**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A22-0509**

State of Minnesota,
Respondent,

vs.

Jesse Scott Landwehr,
Appellant.

**Filed December 19, 2022**
**Affirmed**
**Bryan, Judge**
**Concurring specially, Bjorkman, Judge**

Stearns County District Court
File No. 73-CR-15-1965

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

Janelle P. Kendall, Stearns County Attorney, Michael J. Lieberg, Chief Deputy County Attorney, St. Cloud, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Chang Y. Lau, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

## NONPRECEDENTIAL OPINION

**BRYAN**, Judge

In this sentencing appeal, appellant argues that the district court imposed a sentence that was not authorized by law because it violated his plea agreement. Because we conclude that appellant's sentence did not violate his plea agreement, we affirm.

## FACTS

In March 2015, respondent State of Minnesota charged appellant Jesse Scott Landwehr with one count of first-degree burglary. Pursuant to a plea agreement, Landwehr pleaded guilty to the burglary charge in June 2015. At the plea hearing, the parties and the district court had the following exchange regarding the plea agreement:

> THE COURT: [A]s I understand it from my discussion with Counsel off the record, the plea would involve a cap as far as any executed jail time, but there would also be a Motion for a Departure, both durational and dispositional. But as far as any other terms or to specify the terms as to the cap . . . what's your understanding of the plea agreement?
> DEFENDANT'S COUNSEL: Um, Your Honor, there's no additional plea. There's no additional agreement essentially beyond the cap. Obviously, as part of—if he were placed on probation, there would obviously [be] assessments. There would be a PSI and to see what—how he's doing in terms of his mental health as well as his chemical use, Your Honor.
> THE COURT: And what's the cap number?
> DEFENDANT'S COUNSEL: Seventy-five months, Your Honor, is the cap number.
> PROSECUTOR: That's correct, Your Honor.
> THE COURT: All right. So, Mr. Landwehr, do you understand what's discussed here?
> THE DEFENDANT: Yes.

A written plea petition was also filed describing the plea agreement. The petition states in relevant part: "plead to charge," "75 months cap," and "defendant will be moving for durational + dispositional departure."

Later in the plea hearing, the district court asked Landwehr: "you're here to plead guilty to take advantage of the cap that's been agreed to. And I assume that's part of the reason, but also are you pleading guilty because you are guilty?" Landwehr responded affirmatively and admitted the elements of the offense.

A sentencing worksheet filed with the district court noted that the presumptive disposition and duration under the Minnesota Sentencing Guidelines was a commitment to prison for 84-117 months. Landwehr moved for a downward dispositional departure, requesting a probationary sentence, but made no motion for a downward durational departure. At the sentencing hearing,[1] the state argued for an executed prison term of 75 months, consistent with the presumptive disposition, but lower than the presumptive guidelines range. The district court granted Landwehr's departure request, imposing a prison sentence of 98 months, but staying execution of that sentence for 15 years. The district court also ordered restitution and imposed a 180-day, staggered jail sentence. The district court distinguished between the length of the stayed prison term and the shorter, agreed-upon prison term:

> In the past when [Landwehr] has failed on probation he's gone to prison, that's what he's looking at now, and he's looking at about 98 months. And I would—if he violates it would be my

[1] The district court held a sentencing hearing on August 2, 2015, but continued the hearing until August 26, 2015, to provide the probation officer an opportunity to make a recommendation regarding Landwehr's dispositional departure motion.

> intention to sentence him on that and not the agreed lower in the box.[2] As far as I'm concerned, at this point if I grant the dispositional departure and he fails I'd be sentencing him in accordance with the sentencing guidelines.

The district court did not offer Landwehr an opportunity to withdraw his guilty plea before sentencing him, and Landwehr did not object to or appeal the sentence.

In March 2020, the district court revoked Landwehr's probation and executed the imposed 98-month sentence. In December 2021, Landwehr filed a pleading, captioned as a motion to correct his sentence pursuant to Minnesota Rule of Criminal Procedure 27.03, subdivision 9. Landwehr characterized the plea agreement as limiting the district court's authority to impose a sentence in excess of 75 months. Because the district court imposed a 98-month sentence, Landwehr argued, the sentence was not authorized by law.

