STATE OF MINNESOTA
IN COURT OF APPEALS
A11-543

Fredquinzo Ronte King, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed October 17, 2011
Affirmed
Bjorkman, Judge

Hennepin County District Court
File No. 27-CR-07-124739

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

Michael O. Freeman, Hennepin County Attorney, Thomas A. Weist, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Melissa Sheridan, Assistant Appellate Public Defender, Eagan, Minnesota (for appellant)

Considered and decided by Stauber, Presiding Judge; Bjorkman, Judge; and Huspeni, Judge.*

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

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

BJORKMAN, Judge

Appellant challenges the postconviction court's resentencing of his kidnapping conviction, arguing that the court was only authorized to correct appellant's unlawful second-degree murder sentence. Because the aggregate sentence complies with the plea agreement, we affirm.

FACTS

Appellant Fredquinzo Ronte King pleaded guilty to kidnapping and second-degree murder pursuant to an agreement under which he would receive a 540-month aggregate sentence in exchange for the state's dismissal of two first-degree murder charges. Specifically, King agreed that if he received a 367-month sentence for second-degree murder, he would receive a 173-month sentence for kidnapping—an upward departure from the sentencing guidelines. King expressly waived his right to a trial on the issue of whether he treated the victim with particular cruelty, justifying an upward departure.

Using a criminal-history score of two, the district court imposed a 125-month sentence on the kidnapping conviction and a permissive consecutive term of 415 months for second-degree murder. Although the district court found grounds for an aggravated kidnapping sentence, both sentences were within their presumptive sentencing ranges.

King filed a postconviction petition challenging his second-degree murder sentence based on an erroneous assignment of two criminal-history points. Both the parties and the district court agreed that a criminal-history score of zero should have been used because the consecutive sentence was permissive rather than presumptive.

Accordingly, the district court reduced the sentence for second-degree murder to 367 months. At the same time, the district court increased the kidnapping sentence to 173 months to maintain the aggregate sentence of 540 months contemplated in the plea agreement. This appeal follows.

D E C I S I O N

"The decisions of a postconviction court will not be disturbed unless the court abused its discretion. The court abuses its discretion if it misinterprets or misapplies the law." *Johnson v. State*, 733 N.W.2d 834, 836 (Minn. App. 2007) (quotation and citation omitted), *review denied* (Minn. Sept. 18, 2007).

King argues that the district court lacked the authority to increase his kidnapping sentence because the original sentence for this offense was lawful. We disagree. In *Johnson*, this court held that where a defendant successfully challenges the "sentence on one of two counts . . ., resulting in a reduction of that sentence, the court has the authority to increase the other sentence so as to comport with the plea agreement as to the aggregate [sentence]." *Id.* at 835. *Johnson* is directly applicable to this case. As in this case, the defendant in *Johnson* asserted that the postconviction court was only authorized to correct the unlawful sentence. We disagreed, reasoning that the corrected sentence did not exaggerate the criminality of Johnson's conduct since it would have been lawful at the time of the original sentencing, and the aggregate sentence was not unfair since Johnson voluntarily agreed to it. Based on *Johnson*, we conclude that the district court did not abuse its discretion by increasing King's kidnapping sentence.

King acknowledges that the district court's decision is correct under *Johnson* but urges this court to overturn *Johnson* as inconsistent with prior case law. We decline to do so. First, a court should be extremely reluctant to overturn its own precedent. *See State v. Lee*, 706 N.W.2d 491, 494 (Minn. 2005). Second, King relies on cases that are easily distinguishable from *Johnson* in both their facts and their holdings. Third, *Johnson* is based on sound legal reasoning and the supreme court's holding in *State v. Coe*: when a court reduces the sentence on one count due to a previous legal error, it may increase the sentence on a related count if (1) the increased sentence would have been lawful when the original sentence was imposed and (2) the modified aggregate sentence does not exceed the original aggregate sentence. 411 N.W.2d 180, 181-82 (Minn. 1987). Our decision in *Johnson* complies with these two criteria. For these reasons, we decline to overturn *Johnson*.

Affirmed.