STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0045

Timothy Richard Gilles, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed September 25, 2023
Affirmed
Smith, John, Judge[*]

Stearns County District Court
File No. 73-CR-11-3318

Zachary A. Longsdorf, Longsdorf Law Firm, PLC, Inver Grove Heights, Minnesota (for appellant)

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

Janelle P. Kendall, Stearns County Attorney, Kyle R. Triggs, Assistant County Attorney, St. Cloud, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Ross, Judge; and Smith, John, Judge.

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

NONPRECEDENTIAL OPINION

SMITH, JOHN, Judge

We affirm the district court's denial of appellant's challenge to his sentence because the district court did not err by treating appellant's motion to correct his sentence as a time-barred petition for postconviction relief.

FACTS

On April 15, 2011, appellant Timothy Gilles was driving in St. Cloud, Minnesota, when police attempted to stop him due to an active warrant. When the officers activated their lights and sirens, Gilles made an evasive left-hand turn around a vehicle, crossed the center median of the road he on which he was driving, and fled at high speed into oncoming traffic. Gilles struck another vehicle, killing the driver and seriously injuring a pregnant passenger. The passenger's baby had to be prematurely delivered and died two days later due to injuries from the collision. Respondent State of Minnesota charged Gilles with two counts of fleeing a peace officer resulting in death (counts 1 and 3), two counts of third-degree murder (counts 2 and 4), and one count of fleeing a peace officer resulting in substantial bodily harm (count 5) because of these events.[1] The state also moved to introduce *Blakely* evidence to establish a basis for an upward durational departure. *See Blakely v. Washington*, 542 U.S. 296, 303, (2004) (explaining that facts supporting an enhanced sentence must be found by a jury or admitted by the defendant).

[1] Counts 1 and 2 corresponded to the death of the driver, counts 3 and 4 corresponded to the death of the child, and count 5 corresponded to the injury of the passenger.

Before trial, the state sent Gilles a letter containing two alternative settlement offers. Under both offers, Gilles would plead guilty to counts 1, 3, and 5, and the state would dismiss the two third-degree murder charges. The state also proposed that count 5 would be sentenced first, count 1 would be sentenced second, and count 3 would be sentenced third, because of the chronological order of events—the passenger was injured upon impact, the driver died shortly after impact, and the child died later in the hospital. The state's first settlement offer was for a joint sentencing recommendation of 360 months. Under its second offer, Gilles would enter "a straight up plea" to counts 1, 3, and 5, and admit to the state's *Blakely* motion, but the state "would agree that this matter would be sentenced within the range outlined in the sentencing guidelines." The state also explained that it "would agree to cap its argument at 432 months, which is the most the State could ask for without the *Blakely* enhancement," and that the guidelines range for counts 1, 3, and 5 was a minimum of 204 months and a maximum of 432 months.

Gilles accepted the state's second offer and pleaded guilty to counts 1, 3, and 5. Gilles signed a written plea petition which described the agreement as follows:

> Plead guilty to counts 1, 3, 5
>
> Admit to State's *Blakely* motion
>
> State agrees this matter would be sentenced within the range outlined in the sentencing guidelines
>
> State also agrees to cap argument at 432 months, which is the most the state could ask for without the *Blakely* enhancement, D cannot be sentenced to more than 432 months

At the plea hearing, the parties further explained the agreement to the district court:

> [DEFENSE COUNSEL]: It's a partial plea agreement. Specifically, [Gilles is] pleading guilty to Counts I, III and V. He has agreed to admit to the State's [*Blakely*] Motion. The State agrees that this matter would then be sentenced within the range outlined in the Sentencing Guidelines. They've agreed to cap their argument at 432 months, which is the most the State could ask for without the [*Blakely*] enhancement. And so the Defendant could not be sentenced to more than 432 months. But we are free to argue anything below that.
>
> THE COURT: Okay. And 432 months would be top of the box?
>
> [PROSECUTOR]: It would be top of the box, Your Honor, assuming consecutive sentences, that's correct.
>
> THE COURT: All right. So even though there would be an admission to facts to support a departure, the sentence would still be within the limits of the Guidelines?
>
> [PROSECUTOR]: That is a correct statement, Your Honor. And the Sentencing Guidelines range then would be 204 months which would be a bottom of the box with concurrent sentences again up to the 432.

Later during the plea hearing, defense counsel confirmed Gilles's understanding of the plea agreement:

> [DEFENSE COUNSEL]: And you understand that the plea agreement that you're entering into today basically caps your sentence at 432 months, but that there is no guarantee as to how many months you're actually going to have to sit, or that you're actually going to have to serve other than it cannot be more than 432 months?
>
> [GILLES]: Yes.

