STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0206

Tyler Douglas Flantz, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed November 28, 2022
Affirmed
Bryan, Judge

Anoka County District Court
File No. 02-CR-18-5482

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

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

Anthony C. Palumbo, Anoka County Attorney, Kelsey R. Kelley, Assistant County Attorney, Anoka, Minnesota (for respondent)

Considered and decided by Bryan, Presiding Judge; Bjorkman, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

BRYAN, Judge

Appellant challenges the district court's denial of his petition for postconviction relief, arguing that the district court should have vacated one of his convictions for possession of child pornography pursuant to the provisions of Minnesota Statutes sections

609.04 and 609.035 (2016). We conclude that because the two convictions at issue involve separate victims, neither section applies, and we affirm the district court's decision.

FACTS

On August 17, 2018, respondent State of Minnesota charged appellant Tyler Douglas Flantz with five counts of possession of pornographic work involving minors in violation of Minnesota Statutes, section 617.247, subdivision 4(a) (2016). Flantz pleaded guilty to counts two through five in exchange for the dismissal of count one. Each count corresponded to a different pornographic image, and Flantz admitted during the plea colloquy that the images depicted different children. Specifically, Flantz admitted that the female child depicted in image D (corresponding to count four) was a different victim than the female child depicted in image E (corresponding to count five). The district court accepted Flantz's pleas and sentenced him to four concurrent prison terms.

Flantz filed a direct appeal, challenging the district court's calculation of his criminal history score and the order in which the district court imposed the four concurrent sentences. *State v. Flantz*, No. A20-0667, 2021 WL 957325, at *2 (Minn. App. Mar. 15, 2021), *rev. denied* (June 15, 2021). We affirmed, concluding that the district court imposed sentences for each of the four convictions in the proper chronological order because both counts four and five were continuing offenses occurring throughout the entire range of stated dates. *Id.* at *4. We also determined that the district court included the correct custody status points when it calculated the applicable criminal history score for each conviction. *Id.* Flantz then petitioned for postconviction relief, challenging the validity of

his conviction and sentence for count five. The district court denied Flantz's petition for postconviction relief, and Flantz appeals.

DECISION

Flantz argues that the district court should have vacated his conviction for count five based on the prohibitions in Minnesota Statutes sections 609.04 and 609.035.[1] We disagree and conclude that neither statutory prohibition applies because Flantz admitted that the images corresponding to counts four and five depicted two different children.[2]

Section 609.04 prohibits a district court from convicting a defendant "twice for the same offense against the same victim on the basis of the same act." *State v. Goodridge*, 352 N.W.2d 384, 389 (Minn. 1984). Section 609.035 prohibits a district court from sentencing a defendant for more than one offense committed during a single behavioral incident. *State v. Bauer*, 792 N.W.2d 825, 827 (Minn. 2011). The general prohibition in section 609.035 does not apply to crimes involving multiple victims. *State v. Skipintheday*, 717 N.W.2d 423, 426 (Minn. 2006) (permitting multiple sentences when the crimes involve multiple victims and the sentences do not unfairly exaggerate the criminality of the

[1] Flantz also argues that his conviction for count five violated the Double Jeopardy Clauses of the Minnesota and U.S. Constitutions. We have previously observed that the statutory protections "broaden the protection afforded by . . . constitutional provisions against double jeopardy" and "encompasses [an] appellant's constitutional double jeopardy protections." *State v. Bakken*, 871 N.W.2d 418, 423 (Minn. App. 2015) (quotation omitted), *aff'd*, 883 N.W.2d 264 (Minn. 2016). Thus, we limit our discussion to the statutory provisions and need not address Flantz's constitutional argument.

