This opinion is nonprecedential except as provided by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
A21-0337

State of Minnesota,
Respondent,

vs.

Jesse Nikolas Rowland,
Appellant.

Filed December 27, 2021
Reversed and remanded
Frisch, Judge

Clay County District Court
File No. 14-CR-20-561

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

Brian J. Melton, Clay County Attorney, Pamela L. Foss, Chief Assistant County Attorney, Moorhead, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Lauermann, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Reyes, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

Appellant argues that the district court erred by imposing four separate sentences for his child-pornography convictions because the state failed to demonstrate that the

offenses were committed as separate behavioral incidents or that they involved multiple victims. Appellant also makes several pro se arguments. We reverse and remand.

FACTS

After recovering two computers and two hard drives containing child pornography from appellant Jesse Nickolas Rowland's residence, respondent State of Minnesota charged Rowland with four counts of possession of child pornography in violation of Minn. Stat. § 617.247, subd. 4(a) (Supp. 2019). Rowland pleaded guilty to all four counts.

The state elicited the following testimony from Rowland to establish the factual basis for the plea. Rowland agreed that each count of possession occurred on or about May 22, 2019, in Clay County. On that date, four devices were seized from his home. Rowland agreed that he had downloaded child pornography onto each device. No other information was elicited regarding Rowland's possession of the devices or the details of the child pornography contained on those devices. The district court accepted Rowland's plea and imposed stayed prison sentences of 15 months, 20 months, 25 months, and 30 months, respectively, for the four counts.

This appeal follows.

DECISION

I. The state failed to prove that Rowland's possession of child pornography on multiple devices constituted multiple behavioral incidents.

Rowland argues that the district court erred when it entered sentences for all four counts of possessing child pornography because the state failed to demonstrate that each count was part of a single behavioral incident.

"[I]f a person's conduct constitutes more than one offense under the laws of this state, the person may be punished for only one of the offenses." Minn. Stat. § 609.035, subd. 1 (2018). A district court may not impose multiple sentences on a defendant for multiple offenses committed as part of the same behavioral incident unless an exception to the general rules applies. *State v. Ferguson*, 808 N.W.2d 586, 589 (Minn. 2012). The state has "the burden of proving, by a preponderance of the evidence, that a defendant's offenses were not part of a single behavioral incident." *State v. Bakken*, 883 N.W.2d 264, 270 (Minn. 2016).

We review the district court's findings of fact for clear error and its application of the law to those facts de novo. *Id.* We determine whether the crimes were part of a single behavioral incident by considering whether they "occurred at substantially the same time and place" and "whether the conduct was motivated by an effort to obtain a single criminal objective." *Id.* (quotations omitted).

Here, Rowland admitted that on May 22, 2019, he possessed the four devices containing child pornography. He also admitted that all four devices were seized from the same place, his home. Besides these two admissions, Rowland did not admit to any other facts related to the charges, including when he downloaded specific files, how many files were contained on the devices, or what those files specifically depicted. The factual basis elicited in support of Rowland's plea established only that Rowland possessed four devices containing child pornography on the day the devices were seized from his residence.

We find these facts to be analogous to those in *State v. Carlson*, 192 N.W.2d 421 (Minn. 1971). In *Carlson*, the defendants were charged with and convicted of 29 counts of possessing and distributing obscene materials. 192 N.W.2d at 423. The charges stemmed from a raid on their business which resulted in the seizure of 54 rolls of obscene film. *Id.* The district court imposed a fine for each count. *Id.* The supreme court reversed because the facts showed that the possession, combined with an intent to distribute, constituted a single behavioral incident. *See id.* at 428-29. The supreme court later expressly opined that *Carlson* contained "no indication that the State could establish that the defendants possessed the films or offered them for sale at any time or place other than when and where they were discovered by police." *Bakken*, 883 N.W.2d at 272.

Here, like in *Carlson*, Rowland's charges stem from a single raid on his home by law enforcement. The four devices containing the child pornography were all seized on the same day and at the same location. No evidence was elicited setting forth when the files on the devices were downloaded, whether the files on each device were different, any information about the victim or victims depicted in the files, or any other factual details. Without additional evidence showing that Rowland possessed certain child pornography at a time other than when law enforcement seized his devices, the state failed to meet its burden to demonstrate that the counts were separated by time and place. *See id.* (distinguishing *Carlson* with facts proving that defendant downloaded child pornography on different days over several months).

