This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0171

Eugene Francis Cuypers, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed November 1, 2021
Affirmed
Bratvold, Judge

Washington County District Court
File No. 82-K1-00-004784

Cathryn Middlebrook, Chief Appellate Public Defender, Christopher L. Mishek, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Pete Orput, Washington County Attorney, Nicholas A. Hydukovich, Stillwater, Minnesota (for respondent)

Considered and decided by Jesson, Presiding Judge; Larkin, Judge; and Bratvold, Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

In this appeal from an order denying a motion to correct his sentence, appellant argues the district court erred by treating his motion as a time-barred postconviction petition. He also argues equity supports his request to be sentenced like his codefendant.

Because appellant's sentence impacts a negotiated plea agreement, the district court did not err by treating appellant's motion to correct his sentence as a postconviction petition and denying it as untimely. In the alternative, we also reject appellant's equitable sentencing argument. Thus, we affirm.

FACTS

In 1990, a jury convicted appellant Eugene Francis Cuypers of first-degree premeditated murder, and the district court imposed a mandatory sentence of life imprisonment. The Minnesota Supreme Court affirmed his conviction. *State v. Cuypers*, 481 N.W.2d 553, 555 (Minn. 1992).

In August 2000, while Cuypers was an inmate at the Minnesota Correctional Facility in Stillwater, he and Israel Ray Gaitan Jr. were indicted for the first-degree murder of another inmate. In 2001, Cuypers reached a plea agreement, pleaded guilty to an amended charge of second-degree unintentional murder, and admitted beating the deceased inmate with a steel bar. At sentencing, the district court followed the parties' request under the plea agreement and imposed a 130-month prison sentence, a downward durational departure from the presumptive sentence under the Minnesota Sentencing Guidelines. The sentence was to be served consecutively to his sentence for the 1990 conviction ("the 2001 sentence"). Cuypers did not appeal his 2001 conviction or sentence.

In 2002, codefendant Gaitan reached a plea agreement and pleaded guilty to an amended charge of second-degree unintentional murder. At sentencing, the district court

followed the parties' request under the plea agreement and imposed a 169-month prison sentence, to be served concurrently with the sentence Gaitan was already serving.[1]

Nineteen years later, Cuypers moved to correct his 2001 sentence. Cuypers's motion argued that the disparity between his consecutive sentence and Gaitan's concurrent sentence was inequitable and violated his right to equal protection under the Fourteenth Amendment. The district court first determined Cuypers's 2001 sentence was imposed as part of a negotiated plea agreement, therefore, the district court lacked authority to correct the sentence. The district court then reasoned Cuypers's motion should be treated as a petition for postconviction relief, determined his petition was time-barred, and denied relief without a hearing.

Cuypers appeals.

DECISION

A convicted defendant may seek relief from an illegal sentence in two ways. The Minnesota Rules of Criminal Procedure provide that a "sentence not authorized by law" may be corrected "at any time." Minn. R. Crim. P. 27.03, subd. 9. Minnesota's postconviction statute allows a convicted defendant to petition to correct a sentence when the sentence "violate[s] the person's rights under the Constitution or the laws of the United States or of the state." Minn. Stat. § 590.01, subd. 1(1) (2020). A petition for

[1] When Gaitan and Cuypers killed the inmate, Gaitan was incarcerated for a 1993 first-degree murder conviction. The Minnesota Supreme Court affirmed Gaitan's 1993 conviction. *State v. Gaitan*, 536 N.W.2d 11, 12 (Minn. 1995).

postconviction relief, however, must typically be filed within two years of the date when a conviction becomes final. Minn. Stat. § 590.01, subd. 4(a) (2020).

Appellate courts review a district court's order denying a motion to correct a sentence for abuse of discretion. *Townsend v. State*, 834 N.W.2d 736, 738 (Minn. 2013). An appellate court reviews "the district court's legal conclusions de novo and its factual findings under the clearly erroneous standard." *Id.* When "[t]he parties' arguments present issues regarding the interpretation of a procedural rule and statute," like whether a district court erred by treating a motion to correct a sentence as a petition for postconviction relief, appellate review is de novo. *State v. Coles*, 862 N.W.2d 477, 479 (Minn. 2015).

Cuypers raises two issues, which we discuss in turn.

I. The district court correctly determined that Cuypers's motion is an untimely petition for postconviction relief.

Cuypers argues the district court erred by treating his rule 27.03 motion as a postconviction petition because his motion "does not implicate material and bargained-for terms of his plea bargain." The state argues Cuypers's 2001 sentence was negotiated as part of his plea agreement so his motion must be treated as a petition for postconviction relief and, as such, is time-barred.

