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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-317**

Richard Dix Young, III, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed July 5, 2011
Affirmed
Connolly, Judge**

Ramsey County District Court
File No. 62-CR-09-12573

David W. Merchant, Chief Appellate Public Defender, Cathryn Middlebrook, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

John J. Choi, Ramsey County Attorney, Mitchell L. Rothman, Assistant County Attorney, St. Paul, Minnesota (for respondent)

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

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant argues that the district court erred by imposing consecutive sentences after he was convicted of second-degree assault and attempted first-degree assault because the sentence was not authorized by law. Because appellant's sentence is authorized by caselaw, we affirm.

FACTS

The facts of this case are not in dispute. In December 2009, appellant Richard Young pleaded guilty to second-degree assault and attempted first-degree assault as part of a plea agreement he negotiated with the state. The charges against Young arose from an incident in June 2009 when Young shot a gun into a vehicle occupied by K.J. and D.S. Although Young's intended target was K.J., a shot struck D.S. in the face.

According to the plea agreement, Young and the state agreed that Young would receive consecutive sentences. After the district court imposed consecutive sentences, Young moved, under rule 27.03 of the Minnesota Rules of Criminal Procedure, to modify and correct his sentence based on his assertion that consecutive sentencing was not authorized by law. *See* Minn. R. Crim. P. 27.03, subd. 9 (permitting court to correct sentences not authorized by law). The district court denied Young's motion. Young appeals.

DECISION

The interpretation of caselaw and the sentencing guidelines are questions of law which we review de novo. *State v. Robideau*, 796 N.W.2d 147, 150 (Minn. 2011) (caselaw); *State v. Williams*, 771 N.W.2d 514, 520 (Minn. 2009) (sentencing guidelines).

The parties correctly assert that on June 25, 2009, the date of Young's offenses, the applicable version of the sentencing guidelines did not include attempted first-degree assault on the list of offenses eligible for permissive consecutive sentencing. Minn. Sent. Guidelines II.F & VI (2008).¹ The district court acknowledged that the sentencing guidelines did not authorize Young's consecutive sentence, but concluded that caselaw provided authorization. The district court did not err in its analysis.

In *State v. Rivers* this court concluded that although the sentencing guidelines did not authorize permissive consecutive sentences for the defendant's felony and gross-misdemeanor offenses, "it has long been recognized that multiple and consecutive sentences are allowed" when "crimes are committed against multiple victims, even if the crimes are committed in a single behavioral incident." 787 N.W.2d 206, 212-13 (Minn. App. 2010) (citing *State v. Cruz-Ramirez*, 771 N.W.2d 497, 512 (Minn. 2009) (stating that when multiple victims are involved, multiple and consecutive sentences are allowed)), *review denied* (Minn. Oct. 19, 2010).

Young argues that *Rivers* should not apply to his sentence for two reasons: (1) the sentencing guidelines were not applicable in *Rivers* because the charges involved a felony

¹ The guidelines were subsequently revised to include attempted crimes on the list of offenses eligible for permissive consecutive sentencing. Minn. Sent. Guidelines II.F.2(b) & VI (2009).

and a gross-misdemeanor, while the sentencing guidelines are applicable to Young's offenses because they are both felonies and (2) *Rivers* incorrectly relied on *Cruz-Ramirez* as caselaw authorizing multiple and consecutive sentences because the sentencing guidelines provided authorization for the defendant's sentence in *Cruz-Ramirez*.

Young's arguments are unpersuasive. First, even if the sentencing guidelines were not applicable to the defendant's offenses in *Rivers*, caselaw still provides independent authorization for multiple and consecutive sentences. Second, although the sentencing guidelines may have provided authorization for the consecutive sentence in *Cruz-Ramirez*, the court relied on caselaw as authorization for the sentence and nothing indicates that the court relied on the sentencing guidelines. *See* 771 N.W.2d at 512 (citing caselaw in support of consecutive sentencing and omitting any citation to sentencing guidelines).

Finally, Young argues that his consecutive sentence was not authorized by law because the sentence constituted a departure from the sentencing guidelines and the district court failed to state on the record the grounds for a departure. For a sentence to be unauthorized, however, it must be contrary to law or applicable statutes. *State v. Humes*, 581 N.W.2d 317, 319-20 (Minn. 1998). Because caselaw provided the district court with the authority to impose consecutive sentences, it did not err in denying Young's motion to correct his sentence.

Affirmed.