**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A12-1914**

Booker Timothy Hodges, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed April 22, 2013**
**Affirmed**
**Rodenberg, Judge**

Ramsey County District Court
File No. 62-K9-06-004674

David W. Merchant, Chief Appellate Public Defender, St. Paul, Minnesota; and

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

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

John J. Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Halbrooks, Judge; and Rodenberg, Judge.

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

**RODENBERG**, Judge

Appellant challenges the district court's order denying a Minn. R. Crim. P. 27.03, subd. 9, motion to correct the minimum term of imprisonment imposed as part of

appellant's mandatory life sentence. Appellant argues that his 240-month minimum term of imprisonment is not authorized by law because it exceeds the statutory maximum of 180 months applicable to the offense of conviction in the absence of the mandatory life sentence. Appellant also argues that his constitutional rights were violated because he received ineffective assistance of counsel. We affirm.

**FACTS**

In 2007, appellant Booker Timothy Hodges pleaded guilty to third-degree criminal sexual conduct. Because of his prior sex-offense convictions and consistent with the plea agreement, appellant received a mandatory life sentence under Minn. Stat. § 609.3455, subd. 4(a)(1) (2006), with a 240-month minimum term of imprisonment imposed pursuant to Minn. Stat. § 609.3455, subd. 5. The district court found that, if it was required to apply the sentencing guidelines in calculating the minimum term of imprisonment, aggravating circumstances would justify an upward durational departure from the presumptive sentence to arrive at a 240-month minimum term of imprisonment.

Appellant directly appealed his sentence. *State v. Hodges* (*Hodges I*), 757 N.W.2d 693, 695, 697 (Minn. App. 2008), *aff'd on other grounds*, 784 N.W.2d 827 (Minn. 2009). This court affirmed the sentence while holding that the minimum term of imprisonment must be equal to *at least* the sentence arrived at by application of the sentencing guidelines. *Id.* at 696, 698. The supreme court affirmed, holding that the minimum term of imprisonment must be calculated according to the same sentencing procedures that would be followed absent the mandatory life sentence. *State v. Hodges* (*Hodges II*), 784 N.W.2d 827, 833–34 (Minn. 2009). The supreme court concluded that the district court

properly determined that aggravating factors supported an upward durational departure under the sentencing guidelines and was "satisfied that the aggravating factors found by the district court [were] sufficiently severe to justify the imposition of a minimum term of imprisonment amounting to a slightly greater-than-double-durational sentence." *Id.*

Appellant subsequently filed a pro se petition for postconviction relief. The district court denied his petition. Appellant appealed, but then voluntarily dismissed his appeal.

In July 2012, appellant brought a Minn. R. Crim. P. 27.03, subd. 9, motion to correct his sentence to reduce his minimum term of imprisonment from 240 months to the 180-month statutory maximum sentence that would apply to a third-degree criminal sexual conduct conviction in the absence of the mandatory life sentence. The district court denied the motion.

The present appeal is from the district court's denial of appellant's Minn. R. Crim. P. 27.03, subd. 9, motion.

## D E C I S I O N

### I

Appellant argues that his trial and appellate lawyers were constitutionally ineffective. The purpose of a Minn. R. Crim P. 27.03, subd. 9, motion is to seek the correction or modification of a sentence not authorized by law. It is not a vehicle for bringing other challenges to a conviction or sentence. *See Johnson v. State*, 801 N.W.2d 173, 176 (Minn. 2011) (rejecting use of a Minn. R. Crim. P. 27.03, subd. 9, motion to challenge validity of a conviction); *Vazquez v. State*, 822 N.W.2d 313, 318 n.3 (Minn.

App. 2012) (expressing no opinion as to a "transparent attempt" to use the rule to "circumvent" other limits on postconviction proceedings). Because the present motion is not a proper vehicle for raising an ineffective-assistance-of-counsel claim, we decline to address it.

**II**

Appellant's primary argument on appeal is that the district court impermissibly imposed a minimum term of imprisonment that exceeded the statutory maximum sentence applicable to the offense of conviction in the absence of the mandatory life sentence.[1] This court will not reverse the denial of a Minn. R. Crim. P. 27.03, subd. 9, motion unless the district court abused its discretion or the original sentence was not authorized by law. *Miller v. State*, 714 N.W.2d 745, 747 (Minn. App. 2006).

When sentencing a defendant to life in prison under Minn. Stat. § 609.3455, subd. 4(a)(1), "the court shall specify a minimum term of imprisonment, based on the sentencing guidelines or any applicable mandatory minimum sentence, that must be

[1] When a sentencing court applying the sentencing guidelines imposes a departure justified by "severe aggravating circumstances," the statutory maximum provided by the legislature in the statute defining the offense remains an "absolute limit on sentence duration for the offense." *State v. Mortland*, 399 N.W.2d 92, 94 n.1 (Minn. 1987); *see also State v. Dixon*, 415 N.W.2d 414, 417 (Minn. App. 1987) (modifying sentence to conform to statutory maximum), *review denied* (Minn. Jan. 20, 1988); *cf.* Minn. Sent. Guidelines II.H (stating that if the presumptive sentence "exceeds the statutory maximum sentence for the offense of conviction, the statutory maximum sentence shall be the presumptive sentence"). Third-degree criminal sexual conduct carries a statutory maximum sentence of 180 months. Minn. Stat. § 609.344, subd. 2 (2006). In the absence of the mandatory life sentence, appellant could not have been sentenced to more than 180 months in prison under the sentencing guidelines. *See Mortland*, 399 N.W.2d 92, 94 n.1.

served before the offender may be considered for supervised release." *Id.*, subd. 5 (2006).

In determining the minimum term of imprisonment, the sentencing court must follow "the procedures that would have been used to sentence the defendant in the absence of a mandatory life sentence." *Hodges II*, 784 N.W.2d at 833. Where no mandatory minimum sentence applies,[2] the sentencing court "follow[s] the same procedure a district court would have used under the sentencing guidelines." *Id.*

The supreme court did not expressly address in *Hodges II* whether the legislature, in providing a different maximum sentence (life imprisonment) for repeat offenders under Minn. Stat. § 609.3455, intended to eliminate the otherwise-applicable statutory maximum for all purposes, including the determination of the minimum term of imprisonment. *See id.* However, the supreme court reviewed the application of the sentencing guidelines in this case and held that the 240-month minimum term of imprisonment was lawful. *Id.* Based on the unique procedural posture of this case, we must accept for purposes of this appeal that the supreme court in *Hodges II* implicitly held that the statutory maximum sentence has been overridden for all purposes by Minn. Stat. § 609.3455. Issues determined in an earlier appeal are not appropriate for reexamination in a later appeal. *State v. Bailey*, 732 N.W.2d 612, 623 (Minn. 2007).

[2] The supreme court has interpreted the phrase "mandatory minimum sentence" in Minn. Stat. § 609.3455, subd. 5, as a reference to the mandatory minimum sentences found in Minn. Stat. § 609.342, subd. 2 (2012) and Minn. Stat. § 609.343, subd. 2 (2012). *Hodges*, 784 N.W.2d at 832. Neither provision applies here. *Id.* at 833.

We conclude that the district court did not abuse its discretion in denying appellant's motion to correct his sentence where the supreme court has previously held the sentence to be lawful. It is not the province of this court to find that a sentence previously affirmed by the Minnesota Supreme Court on appeal in this very case is in fact a sentence not authorized by law. *Cf. Kornberg v. Kornberg*, 525 N.W.2d 14, 18 (Minn. App. 1994) (indicating that while a court has the power to revisit its own decisions, it may not revisit the decisions of a higher court).

**Affirmed.**