STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1539

State of Minnesota,
Respondent,

vs.

Joel Patrick Rodriguez,
Appellant.

Filed July 25, 2022
Affirmed
Reilly, Judge

Clay County District Court
File No. 14-CR-20-679

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

Brian J. Melton, Clay County Attorney, Michael D. Leeser, Assistant County Attorney, Moorhead, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Cochran, Judge; and Kirk, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

REILLY, Judge

Appellant argues that the district court erred by ordering restitution for an offense that was dismissed as part of appellant's global plea agreement to different offenses. Because appellant forfeited this issue by not raising it below, and because appellant is not entitled to relief on the merits, we affirm.

FACTS

Between 2019 and 2021, respondent State of Minnesota filed multiple charges against appellant Joel Patrick Rodriguez in seven different case files. Following plea negotiations, the parties reached a global resolution of the criminal complaints against appellant. Appellant pleaded guilty to offenses in four case files. In exchange, the state agreed to dismiss the remaining counts of these complaints and further agreed not to pursue potential charges under review in other case files. The parties also reached an agreement regarding sentencing. At the sentencing hearing, counsel informed the district court that the victim in one of the dismissed cases had filed a request for restitution. The district court agreed to leave restitution unresolved for thirty days to give appellant time to decide whether to object to the restitution request. The district court then imposed a sentence consistent with the parties' plea agreement. The victim later filed a restitution claim form. The district court ordered appellant to pay restitution to cover damages to the victim in one of the dismissed cases. This appeal follows.

DECISION

I. Appellant forfeited review of the restitution issue.

We first consider whether appellant forfeited his challenge to the district court's restitution order by failing to raise it before the district court. A reviewing court generally will not consider restitution arguments not raised below. *State v. Johnson*, 851 N.W.2d 60, 64 (Minn. 2014) (declining to consider a restitution argument raised for the first time on appeal).

A restitution order must be challenged within 30 days of receipt of written notice of the amount of restitution or within 30 days of sentencing, whichever is later. Minn. Stat. § 611A.045, subd. 3(b) (2020). "A defendant may not challenge the restitution after the 30-day time period has passed." *Id.* Here, the district court filed its restitution order in August 2021. Appellant acknowledges he did not file an objection to the restitution request. Even so, appellant argues that because he is challenging the district court's authority to award restitution on a dismissed claim, rather than on the type or amount of restitution, his challenge is timely. The 30-day statutory deadline precludes our review on appeal when a defendant disputes either the amount, or the type, of restitution. *State v. Gaiovnik*, 794 N.W.2d 643, 647 (Minn. 2011). But the 30-day time bar does not apply to a challenge to the district court's legal authority to award restitution. *Id.* at 648. *Gaiovnik* states that the 30-day time limit does not apply under "the narrow circumstances" where the "only challenge is to the legal authority of the court to order restitution and that challenge was raised in the district court." *Id.* The supreme court stated:

> Because the time deadline in [Minn. Stat. § 611A.045, subd. 3(b)] does not govern [the defendant's] challenge, we hold that his failure to submit a written challenge within 30 days after the sentencing hearing does not preclude [him] from challenging in a direct appeal the district court's legal authority to award restitution when he raised this legal issue with the district court at the sentencing hearing.

Id. at 649.

Here, appellant concedes that he did not raise this legal issue with the district court at any point, as required by *Gaiovnik*. Instead, appellant raised his challenge for the first time on appeal. Because appellant failed to properly raise this challenge in district court, he has forfeited his right to challenge restitution on appeal.

Appellant asserts that his claim can be raised for the first time on appeal under Minnesota Rule of Criminal Procedure 27.03, which provides that "[t]he court may at any time correct a sentence not authorized by law." Minn. R. Crim. P. 27.03, subd. 9. An appellant may use the procedure in this rule to challenge a restitution award. *Evans v. State*, 880 N.W.2d 357, 359-60 (Minn. 2016). But "a challenge to a sentence imposed as part of a plea agreement involves more than simply the sentence." *State v. Coles*, 862 N.W.2d 477, 481 (Minn. 2015). When an appellant's motion to correct sentence implicates a plea agreement, including the state's dismissal of other pending charges, the exclusive remedy is a petition for postconviction relief. *Id.* at 480-81. Here, appellant's challenge to the restitution order implicates his other charges and case files, which were resolved as part of a global plea agreement. Thus, appellant cannot properly bring his challenge under rule 27.03 because restitution was part of his plea agreement. *See Evans*, 880 N.W.2d at

360 (holding that a rule 27 motion is not the proper method to challenge a restitution award if payment of restitution is a material part of the negotiation).