The district court observed that Landwehr's request could be construed as either a motion to correct an unlawful sentence pursuant to rule 27.03 or as a petition for postconviction relief pursuant to Minnesota Statutes section 590.01 (2022). The district court then summarized the applicable facts and history of the case[3] before denying the request under both theories. First, the district court concluded that because Landwehr's 98-month sentence was within the presumptive range provided for by the sentencing

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[2] Although the district court used the term "lower in the box," as noted above, 75 months would have been below the presumptive guidelines range (84-117 months) for Landwehr's offense. *See* Minn. Sent'g Guidelines 4.A & 5.A (2014).

[3] We note that at one point, the district court stated that the state "agreed to forgo any arguments for a sentence in excess of 75 months." In its conclusion, however, the district court characterized the plea agreement as a cap on the length of an executed prison term, stating that "the sentence contradicts the terms of the plea agreement *if the disposition departure was not granted*."

guidelines, it was authorized by law, and rule 27.03 did not require resentencing Landwehr. Second, the district court alternatively determined that no relief was available under section 590.01 because the request was filed well after the end of the two-year limitations period. Landwehr appeals.

## DECISION

Landwehr argues that the 98-month sentence was unauthorized by law because it violated the plea agreement and, therefore, the district court violated Minnesota Rule of Criminal Procedure 15.04.[4] Because Landwehr's argument misconstrues the terms of the plea agreement, we are not persuaded.

When considering whether a plea agreement was violated, we must first determine the terms of the plea agreement, which involves an issue of fact to be resolved by the district court. *State v. Brown*, 606 N.W.2d 670, 674 (Minn. 2000); *see also State v. Robledo-Kinney*, 615 N.W.2d 25, 32 (Minn. 2000) (reviewing a district court's determination of the terms of a plea agreement for clear error). "Issues involving the interpretation and enforcement of plea agreements, however, are issues of law that we review de novo." *Brown*, 606 N.W.2d at 674.

In this case, the parties have competing arguments regarding the terms of the plea agreement and regarding the district court's characterization of the plea agreement. Landwehr argues that the parties agreed to a maximum sentence of 75 months in prison

[4] Landwehr makes no argument that he has satisfied the limitations period of section 590.01 and seeks no relief under this statute. Instead of seeking to vacate the conviction and permit withdrawal of the guilty plea, Landwehr requests resentencing and execution of a 75-month prison term under rule 27.03.

and that this maximum applied to both executed and imposed sentences. In support of this argument, he emphasizes the portion of the written plea petition, which states: "75 months cap." The state disagrees, relying on the colloquy to argue that the 75-month maximum sentence only applied to executed time. The parties also do not agree on how the district court characterized the plea agreement. Landwehr asserts in a footnote that the district court adopted a third interpretation of the plea agreement, in which the state merely promised not to argue for a sentence in excess of 75 months. The state, however, argues that the district court determined that the plea agreement "called for a cap on executed prison of 75 months if the sentence were executed at the time of sentencing."

We conclude the district court determined that the plea agreement called for a maximum executed prison sentence of 75 months and did not limit the length of a stayed prison sentence. Landwehr is correct that in one sentence in the district court's summary of the facts, the district court stated that the state "agreed to forgo any arguments for a sentence in excess of 75 months." In the conclusion of the written order, however, the district court made clear that the agreement only limited the length of an executed prison term, emphasizing in italics that the maximum sentence term of the plea agreement did not apply because the district court granted the dispositional departure request: "the sentence contradicts the terms of the plea agreement *if the disposition departure was not granted*."

We also conclude that this determination of the terms of the plea agreement is supported by the record. The plea hearing colloquy allows for only one conclusion: the parties agreed to limit the length of the executed prison term only, allowing the district court to exceed that length if the district court stayed execution of an imposed prison term.