[2] As a threshold matter, the parties dispute whether Flantz has forfeited his arguments, and they disagree regarding whether his petition is barred under *State v. Knaffla*, 243 N.W.2d 737, 741 (Minn. 1976). We need not address *Knaffla*, forfeiture, or whether any distinctions between sections 609.04 and 609.035 impact the applicability of *Knaffla* in light of our decision affirming the denial of Flantz's postconviction petition on its merits.

defendant's conduct);[3] *see also State v. Edwards*, 774 N.W.2d 596, 606 (Minn. 2009) ("[W]here multiple victims are harmed by a defendant's conduct during a single behavioral incident, that defendant is more culpable than if he had harmed only one victim."); *State ex rel. Stangvik v. Tahash*, 161 N.W.2d 667, 672 (1968) ("[M]ultiple crimes against multiple victims [may] permit the imposition of more than one sentence.").

While the rule regarding multiple victims is more frequently discussed when addressing section 609.035, the rule also applies to section 609.04. *State v. Mitjans*, 408 N.W.2d 824, 835 (Minn. 1987) (concluding that the *Blockburger* rule[4] does not apply "if the greater offense is against one victim and the included offense is committed against a different victim," and explaining that the "exception is set out in both section 609.04 and section 609.035"); *see also, e.g. State v. Hodges*, 386 N.W.2d 709, 711 (Minn. 1986) (observing that for both sections 609.04 and 609.035, "the multiple-victim exception clearly permits three assault convictions if a burglar assaults three different people after entering a house"). In addition, the rule applies to charges involving pornographic images

[3] Even when an exception applies, a district court abuses its sentencing discretion if it imposes sentences that unfairly exaggerate the criminality of the defendant's behavior. *See State v. Longo*, 909 N.W.2d 599, 612 (Minn. App. 2018) (concluding that although an exception to section 609.035 applied, the sentence imposed unfairly exaggerated the criminality of appellant's behavior). Flantz, however, makes no such argument, and we therefore conclude that the sentences imposed did not unfairly exaggerate the criminality of Flantz's conduct. *See State v. Hough*, 585 N.W.2d 393, 397-98 (Minn. 1998) (rejecting the argument that imposition of multiple sentences, by itself, constitutes unfair exaggeration).

[4] In *Blockburger v. United States*, 284 U.S. 299, 304 (1932), the United States Supreme court held that the Double Jeopardy Clause prohibits convictions for a greater and a lesser-included offense. Section 609.04 codified the holding in *Blockburger*. *Mitjans*, 408 N.W.2d at 834-35.

depicting separate child victims.[5] *State v. Rhoades*, 690 N.W.2d 135, 139 (Minn. App. 2004). We review de novo the question of whether multiple sentences and convictions are permitted in a particular case due to the presence of involves multiple victims. *Skipintheday*, 717 N.W.2d 423, 426 (Minn. 2006); *see also Pearson v. State*, 891 N.W.2d 590, 596 (Minn. 2017) (stating that appellate courts apply a de novo standard of review to legal issues when reviewing the denial of a petition for postconviction relief).

In this case, the state charged Flantz with possession of one specific image in count four and a different specific image in count five. The charges describe each of the two victims involved, and Flantz admitted that the each of those images depicted different children. This fact remains undisputed on appeal.[6] Pursuant to the holding in *Rhoades*, we conclude that the existence of multiple victims permitted the district court to enter two separate convictions and impose two separate sentences for counts four and five. Accordingly, the district court properly denied Flantz's postconviction petition.

Affirmed.

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[5] Flantz does not argue that the children depicted in the images are not victims. We observe that this court previously described the harms of possessing child pornography and acknowledged the express purpose of the statute criminalizing this possession: to protect "minors who are victimized by involvement in the pornographic work." *Rhoades*, 690 N.W.2d at 139 (emphasis omitted) (quoting Minn. Stat. § 617.247, subd. 1 (2002)).

[6] To the extent that portions of Flantz's brief can be construed as arguing that this court's decision on direct appeal concluded that the same conduct underlies counts four and five, we disagree. This would mischaracterize our previous decision, which concerned the date ranges of counts four and five. *See Flantz*, 2021 WL 957325, at *4. We held that both counts four and five were continuing offenses, occurring during the same date range, but we did not conclude that the conduct at issue constituted a single incident. *Id.*