STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1562

State of Minnesota,
Respondent,

vs.

Kevin Herman Larson,
Appellant.

Filed July 11, 2011
Affirmed
Larkin, Judge

Chisago County District Court
File No. 13-CR-09-1330

Lori A. Swanson, Attorney General, St. Paul, Minnesota; and

Janet Reiter, Chisago County Attorney, Beth A. Beaman, Assistant County Attorney, Center City, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Wright, Presiding Judge; Larkin, Judge; and Bjorkman, Judge.

U N P U B L I S H E D O P I N I O N

LARKIN, Judge

Appellant, a predatory offender, challenges the constitutionality of Minn. Stat. § 243.166 (2008), which requires him to provide his address to authorities prior to his release from prison. He also challenges his sentence. Because the requirement that appellant must provide his address does not implicate his constitutional rights, and because the district court did not abuse its discretion in sentencing, we affirm.

FACTS

On August 25, 2009, appellant Kevin Herman Larson was serving a prison sentence for his conviction of failure to register as a predatory offender under Minn. Stat. § 243.166. He had been previously convicted of the same offense in October 2004, January 2006, and August 2007. On August 25, the department of corrections provided Larson with predatory-offender paperwork, which required him to provide the address where he would be living after his release. Larson did not provide an address.

On August 26, Larson was charged with two counts of violating the predatory offender registration statute. *See* Minn. Stat. § 243.166, subd. 3(b), 3a(b) (requiring a predatory offender to provide his or her address to authorities). Following a stipulated-facts trial, the district court found Larson guilty of the charged offenses and sentenced him to concurrent prison terms of 30 and 43 months. Later, the district court realized that it had erred by imposing separate sentences for two convictions that were part of the same behavioral incident and resentenced Larson to a presumptive guidelines sentence of 36 months in prison on one of the convictions. This appeal follows.

D E C I S I O N

I.

Larson argues that the predatory-offender-registration statute violates his first-amendment right to free speech and his fifth-amendment right to remain silent. *See* U.S. Const. amend. I, V; Minn. Const. art. I, §§ 2, 7. "Evaluating a statute's constitutionality is a question of law." *Hamilton v. Comm'r of Pub. Safety*, 600 N.W.2d 720, 722 (Minn. 1999). Accordingly, our review is de novo and we are "not bound by the [district] court's decision." *Id.* "Minnesota statutes are presumed constitutional, and our power to declare a statute unconstitutional should be exercised with extreme caution and only when absolutely necessary." *In re Haggerty*, 448 N.W.2d 363, 364 (Minn. 1989). "The party challenging a statute has the burden of demonstrating beyond a reasonable doubt a violation of some provision of the Minnesota Constitution." *Id.*; *see also Miller Brewing Co. v. State*, 284 N.W.2d 353, 356 (Minn. 1979) ("A statute will not be declared unconstitutional unless the party challenging it demonstrates beyond a reasonable doubt that the statute violates some constitutional provision.").

Minn. Stat. § 243.166 requires an inmate to communicate his or her address to law enforcement prior to his or her release from prison. Larson argues that this "requirement compels speech, in violation of the First Amendment right to refrain from speaking, because it mandates that [he] speak in a manner, which amounts to an ideological endorsement of the Department of Corrections, and punishes at a felony level the refusal to do so."

"[T]he right of freedom of thought protected by the First Amendment against state action includes both the right to speak freely and the right to refrain from speaking at all." *Wooley v. Maynard*, 430 U.S. 705, 714, 97 S. Ct. 1428, 1435 (1977). This right is fundamental. *See West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 638, 63 S. Ct. 1178, 1185-86 (1943) ("One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections."). But "there is no recognizable interest in being free from having to update address information." *Boutin v. LaFleur*, 591 N.W.2d 711, 718 (Minn. 1999).

Although, "[j]ust as the First Amendment may prevent the government from prohibiting speech, the Amendment may prevent the government from compelling individuals to express certain views," *In re Rothenberg*, 676 N.W.2d 283, 290 (Minn. 2004) (quotation omitted), the cases cited by Larson to support his argument are inapposite. In *Barnette*, the Supreme Court found that requiring students to participate in the Pledge of Allegiance amounted to constitutionally impermissible ideological coercion. 319 U.S. at 642, 63 S. Ct. at 1187. In *Wooley*, the Supreme Court invalidated a law compelling the display of a state slogan, which plaintiffs disagreed with on ideological grounds, on license plates. 430 U.S. at 717, 97 S. Ct. at 1436. These cases are distinguishable because the law required individuals to make ideological expressions of opinion with which they did not agree. Here, Larson is merely compelled to provide his address; the statute does not require Larson to express any particular viewpoint or make an "ideological endorsement of the Department of Corrections." And Larson

presents no persuasive argument that providing his address constitutes an ideological expression.