On appeal, the state urges us to "assume" that because of the allegedly vast amount of pornography discovered on Rowland's devices he must have downloaded and possessed different depictions of child pornography at different times. Such an assumption would require us to consider facts alleged only in the complaint and not admitted by the defendant, which we will not do. *Rosendahl v. State*, 955 N.W.2d 294, 301 (Minn. App. 2021) ("[C]onsideration of evidence not expressly acknowledged and admitted by the defendant during the colloquy is not proper for a reviewing court to consider in a 'typical' plea."). Therefore, the state has failed to show that Rowland's acts of possession lacked a unity of time and place.

In addition, the state failed to show that Rowland's conduct was not "motivated by an effort to obtain a singular criminal objective." *Bakken*, 883 N.W.2d at 270 (quotation omitted). When analyzing this factor, "we examine the relationship of the offenses to one another." *Id.* at 270-71. "We consider whether all of the acts performed were necessary to or incidental to the commission of a single crime and motivated by an intent to commit that crime." *Id.* at 271 (quotation omitted).

Here, the state argues that possession of child pornography for sexual gratification cannot, on its own, constitute a single criminal objective. However, we have previously found the contrary. *State v. McCauley*, 820 N.W.2d 577, 591 (Minn. App. 2012) (comparing criminal objectives related to possessing and disseminating child pornography), *rev. denied* (Minn. Oct. 24, 2012). Although the state argues that such a characterization is too broad, the supreme court has found similar situations to constitute a single criminal objective. *See State v. Herberg*, 324 N.W.2d 346, 349 (Minn. 1982)

(finding that two sexual assaults against the same victim, occurring at different times and locations on the same day, were both related to defendant's single objective to satisfy his sexual desires); *Langdon v. State*, 375 N.W.2d 474, 476 (Minn. 1985) (finding that defendant's single criminal objective was to steal as much money as possible from multiple units within an apartment complex). And in cases where multiple criminal objectives have been found, the crimes have not been strongly connected by time or place. *See Bakken*, 883 N.W.2d at 270-71 (pornographic images downloaded on seven different days); *State v. Secrest*, 437 N.W.2d 683, 685 (Minn. App. 1989) (sexual assaults separated by multiple hours and occurring in different counties), *rev. denied* (Minn. May 24, 1989).

Ultimately, the state bears the burden to show that multiple criminal objectives existed. *Bakken*, 883 N.W.2d at 270. Here, the state has not presented any alternative criminal objective distinct from Rowland's possession of the child pornography for his personal sexual gratification. Therefore, the state has failed to show that Rowland's act of possession was motivated by multiple criminal objectives.

The state argues that, even if Rowland's acts of possession constituted a single behavioral incident, the sentences are proper because a defendant may be sentenced for multiple offenses stemming from a single behavioral incident where "(1) the offenses involve multiple victims; and (2) the multiple sentencing does not unfairly exaggerate the criminality of the defendant's conduct." *State v. Rhoades*, 690 N.W.2d 135, 138 (Minn. App. 2004). Whether the multiple-victim rule applies is subject to de novo review. *State v. Skipintheday*, 717 N.W.2d 423, 426 (Minn. 2006).

Here, the state did not elicit any testimony from Rowland regarding the child or children depicted in the pornography contained on his four devices. Rowland did not admit that the pornography depicted multiple child victims. The state again urges us to assume the existence of at least four unique victims depicted in the images found on Rowland's devices. But we cannot make such an assumption where the state did not elicit evidence regarding the number of images and files contained on Rowland's devices at the plea hearing; these alleged details again originate from the complaint and statement of probable cause, which we do not consider when establishing the factual record in support of a plea. *Rosendahl*, 955 N.W.2d at 300. Thus, there is no evidence in the record to support the state's claims that Rowland's offenses involved multiple victims.

Because the state failed to meet its burden of showing that Rowland's crimes were not part of a single behavioral incident, and because the multiple-victim rule does not apply, it was improper for the district court to enter a sentence for each count. We therefore reverse and remand to the district court for resentencing consistent with this opinion.