Our analysis of whether Cuypers's motion to correct his sentence must be treated as a petition for postconviction relief is guided by the supreme court's decision in *Coles*. Coles, like Cuypers, moved to correct his sentence more than two years after his sentence was imposed. *Id.* Before sentencing, Coles entered into a plea agreement in which the state agreed to dismiss several charges, Coles agreed to plead guilty to a lesser charge, and the

parties agreed to a sentence involving an upward durational departure from the sentencing guidelines. *Id.* at 477.

Seven years later, Coles moved to correct his sentence under rule 27.03, arguing the district court erred by departing from the guidelines. *Id.* at 479. The district court denied the motion, concluding Coles's request was a time-barred postconviction petition because the motion implicated the plea agreement. *Id.* This court affirmed. *State v. Coles*, A13-0789, 2013 WL 6570058 (Minn. App. Dec. 16, 2013). The supreme court granted review and considered whether a defendant "may challenge his sentence in a motion to correct his sentence," under rule 27.03, subd. 9, or "whether his challenge must be brought in a petition for postconviction relief." *Coles*, 862 N.W.2d at 477.

The supreme court determined, "the plain language of Rule 27.03 is limited to sentences." *Id.* at 480. The supreme court reasoned that granting Coles's motion would mean "the terms of the plea agreement the parties reached will, in effect, have been rejected." *Id.* (quotation omitted). "If the defendant succeeds in reducing his or her sentence, he or she retains the benefit of the reduced criminal charge but the State no longer receives the benefit of the longer sentence." *Id.* at 481. Because Coles moved to correct a sentence "imposed as part of a plea agreement, a motion to change that sentence impacts more than simply the sentence and Rule 27.03 does not apply." *Id.* Thus, the supreme court concluded Coles's motion must be treated as a petition for postconviction relief, which was time-barred, and therefore affirmed. *Id.* at 481–82.

With *Coles* in mind, we examine the record of Cuypers's plea and sentence in 2001. At the hearing, the parties outlined the terms of the negotiated plea agreement:

> DEFENSE ATTORNEY: . . . The state has agreed to amend the charge to second degree unintentional murder . . . and based on that amendment Mr. Cuypers is going to enter a plea of guilty . . . .
>
> We have an agreement that there would be a 130 month cap on executed jail time, which would amount to a downward departure, which is a negotiation between the parties. That's the agreement.
>
> THE COURT: Do you have anything to add . . . ?
> PROSECUTING ATTORNEY: Yes. The 130 months would be consecutive to Mr. Cuypers current sentence that he's serving.

The district court then stated the presumptive sentence under the guidelines for second-degree murder is 165 months. The district court accepted Cuypers's guilty plea to the amended charge, imposed a downward durational departure, and sentenced Cuypers to 130 months, to be served consecutively with his current sentence. Thus, the district court imposed the 2001 sentence as part of its acceptance of the negotiated plea agreement. *See* Minn. R. Crim. P. 15.04, subd. 3(2) ("[T]he district court judge must reject or accept the plea of guilty on the terms of the plea agreement.").

Cuypers's appeal focuses on the consecutive term of his 2001 sentence. When a defendant is sentenced for two or more crimes, whether committed at the same time or separate times, the district court "shall specify whether the sentences shall run concurrently or consecutively. If the court does not so specify, the sentences shall run concurrently." Minn. Stat. § 609.15, subd. 1(a) (2000). When a defendant is sentenced for an offense in prison while the defendant is serving a prison term, the guidelines presume the district court will impose a consecutive sentence. Minn. Sent. Guidelines II.F (2000); *see State v. Collins*, 580 N.W.2d 36, 44 (Minn. App. 1998), *rev. denied* (Minn. July 16, 1998).

Cuypers argues, "adjusting the consecutive nature of Cuypers'[s] sentence does not deprive either side of the benefit of the bargain reached in the plea agreement because the term was not a material and bargained-for term of the plea agreement." He contends all parties believed "Cuypers would be in prison his entire life on his initial murder conviction" at the time of the sentencing hearing. According to Cuypers, whether he received "a consecutive versus a concurrent sentence would not have mattered to the state in negotiating the plea—what mattered was that Cuypers was convicted of the offense."