Finally, the prosecutor also asked Gilles about the plea agreement:

> [PROSECUTOR]: And Mr. Gilles, you understand again as has been discussed, the Guideline Sentence range here is anywhere from 204 months to 432 months; you understand that?
>
> [GILLES]: Yes.

Gilles provided a factual basis for counts 1, 3, and 5, as well as admitted the facts in the state's *Blakely* motion. The district court accepted Gilles's plea and scheduled the matter for sentencing.

A pre-sentencing investigation (PSI) recommended the maximum 432-month sentence allowed by the plea agreement. At the sentencing hearing, the state argued for the 432-month sentence recommended by the PSI, while Gilles argued for a 288-month sentence. The district court adopted the PSI's recommendation of a 432-month sentence. First, the district court imposed a stayed 21-month prison sentence on count 5, reflecting a severity level of 4 and a criminal history score of 3. Second, the district court imposed an executed 252-month sentence on count 1, reflecting a severity level of 10 and a criminal history score of 4—including one additional felony point for Gilles's conviction on count 1. Third, the district court imposed a consecutive executed 180-month sentence on count 3, reflecting a severity level of 10 but a criminal history score of 0 due to the consecutive sentencing.

On June 17, 2022, approximately ten years after his sentencing, Gilles filed a motion to correct his sentence pursuant to Minnesota Rule of Criminal Procedure 27.03, subdivision 9. He argued that the district court should not have included a criminal-history point from count 5 when sentencing Gilles on count 1 because count 5 was not one of the two highest-severity offenses. He also argued that, upon resentencing, the district court should impose a further-reduced aggregate sentence because a top-of-the-box sentence would unfairly exaggerate his criminality and because he had shown "a great deal of remorse and growth" since his conviction.

The district court determined that while Gilles's motion was labeled as a motion to correct sentence, it was properly construed as a petition for postconviction relief. In reaching this decision, the district court reasoned that "the State refrained from seeking an upward departure precisely in exchange for Gilles' agreement to the 204-432 sentencing range," and that Gilles's proposed relief would "effectively change[] the plea agreement exclusively in his favor" by modifying the agreed-upon maximum 432-month sentence. Thus, the district court determined that Gilles's motion implicated the plea agreement and would therefore require a postconviction remedy. Because Gilles filed his motion more than nine years after the voluntary dismissal of his direct appeal, the district court concluded that this postconviction request was untimely and denied the motion.

DECISION

On appeal, Gilles argues that the district court erred when it treated his motion to correct his sentence as a time-barred petition for postconviction relief. Then, assuming his motion was timely, he argues that his sentence was not authorized by law because it was based on an incorrect criminal-history score. We disagree.

An offender may collaterally attack their sentence by filing a motion to correct sentence under Minn. R. Crim. P. 27.03, subd. 9, or by filing a petition for postconviction relief under Minn. Stat. § 590.01, subd. 1(1) (2020). *Washington v. State*, 845 N.W.2d 205, 210 (Minn. App. 2014). These "two alternative means of challenging a sentence are subject to different procedural requirements." *Id.* As relevant here, a petition for postconviction relief may not be filed more than two years after a judgment of conviction becomes final if the offender should have known of the claims at the time of direct appeal. *Id.*; Minn. Stat. § 590.01, subd. 4 (2020). However, this two-year time limit does not apply to a motion to correct sentence properly filed under rule 27.03. *Reynolds v. State*, 888 N.W.2d 125, 133 (Minn. 2016); *Vazquez v. State*, 822 N.W.2d 313, 318 (Minn. App. 2012). Instead, a district court "may *at any time* correct a sentence not authorized by law." Minn. R. Crim. P. 27.03, subd. 9 (emphasis added).

Although a motion brought under rule 27.03 is not subject to a time limit, the scope of the relief available is narrower. "In contrast to the comprehensive language of section 590.01, the plain language of rule 27.03 is limited to sentences, and the court's authority

under the rule is restricted to modifying a sentence." *State v. Coles*, 862 N.W.2d 477, 480 (Minn. 2015). Because of this, "courts in some circumstances have the authority to treat a request to correct a sentence purportedly brought under rule 27.03 as a petition for postconviction relief." *Id.*; *see also Washington*, 845 N.W.2d at 212 (stating that "an offender may not avoid the requirements of the postconviction act by simply labeling a challenge as a motion to correct sentence"). One of these circumstances is when a challenge to the sentence "involves more than simply the sentence" because it implicates the terms of a plea agreement. *Coles*, 862 N.W.2d at 480-82.