II. Rowland's plea was not coerced.

Rowland argues in his pro se supplemental brief that the state coerced him into entering a plea of guilty by threatening him with hundreds of other charges if he did not so plead. A plea must be made voluntarily without undue coercion by the state. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). Whether a plea is voluntary is determined by considering all relevant circumstances. *State v. Danh*, 516 N.W.2d. 539, 544 (Minn. 1994).

There is no evidence in the record to support Rowland's claims that his plea was involuntary. Rowland acknowledged in his plea petition and at the plea hearing that

nobody threatened him to enter a guilty plea. No other evidence in the record supports his assertion that he was threatened by the state. Therefore, Rowland's plea was voluntary and not the product of undue coercion.

III. Rowland was not denied his right to present an affirmative defense of voluntary intoxication.

Rowland also argues in his pro se brief that he should have been given the right to present a defense of voluntary intoxication. However, by entering a plea of guilty, Rowland waived all nonjurisdictional arguments, including affirmative defenses. *State v. Johnson*, 422 N.W.2d 14, 16 (Minn. App. 1988), *rev. denied* (Minn. May 16, 1988).

Rowland argues that he would have raised the defense and not pleaded guilty had the state not coerced him into entering a plea. But the record contains no evidence that the state exerted any improper pressure on Rowland to plead guilty and Rowland admitted as much at the plea hearing. Therefore, Rowland was not denied his right to present an affirmative defense of voluntary intoxication.

IV. Rowland was not deprived of his right to a speedy trial.

Rowland also argues in his pro se brief that he was denied his right to a speedy trial. The Sixth Amendment to the United States Constitution provides an accused "the right to a speedy and public trial." U.S. Const. amend. VI; *see also* Minn. Const. art. 1, § 6. "A defendant must be tried as soon as possible after entry of a plea other than guilty." Minn. R. Crim. P. 11.09(b). "On demand of any party after entry of such plea, the trial must start within 60 days unless the court finds good cause for a later trial date." *Id.*

Here, the record does not reflect that Rowland ever asserted his right for a speedy trial. Rowland entered a plea of not guilty on July 31, 2020. On December 11, 2020, Rowland signed a plea petition waiving his right to a trial. Rowland also affirmed the waiver of his right to a trial when he pleaded guilty. And even if Rowland was deprived of his right to a speedy trial prior to entering his guilty plea, he waived his right to challenge pre-plea constitutional deficiencies by pleading guilty. *State v. Smith*, 749 N.W.2d 88, 97 (Minn. App. 2008) ("[W]hen Smith pleaded guilty, his speedy-trial right evaporated.").

Rowland argues that he did not assert his speedy-trial right and instead entered a plea of guilty because he was provided with ineffective assistance of counsel. He alleges that his counsel advised him that he was not allowed to raise the speedy-trial issue to get his charges dismissed. Ineffective assistance of counsel renders a guilty plea involuntary. *State v. Ecker*, 524 N.W.2d 712, 718 (Minn. 1994).

A claim for ineffective assistance of counsel requires the claimant to show that (1) counsel's performance fell below an objective standard of reasonableness and (2) absent counsel's unreasonable performance, the result of the proceeding likely would have been different. *Strickland v. Washington*, 466 U.S. 668, 687-88, 694-95 (1984). "If a claim fails to satisfy one of the *Strickland* requirements, we need not consider the other requirement." *State v. Mosley*, 895 N.W.2d 585, 591 (Minn. 2017).

Here, even assuming that counsel provided objectively erroneous legal advice regarding Rowland's ability to raise a speedy-trial defense, Rowland cannot show that the result of the proceeding likely would have been different. Rowland fails to show that a trial would not have occurred within 60 days if he had asserted his speedy-trial right when

he pleaded not guilty and that the charges would have been dismissed. Without evidence in the record that his right to a speedy trial would have been violated had it been asserted, we do not find that ineffective assistance of counsel rendered Rowland's plea invalid. Therefore, Rowland's right to raise a speedy-trial defense was waived when he entered a plea of guilty.

Reversed and remanded.