650, 656-57 (Minn. 1968) (prohibiting court from imposing a more severe sentence after defendant's successful appeal results in remand for a new trial). This rule exists to prevent the district court from punishing a defendant for appealing a conviction, and to ensure that the defendant feels free to exercise the right to appeal. *Prudhomme*, 228 N.W.2d at 247

(Kelly, J., concurring in part and dissenting in part). To allow otherwise "would have the effect of punishing [the] defendant for exercising his right to appeal from the sentence." *Wallace*, 327 N.W.2d at 88.

Appellant is correct that the penalty for his racketeering offense increased from 84 months to 117 months. However, appellant's *total* sentencing package decreased from 189 months to 117 months. A "sentencing package" is defined as "the bottom line, the total number of years (or . . . months) which effectuates a sentencing plan." *State v. Hutchins*, 856 N.W.2d 281, 285 (Minn. App. 2014) (citing *United States v. Binford*, 108 F.3d 723, 728 (7th Cir. 1997)). A sentencing package "reflects the likelihood that in sentencing a defendant who is convicted of more than one count of a multicount indictment, the district [court] imposes an overall punishment which takes into account the nature of the crime, certain characteristics of the criminal, and the interdependence of the individual counts." *Id*. We recognized in *Hutchins* that a sentencing package may be "unbundled," such as when part of the sentence is vacated, and "in order to effectuate its original sentencing intent, the district court may 'rebundle' the package by resentencing the defendant." *Id*. Thus, when "a defendant 'attacks a portion of a judgment, he is reopening the entire judgment and cannot selectively craft the manner in which the court corrects that judgment.'" *Id*. (quoting *Gardiner v. United States*, 114 F.3d 734, 736 (8th Cir. 1997)), *cert. dismissed as improvidently granted*, 866 N.W.2d 905 (Minn. 2015)).

The record reflects that appellant's overall sentencing package did not increase. During resentencing, the district court imposed a 117-month sentence on appellant's racketeering charge. This sentence is an increase of 33 months from the original 84-month

sentence. While appellant's sentence moved from the lower range to the upper range of the presumptive sentence, it is uncontested that his sentence remained within the presumptive-sentence range. *See State v. Jackson*, 749 N.W.2d 353, 359 n.2 (Minn. 2008) ("All three numbers in any given cell constitute an acceptable sentence . . . the lowest is not a downward departure, nor is the highest an upward departure."). Further, although the sentence for the racketeering offense increased, appellant's *total* sentencing package decreased from 189 months to 117 months. Because the district court did not increase appellant's total sentencing package, we determine that it did not abuse its discretion in resentencing.

II. Appellant's Pro Se Arguments

Appellant raises several arguments in his pro se supplemental brief. Several of these arguments are duplicative of arguments raised in his initial appeal, and we decline to reconsider arguments already considered and rejected by this court.[2] When this "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) (applying "law of the case" doctrine on appeal from denial of a postconviction claim); *see also State v. LaRose*, 673 N.W.2d 157, 161 (Minn. App. 2003) ("When an appellate court has ruled on an issue of law, the issue decided becomes law of

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[2] Appellant argues that the district court erroneously ranked the racketeering offense and failed to adequately apply the amelioration doctrine. We rejected these arguments in appellant's original appeal and do not reconsider them now.

the case and may not be relitigated or reexamined." (quotations and alteration omitted)), *review denied* (Minn. Aug. 17, 2004).

Appellant also argues that the sentence violates his equal-protection rights, and urges the court to modify his sentence in the interests of justice. Appellant could have raised these issues in his initial appeal, but failed to do so. We therefore determine that these claims are *Knaffla*-barred. *See State v. Knaffla*, 243 N.W.2d 737, 741 (Minn. 1976) (noting that once "direct appeal has once been taken, all matters raised therein, and all claims known but not raised, will not be considered upon a subsequent petition for postconviction relief"). Appellant also failed to support his remaining pro se arguments with citation to legal authority, and we therefore deem them waived. *See State v. Taylor*, 869 N.W.2d 1, 22 (Minn. 2015) ("We deem arguments waived on appeal if a pro se supplemental brief contains no argument or citation to legal authority in support of the allegations." (quotation omitted)).

Affirmed.