"The standard for reviewing a district court's decision to treat a motion to correct a sentence under rule 27.03 as a postconviction petition under Minnesota Statutes Chapter 590 remains an open question." *Bolstad v. State*, 966 N.W.2d 239, 242 (Minn. 2021). In *Coles*, the supreme court reviewed the issue de novo, reasoning that "[t]he parties' arguments present[ed] issues regarding the interpretation of a procedural rule and statute." 862 N.W.2d at 479; *see also Johnson v. State*, 801 N.W.2d 173, 176 (Minn. 2011) (*Johnson I*). But in other cases, the supreme court has "declined to adopt a definitive standard of review" because, regardless of the applicable standard, the district court did not err. *Bolstad*, 966 N.W.2d at 242 (quotation omitted); *see also Wayne v. State*, 870 N.W.2d 389, 391 n.2 (Minn. 2015); *Johnson v. State*, 877 N.W.2d 776, 779 n.3 (Minn. 2016) (*Johnson II*). Similarly, we need not resolve this issue here because regardless of whether we review

the district court's decision de novo or for an abuse of discretion, we conclude that the district court did not err.

Gilles does not dispute that his motion would be untimely if construed as a petition for postconviction relief. Instead, he argues that the district court should have considered his motion under rule 27.03 because the relief he seeks—correction of his criminal-history score—does not conflict with the terms of the plea agreement. We are not persuaded because the state agreed to forgo its argument for an aggravated sentence in exchange for the ability to argue for the 432-month sentence that Gilles received.

In *Coles*, the supreme court explained that when a district court imposes a sentence pursuant to a negotiated plea agreement, a subsequent attempt to modify that sentence that changes the benefit of the bargain struck essentially amounts to rejection of the terms of the plea agreement. 862 N.W.2d at 480-82. Coles pleaded guilty and agreed to two consecutive 48-month sentences—an upward durational departure—in exchange for dismissal of a higher-severity charge. *Id.* at 478. Coles later challenged his sentence, arguing that the district court had not cited valid grounds for the departure. *Id.* at 479. The supreme court reasoned that this was more than a challenge to the sentence because Coles's "sentence and conviction were part of a negotiated package in which both Coles and the State received a significant benefit." *Id.* at 481-482. The supreme court observed that in such cases, "[i]f [a] 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's motion "involve[d] the plea agreement itself" rather than "simply the sentence," the supreme court concluded that it was properly viewed as a petition for postconviction relief. *Id.*

Not every sentencing modification implicates the terms of the underlying plea agreement. In deciding *Coles*, the supreme court distinguished its previous opinion in *State v. Maurstad*, 733 N.W.2d 141, 147 (Minn. 2007). *Coles*, 862 N.W.2d at 481 n.4. In *Maurstad*, the parties agreed that the defendant would "be sentenced according to the Minnesota sentencing guidelines." 733 N.W.2d at 143. The supreme court eventually held that Maurstad could obtain review of his criminal-history score under rule 27.03 because "a defendant may not waive review" of that calculation. *Id.* at 147. The supreme court emphasized in *Coles* that the plea agreement in *Maurstad* was for a guidelines sentence, whereas Coles agreed to a specific sentence. *Coles*, 862 N.W.2d at 481 n.4. Based on this, the supreme court reasoned that "[u]nlike 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." *Id.*

Similarly, Gilles argues that modification of his sentence would not implicate his plea agreement because his agreement was for a guidelines sentence, and he merely seeks correction of his criminal-history score. He relies on three nonprecedential opinions in which this court, citing *Coles*, concluded that modification of a sentence would not

implicate the terms of the plea agreement. *See State v. Gustafson*, No. A20-0877, 2021 WL 1846581, at *2-4 (Minn. App. May 10, 2021) (concluding that where the parties agreed to a top-of-the-box sentence, modifying defendant's criminal-history score "would not change the foundation of the plea agreement"); *Bilbro v. State*, A17-1566, 2018 WL 3340453, at *2 (Minn. App. July 9, 2018), *rev'd on other grounds*, 927 N.W.2d 8 (Minn. 2019) (concluding that challenge to sentence did not "attack the substance of the plea agreement" because defendant "agreed to submit a 'straight plea to the court,' which contained no agreement as to any of the terms of the sentence"); *Barnes v. State*, No. A16-0983, 2017 WL 1628501, at *4 (Minn. App. May 1, 2017), *rev. denied* (Minn. July 18, 2017) (concluding that "[b]ecause the parties bargained for a bottom-of-the-box sentence," correcting defendant's criminal-history score would not be "rejecting the terms of the plea," but instead would be "giving effect to" them); *but see generally* Minn. R. Civ. App. P. 136.01, subd. 1(c) (stating that nonprecedential opinions of this court are not binding authority).