The district court made a record of a conversation that it had off the record regarding the terms of the plea agreement, and that the parties understood the "cap" referenced in the plea petition to apply only to executed time: "[A]s I understand it from my discussion with Counsel off the record, the plea would involve a cap as far as any executed jail time, but there would also be a Motion for a Departure, both durational and dispositional." The district court asked Landwehr's plea counsel if that was correct and defense counsel agreed, referring to what the district court called "a cap as far as any executed time" as "the cap" and noting no additional terms: "Your Honor, there's no additional plea. There's no additional agreement essentially beyond the cap." Consistent with this agreement to limit executed time, neither Landwehr nor his attorney made a motion for a durational departure, objected to the stayed 98-month sentence, or appealed the sentence as violating the plea agreement at the time.[5]

Having determined that the plea agreement did not include a limit on the length of any stayed prison sentence, we necessarily conclude that the 98-month sentence imposed did not violate the plea agreement. Given this decision, we need not address the parties' legal arguments regarding the scope of rule 27 or whether a violation of rule 15.04 renders a subsequent sentence unauthorized by law.

**Affirmed.**

[5] We observe that the moving party has the burden of proof on rule 27.03 motions, *Williams v. State*, 910 N.W.2d 736, 743 (Minn. 2018), and on postconviction petitions under section 590.01, *Williams v. State*, 692 N.W.2d 893, 896 (Minn. 2005). Landwehr did not request a hearing or otherwise develop the record to include any facts to suggest that the district court was incorrect when it memorialized the conversation that occurred off the record or when it stated that the parties agreed to a cap on executed time only.

**BJORKMAN**, Judge (concurring specially)

Appellant Jesse Scott Landwehr moved the district court to correct his 98-month guideline sentence under Minn. R. Crim. P. 27.03, subd. 9, because it is "not authorized by law." He did not argue that his guilty plea was involuntary because his sentence exceeded the duration set forth in the plea agreement. *See Dikken v. State*, 896 N.W.2d 873, 877 (Minn. 2017) (stating that guilty plea is involuntary when "based on a promise by the prosecutor that goes unfulfilled"); *State v. Kunshier*, 410 N.W.2d 377, 379 (Minn. App. 1987) (stating that defendant should be allowed to withdraw guilty plea if an unqualified promise as to sentence is not fulfilled). And he did not otherwise contest the validity of his guilty plea or seek relief under the postconviction statute.

[1] I take Landwehr at his word and focus my analysis on whether his sentence is authorized by law. Because the sentence is not contrary to law or applicable statutes, I would affirm on that basis.

A sentence is not authorized by law if it is "contrary to law or applicable statutes." *State v. Schnagl*, 859 N.W.2d 297, 301 (Minn. 2015). Specifically, a sentence is unauthorized "when it does not meet the requirements of the applicable sentencing statute." *State v. Amundson*, 828 N.W.2d 747, 752 (Minn. App. 2013). Accordingly, sentence correction under rule 27.03 is available if, for example, a sentence is premised on an incorrect criminal-history score, *State v. Maurstad*, 733 N.W.2d 141, 147 (Minn. 2007), departs from the sentencing guidelines without proper support, *Amundson*, 828 N.W.2d at

[1] Landwehr's position distinguishes this case from *State v. Coles*, 862 N.W.2d 477, 480 (Minn. 2015), where the defendant invoked both rule 27.03 and the postconviction statute.

753-54, or omits a required conditional-release term, *State v. Garcia*, 582 N.W.2d 879, 881 (Minn. 1998).

Landwehr invites us to add Minn. R. Crim. P. 15.04 to the list of laws that inform whether a sentence is authorized by law. I would decline this invitation. That rule governs the process by which the state and defendants discuss and enter into plea agreements and the district court's role in that process. It requires a district court to "reject or accept the plea of guilty on the terms of the plea agreement" and, if rejecting the plea agreement, to permit the defendant to withdraw the plea. Minn. R. Crim. P. 15.04, subd. 3(2). It provides no direction as to whether a particular agreed-to sentence is authorized by law. Compliance with rule 15.04 may implicate the validity of a guilty plea. But a party cannot use a sentence-correction motion to challenge the validity of an underlying conviction. *See Hannon v. State*, 957 N.W.2d 425, 433 n.9 (Minn. 2021) (stating that to the extent defendant challenged his sentence for murder during kidnapping because "there was no kidnapping," the challenge is "beyond the scope of a rule 27.03 motion"); *Wayne v. State*, 870 N.W.2d 389, 391 (Minn. 2015) (stating that rule 27.03 is inapplicable where alleged error in instructing jury on a lesser-included offense implicated more than defendant's sentence).

In sum, I would affirm because Landwehr's guideline sentence is not contrary to law or applicable statutes.