Cuypers is correct that during the 2001 plea and sentencing hearing, the prosecuting attorney, defense attorney, and the district court discussed that Cuypers would be in prison for the rest of his life—until 2088, 2089, or 2091—regardless of the duration of the 2001 sentence.[2] Cuypers is also correct that the consecutive term of his 2001 sentence was not mentioned in his written plea petition. But during the hearing, the parties and the district court expressly discussed that the 2001 sentence would be served consecutively to the sentence Cuypers was then serving. For example, before imposing the 2001 sentence, the district court stated:

> *I will go along with the joint request for a downward durational departure* based on the agreement of the prosecution plus the fact that [Cuypers's] supervised released date on [his] present offense is so far into the distant future *with*

[2] The rationale for believing that Cuypers would remain in prison until 2088, 2089, or 2091 is unclear. Cuypers's brief argues that the parties' belief was "erroneous" and that Cuypers moved to correct his 2001 sentence "[a]fter learning he was eligible for supervised release on his 1990 murder conviction." For his 1990 conviction, Cuypers likely was eligible for supervised release after serving 30 years of his life sentence. *See* Minn. Stat. § 244.05, subd. 5 (2020). But Cuypers's likely release date for his 1990 conviction is immaterial to the issue on appeal. As explained in this opinion, the record shows that Cuypers's 2001 sentence was part of a negotiated plea agreement.

> *this consecutive sentence added onto it* the likelihood that [he] will ever see the light of day again is slim to none, no matter [the] sentence I impose.

(Emphasis added.) Cuypers's argument is therefore unpersuasive because his 2001 sentence—including the district court's decision to impose the sentence consecutively—was part of the negotiated plea agreement.

Cuypers asks this court to follow *State v. Maurstad*, 733 N.W.2d 141 (Minn. 2007), and *Reynolds v. State*, 888 N.W.2d 125 (Minn. 2016). He contends that, based on these two cases, we should conclude his sentence was not the product of a plea bargain, therefore, it may be corrected under rule 27.03. We disagree.

In *Maurstad*, the supreme court ordered the district court to correct a sentence imposed after a plea agreement, relying, in part, on rule 27.03. 733 N.W.2d at 147. The plea agreement provided only that the defendant would "be sentenced according to the Minnesota sentencing guidelines." *Id.* at 143. The district court, however, imposed a sentence based on an incorrect criminal-history score, which the supreme court determined was an illegal sentence. *Id.* at 147. *Coles* differentiated the facts in *Maurstad*: "Unlike Coles' requested relief, adjusting Maurstad's sentence to the correct sentence under the guidelines did not deprive either side of the benefit of the bargain reached in the plea agreement." *Coles*, 862 N.W.2d at 481 n.4.

In *Reynolds*, the parties reached a plea agreement, and the appellant pleaded guilty to failing to register as a predatory offender; the district court imposed a sentence of one year and one day in prison. 888 N.W.2d at 128. Months later, acting sua sponte, the district court modified appellant's sentence to include a ten-year conditional-release term. *Id.* On

an appeal from the modified sentence, the supreme court determined the modified sentence was not authorized by law and could be corrected under rule 27.03, in part, because the ten-year conditional-release term was not contemplated in the plea agreement. *Id.* at 130.

In short, the appellants' requests for relief in *Maurstad* and *Reynolds* did not implicate the bargained-for plea agreement. Our review of Cuypers's 2001 sentencing hearing shows the opposite. Cuypers's attorney described the parties' negotiated agreement as including a dismissed change, an amended charge, and the downward durational departure. The prosecuting attorney stated that the parties agreed the 2001 sentence would be consecutive to Cuypers's 1990 sentence. The district court also stated it was accepting the parties' "joint request for a downward dispositional departure" because Cuypers would be released "in the distant future," in part noting that "this consecutive sentence [would be] added onto it." Thus, the record shows the parties bargained for and the district court accepted the consecutive term of Cuypers's 2001 sentence.

To conclude, any modification of Cuypers's sentence would impact "more than simply the sentence," therefore, Cuypers's motion to correct his sentence must be treated as a petition for postconviction relief. *See Coles*, 862 N.W.2d at 481. Cuypers's petition for postconviction relief is therefore untimely because he filed it 19 years after he was sentenced. *See* Minn. Stat. § 590.01, subd. 4(a).[3] For that reason, we affirm the district court's order denying Cuypers's motion as a time-barred postconviction petition.