The facts in this case, however, are distinguishable from the cases that Gilles cites. Gilles did not simply agree to a guidelines sentence like the defendants in *Gustafson* and *Barnes*, nor did he enter a "straight plea" with no agreement as to the sentence like the defendant in *Bilbro*. Instead, the record indicates that the parties assigned independent significance to the 432-month cap.[2] Although the state's settlement offer, the signed plea

[2] The determination of "what the parties agreed to in a plea bargain" is a fact question for the district court to resolve. *State v. Rhodes*, 675 N.W.2d 323, 326 (Minn. 2004). But "interpretation and enforcement of plea agreements involve issues of law" that this court reviews de novo. *Id.* Here, because the plea offer, plea petition, and plea transcript are all

petition, and the plea hearing transcript all reference the sentencing guidelines, each of these documents also make separate reference to a maximum sentence of 432 months. First, the state specifically offered to "cap its argument at 432 months, which is the most the State could ask for without the *Blakely* enhancement," if Gilles would plead guilty and admit to the state's *Blakely* motion. Second, the signed plea petition noted the state's agreement to a guidelines sentence, but separately stated that the "State *also* agrees to cap argument at 432 months" and that Gilles "cannot be sentenced to more than 432 months." (Emphasis added.) Finally, at the plea hearing, the parties referenced both the guidelines and a maximum sentence of 432 months, and Gilles confirmed his understanding that his agreement "basically caps [his] sentence at 432 months."

In short, the record indicates the state made clear that it would be seeking a 432-month sentence in exchange for forgoing a possible *Blakely* enhancement. While 432 months was framed as the maximum available sentence under the sentencing guidelines, the parties emphasized a specific 432-month cap, and the terms of their agreement indicate a mutual understanding that 432 months was the correct maximum sentence. This stands in contrast with *Gustafson*, for example, where the parties agreed to "a guidelines sentence, high end of the box" and the plea agreement simply stated the parties "*believe[d]*" that Gustafson had a certain criminal-history score and sentence. 2021 WL 1846581 at *1

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consistent in their descriptions of the plea agreement, we discern no remaining question of fact as to what the parties agreed to and therefore interpret the parties' agreement as a matter of law. *See generally State v. Spraggins*, 742 N.W.2d 1, 3-4 (Minn. App. 2007) (noting that "principles of contract law are applied to determine the terms and enforcement of plea agreements").

(alteration in original). Like the sentence in *Coles*, the 432-month cap here was "part of a negotiated package in which both [appellant] and the State received a significant benefit."[3] 862 N.W.2d at 481-82. Because modification of this sentence would deprive the state of the benefit of this bargain, we conclude that Gilles's motion implicates his plea agreement and is beyond the scope of rule 27.03. The district court therefore properly construed the motion as a time-barred petition for postconviction relief.[4]

Affirmed.

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[3] Gilles also argues that, because other defendants who committed similar offenses have received lower sentences than he did, the state did not "g[i]ve up anything in not seeking an aggravated sentence." We are not persuaded by this alternate reasoning; regardless of whether the state would have been successful in seeking an upward departure, the benefit that Gilles bargained for was the state forgoing the ability to argue for a one.

[4] Moreover, even if Gilles could obtain relief under rule 27.03 and we were to reach the merits of his motion, we would conclude that Gilles's sentence was correctly calculated. We review the interpretation of the Minnesota Sentencing Guidelines de novo using principles of statutory interpretation and beginning with the plain language of the guidelines. *State v. Scovel*, 916 N.W.2d 550, 554-55 (Minn. 2018). Under the applicable guidelines provision, when calculating a person's criminal-history score, "[o]nly the two offenses at the highest severity levels are considered for prior multiple sentences arising out of a single course of conduct in which there were multiple victims." Minn. Sent'g Guidelines II.B.1.d (2010); *see also* Minn. Sent'g Guidelines cmt. II.B.108 (2010) (noting that "[t]his limit . . . also applies when such sentences are imposed on the same day"). Gilles asserts that because his three offenses occurred as part of a single course of conduct and counts 3 and 5 were the most severe offenses, it was an error to include a criminal-history point from count 1—the least severe offense—in his criminal-history score for count 5. But section II.B.1.d applies only to "*prior* multiple sentences." (Emphasis added.) Here, Gilles was sentenced first on count 1, then on count 5, and then on count 3; when Gilles was sentenced on count 5, count 1 was the only prior sentence arising out of the applicable course of conduct. Because nothing in the plain language of the guidelines suggests that convictions which have yet to be sentenced are considered prior sentences, we discern no error in the calculation of Gilles's criminal-history score.