In sum, because appellant failed to raise a challenge to the restitution order in district court, we deem this argument forfeited.

II. Appellant's argument fails on the merits.

For the reasons set forth above, we conclude that appellant's failure to raise this challenge in district court bars relief on appeal. While we need not consider the merits of appellant's argument, we hold that they would not support relief in any event.

Appellant challenges the district court's restitution order. We review a restitution order for an abuse of the district court's "broad discretion." *State v. Andersen*, 871 N.W.2d 910, 913 (Minn. 2015). A district court abuses its discretion when its decision is based on an erroneous interpretation or application of the law. *State v. Boettcher*, 931 N.W.2d 376, 380 (Minn. 2019). A challenge to the district court's authority to order restitution represents a legal question subject to de novo review. *Andersen*, 871 N.W.2d at 913.

Appellant argues the district court "erred" by ordering restitution for an offense that was dismissed as part of a global plea agreement. We do not agree. A district court may order restitution for the losses of victims harmed by the offender in instances separate from the case the offender pleads guilty to as a part of a plea agreement. *State v. Kennedy*, 327 N.W.2d 3, 5 (Minn. 1982). *Kennedy* is instructive. In that case, the state charged the defendant with 32 felony counts of theft and securities-law violations. *Id.* at 4. The defendant entered into a plea agreement with the state in which he pleaded guilty to three counts, and the state agreed to dismiss the remaining 29 counts and refrain from charging

the defendant with more crimes. *Id.* The defendant also agreed to pay restitution based on the losses of all the victims of his underlying crimes, not just the victims named in the counts to which the defendant pleaded guilty. *Id.* Further, "it became clear at the sentencing hearing that what was contemplated was reasonable restitution based not just on the losses of the parties named in the three counts but on the losses of all the victims of defendant's criminal scheme." *Id.* Three years later, the defendant argued to the district court that he should only be required to pay restitution for three victims. *Id.* The district court rejected this argument and ordered the defendant to pay reasonable restitution "based on losses of all victims of defendant's Minnesota activities." *Id.* The supreme court affirmed, stating that

> [a]lthough the record made at the time defendant entered his guilty pleas did not make it clear what the parties meant the scope of restitution to be, the record made at the time of the sentencing hearing establishes that the parties contemplated that restitution would be based on the losses of all the victims of the underlying criminal scheme.

Id. The supreme court noted that if the defendant had objected to this global resolution of his many claims, then he either "should have stated it at that time" or "withdrawn his guilty pleas and stood trial." *Id.* at 4-5.

Here, the parties agreed that appellant would plead guilty to certain counts of his seven outstanding complaints, and, in exchange, the state would dismiss the remaining complaints and charges. Appellant agreed to pay restitution and fines. During the sentencing hearing, it became clear that there was a request for restitution in one of the cases to be dismissed. Counsel informed the district court that "there is a[n] Affidavit of

Loss in the file [to be dismissed]." The district court inquired, "So, in [the dismissed case], you're asking for restitution to be ordered in the amount of [$1,750] to [the victim] because the—the file for which . . . that money is owed is a file to be dismissed. Is that accurate?" Counsel answered, "Correct." Counsel asked the district court to leave restitution open for 30 days to give appellant time to decide whether he wanted to file an objection to the amount of restitution. Counsel did not object to ordering restitution on a dismissed case file. The district court agreed to hold the issue open for 30 days. The district court then asked appellant if he wished to address the court. Appellant did not have any comments related to restitution. The district court imposed sentence and later awarded the victim $2,750 in damages.[1]

As in *Kennedy*, the issue of restitution was specifically addressed at the sentencing hearing. The parties contemplated that appellant would pay restitution in a dismissed court file. Thus, the district court did not abuse its discretion by imposing restitution as part of the global plea agreement.

Affirmed.

[1] Appellant argues the restitution amount of $2,750 does not match the damages described at the sentencing hearing. This is a challenge to the type or amount of restitution and is not reviewable for the first time on appeal.