Larson also cites *Riley v. Nat'l Fed'n of the Blind of North Carolina, Inc.*, in which the Supreme Court invalidated a law governing factual disclosures by charities concluding that the law was not narrowly tailored to achieve the state's objective. 487 U.S. 781, 108 S. Ct. 2667 (1988). But *Riley* is distinguishable because it dealt with a recognized form of protected speech, i.e. charitable solicitations. The Supreme Court has "squarely held, on the basis of considerable precedent, that charitable solicitations involve a variety of speech interests . . . that are within the protection of the First Amendment, and therefore have not been dealt with as purely commercial speech." *Id.* at 788, 108 S. Ct. at 2673 (quotation omitted). In contrast, refusal to disclose an address has not been recognized as protected free speech.

Larson also argues that Minn. Stat. § 243.166 violates his fifth-amendment right to remain silent. But "[c]ompulsion does not violate the Fifth Amendment privilege against self-incrimination unless the information the claimant would be compelled to divulge is incriminating." *Johnson v. Fabian*, 735 N.W.2d 295, 309 (Minn. 2007). The information that Larson was required to provide—the address where he would live following his release from prison—is not incriminating. This information does not subject Larson to any criminal liability, nor does it expose him to a perjury prosecution. *See id.* at 309, 297 (stating that "[a]nswers that would in themselves support a conviction or that would furnish a link in the chain of evidence needed to prosecute the claimant are incriminating for purposes of the privilege" and that "[t]he privilege against self-

incrimination can be claimed as long as disclosures being sought could, at the time they are sought, subject the claimant to a perjury charge"). Because an offender's soon-to-be address is not incriminating, being compelled to provide it does not violate the fifth amendment. In sum, Larson has not established that section 243.166 is unconstitutional.

II.

Larson argues that the district court did not have the authority to increase his sentence from 30 to 36 months "[b]ecause the rules do not allow a district court judge to increase a sentence unless it was based on a clerical mistake." "District courts have great discretion in imposing sentences, and we will not disturb a sentence if it is authorized by law." *State v. Munger*, 597 N.W.2d 570, 573 (Minn. App. 1999), *review denied* (Minn. Aug. 25, 1999).

The district court originally sentenced Larson to a total of 43 months, 30 months on count 1 and 43 months on count 2, to be served concurrently. Upon realizing that this was an impermissible sentence, the district court resentenced Larson, sua sponte, to 36 months, which was the upper-end of the presumptive-sentence range. *See* Minn. Sent. Guidelines IV (2008) (stating that the presumptive-sentence range for a violation of the predatory-offender-registration statute, with a criminal-history score of 5, is 26-36 months). Larson argues that Minn. R. Crim. P. 27.03, subd. 9, prohibits the district court from increasing his sentence on count 1 from 30 to 36 months. Rule 27.03, subd. 9, states that "[t]he court may at any time correct a sentence not authorized by law. The court may modify a sentence during a stay of execution or imposition of sentence if the court does not increase the period of confinement."

Although the district court increased Larson's sentence on count 1 from 30 to 36 months, both sentences were within the presumptive range. And the district court did not exceed the original sentence: Larson's sentence actually decreased from 43 to 36 months. Therefore, the district court did not abuse its discretion by resentencing Larson to 36 months. *See State v. Nunn*, 411 N.W.2d 214, 216 (Minn. App. 1987) (stating that the district court was "free to resentence . . . so long as the newly imposed sentences were authorized by law and did not exceed the original . . . sentence"); *State v. Rohda*, 358 N.W.2d 39, 41 (Minn. App. 1984) (informing the district court that, on remand, in a situation where consecutive sentencing was not allowed, it had the discretion to "depart by imposing a concurrent sentence of up to but not more than [the original total consecutive sentence of] 91 months").

III.

Larson submitted a pro se supplemental brief, arguing that he has repeatedly been criminally sanctioned without being charged with a crime; that the predatory-offender registration statute is a bill of attainder and an ex post facto law; that he had a right to remain silent; that the registration requirement amounted to an illegal search and seizure; that he was subjected to excessive bail and cruel and unusual punishment, denied the equal protection of the laws, unable to speak without fear of incarceration, and enslaved in violation of the thirteenth amendment. He also seeks over nine million dollars in restitution. We have reviewed these arguments and find them to be without merit. *See*

Ture v. State, 681 N.W.2d 9, 20 (Minn. 2004) (rejecting pro se arguments without detailing consideration of each argument).

Affirmed.

Dated:

Judge Michelle A. Larkin