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[3] Cuypers had more than two years from his 2001 sentence in which to bring a postconviction petition. The postconviction statute became effective in July 2005. 2005 Minn. Laws ch. 136, art. 14 § 13, at 1097. The postconviction statute provides: "[a] defendant whose conviction became final before August 1, 2005, had until July 31, 2007,

II. Alternatively, Cuypers did not meet his burden of proving his sentence is unlawful.

Because we affirm the district court's denial of Cuypers's postconviction petition as untimely, we need not reach Cuypers's equity-in-sentencing argument. Even if we assume Cuypers's petition is timely, however, his second argument fails. When a defendant moves to correct his sentence, the defendant bears the burden of proving the illegality of his sentence. *Williams v. State*, 910 N.W.2d 736, 742–43 (Minn. 2018). Cuypers argues his sentence is unlawful because equity requires that he be treated the same as his similarly situated codefendant, Gaitan, who received a concurrent sentence of 169 months to Cuypers's consecutive sentence of 130 months. The state contends Cuypers's rule 27.03 motion fails because Cuypers provided no "viable basis for comparison of his culpability compared with that of Gaitan."

Minnesota caselaw and the sentencing guidelines recognize equitable principles in sentencing codefendants. *See State. v. McClay*, 310 N.W.2d 683, 685–86 (Minn. 1981) (affirming as modified identical sentences for codefendants because conviction offense, criminal history, and basis for upward departure was identical for both defendants); *see also* Minn. Sent. Guidelines I (2000) ("equity in sentencing" requires "convicted felons

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to file a timely petition for postconviction relief. After July 31, 2007, such a defendant is not entitled to petition for postconviction relief unless the defendant satisfies one of the exceptions in Minn. Stat. § 590.01, subd. 4(b)." *Staunton v. State*, 842 N.W.2d 3, 9 (Minn. 2014) (citations omitted). Because Cuypers's sentence was final in 2001, he had until July 2007 to petition for postconviction relief.

We note that the postconviction relief statute includes five exceptions under which a court may consider an otherwise untimely petition. *See* Minn. Stat. § 590.01, subd. 4(b) (2020). Cuypers does not contend that any exceptions apply to his case.

similar with respect to relevant sentencing criteria ought to receive similar sanctions"). An appellate court may "modify the sentence of an appealing defendant if that appears to be in the interests of fairness and uniformity." *State v. Vazquez*, 330 N.W.2d 110, 112 (Minn. 1983).

Cuypers makes two arguments to support his claim that he and Gaitan were similarly situated. First, Cuypers argues in his primary brief that he and "Gaitan had the same criminal histories." In his reply brief, however, Cuypers concedes this statement was "likely inaccurate" because "it appears Cuypers had additional convictions from 1988 and 1989." It is correct, as Cuypers argues, that "[o]n the date of offense in 2000 both Cuypers and Gaitan were in prison for one prior murder conviction." But it is insufficient to simply establish one similar prior conviction. *See, e.g.*, *Vazquez*, 330 N.W.2d at 112 (rejecting equitable-sentencing argument based on codefendant's sentence of shorter duration even though both had the same criminal history because appellant's sentence was "not a relatively harsh sentence").

Second, Cuypers argues he and Gaitan "both pleaded guilty to unintentional second-degree murder for causing the death of an inmate in prison in the same incident" and the lesser sentence Cuypers received shows "that the judge found his conduct less severe." We are not convinced. Both Cuypers and Gaitan pleaded guilty to second-degree unintentional murder. This court has repeatedly stated, however, that "a defendant is not entitled to a reduction in his sentence merely because a codefendant received a lesser sentence." *State v. Olson*, 765 N.W.2d 662, 665 (Minn. App. 2009); *see also State v.*

Krebsbach, 524 N.W.2d 17, 19 (Minn. App. 1994), *rev. denied* (Minn. Jan. 13, 1995); *State v. Starnes*, 396 N.W.2d 676, 681 (Minn. App. 1986).

Cuypers admitted at the plea hearing that he killed the victim with a "cold-rolled steel bar," hitting him "five, maybe six" times, with two or three blows to the head. After this admission by Cuypers, the district court followed the negotiated plea agreement and imposed a downward durational departure. We agree with the state that the downward departure does not show the district court found Cuypers had lesser responsibility.

Based on this record, Cuypers did not meet his burden of proving he and Gaitan were similarly situated. The only evident similarity is that both Cuypers and Gaitan were in prison for a prior murder conviction when they were indicted as codefendants for another murder, which is insufficient. Thus, Cuypers's sentence is lawful.

Affirmed.