STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0789

State of Minnesota,
Respondent,

vs.

Dakari Michael Coles,
Appellant.

Filed December 16, 2013
Affirmed
Kalitowski, Judge

Hennepin County District Court
File Nos. 27-CR-05-035318, 27-CR-05-035365

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

Michael O. Freeman, Hennepin County Attorney, Jean Burdorf, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Interim Chief Appellate Public Defender, Sara J. Euteneuer, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Worke, Judge; and Connolly, Judge.

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

KALITOWSKI, Judge

In this appeal from the district court's denial of his petition for postconviction relief, appellant Dakari Michael Coles argues that the district court erred by (1) treating

his motion to correct a sentence as a postconviction motion and finding it time-barred, and (2) refusing to correct appellant's sentence. We affirm.

D E C I S I O N

In August 2003, appellant entered into a three-component plea agreement with respondent State of Minnesota. Appellant was initially charged with first-degree criminal sexual conduct, first-degree aggravated robbery, and two counts of simple robbery. Appellant pleaded guilty to an amended charge of second-degree criminal sexual conduct and to the first-degree aggravated robbery charge as part of the plea bargain, in exchange for a 96-month prison sentence, stayed until his 21st birthday, and the dismissal of the other charges. The 96-month sentence was based on a 48-month sentence for the second-degree criminal sexual conduct and a consecutive 48-month sentence for the first-degree aggravated robbery. The parties also agreed that appellant would be designated an extended jurisdiction juvenile (EJJ).

In June 2005, appellant's EJJ status was revoked and his 96-month sentence was executed. Almost seven years later, in May 2012, appellant filed a pro se postconviction petition. His petition was forwarded to the Office of the Minnesota Appellate Public Defender, and it filed a supplemental petition and supplemental memorandum in support of the petition for postconviction relief on appellant's behalf. In denying appellant's request for relief, the district court concluded that appellant's petition directly challenged his 2003 plea and, therefore, was subject to the two-year statute of limitations for postconviction petitions in Minn. Stat. § 590.01, subd. 4(a) (2012).

Appellant argues that the district court erred because his supplemental petition referenced Minn. R. Crim. P. 27.03, subd. 9, and therefore was not a petition for postconviction relief subject to the two-year statute of limitations. We will not reverse the denial of either a petition for postconviction relief or a motion under rule 27.03, subd. 9, unless the district court abused its discretion or erred as a matter of law. *See Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012) (addressing petition for postconviction relief); *Anderson v. State*, 794 N.W.2d 137, 139 (Minn. App. 2011) (addressing motions under Minn. R. Crim. P. 27.03, subd. 9), *review denied* (Minn. Apr. 27, 2011).

Minnesota Rule of Criminal Procedure 27.03, subdivision 9, provides that a "court may at any time correct a sentence not authorized by law." But petitions for postconviction relief are subject to a two-year statute of limitations. Minn. Stat. § 590.01, subd. 4. We review de novo the interpretation of a procedural rule. *Johnson v. State*, 801 N.W.2d 173, 176 (Minn. 2011).

Appellant contends that because his petition was clearly identified as a rule 27.03, subd. 9, motion, and the only issue being raised relates to his sentence, his petition should be considered on its merits under our holding in *Vazquez v. State*, 822 N.W.2d 313 (Minn. App. 2012). We disagree.

Even characterizing appellant's motion as a challenge solely to his sentence, *Vazquez* is not controlling. *See Bonga v. State*, 765 N.W.2d 639, 643 (Minn. 2009) (noting "that [§ 590.01] is sufficiently broad to encompass a Minn. R. Crim. P. 27.03 motion").

In *Vazquez*, this court examined whether the two-year postconviction statute of limitations applies to motions to correct a sentence brought under rule 27.03, subd. 9. 822 N.W.2d at 316. We held that "[a] motion for correction or reduction of sentence based solely on a challenge to the accuracy of the criminal-history score is properly brought under Minn. R. Crim. P. 27.03, subd. 9, and is not subject to the two-year postconviction statute of limitations." *Id.* at 314.

In reaching this conclusion, the court examined the following considerations: (1) the policy interests at stake in preserving a defendant's right to challenge an incorrect criminal-history score; (2) the public interest in finality is not as strong when the finality of a sentence is at issue rather than the finality of the conviction; and (3) the "interests of justice" exception, which this court addressed as an exception to the two-year postconviction statute of limitations. *Id.* at 318-20.

Here, the *Vazquez* considerations do not support appellant's claim. First, the implications of a successful challenge to appellant's sentence would not be confined to the terms of his sentence. Rather, they would extend to appellant's plea agreement and underlying convictions. As the district court correctly noted, a successful challenge to appellant's upward sentencing departure for his second-degree criminal sexual conduct conviction would allow respondent to void the 2003 plea agreement and re-file all the charges it reduced or dismissed pursuant to the agreement. This concern was proper for the district court's consideration when construing appellant's motion as a petition for postconviction relief. *See State v. Montermini*, 819 N.W.2d 447, 455 (Minn. App. 2012) (noting the "district court [has] flexibility to consider the effect of the court of appeals

decision on the remainder of the plea agreement"); *State v. Lewis*, 656 N.W.2d 535, 539 (Minn. 2003) (stating the "[sentence component and conviction component] are interrelated and that the district court should be free to consider the effect that changes in the sentence have on the entire plea agreement").

Second, the public interest considerations that prevailed in *Vazquez* are not present here. The *Vazquez* court found no countervailing public interest in the finality of a sentence when the sentencing issue involved the calculation of a criminal-history score. 822 N.W.2d at 319. But here, the public interest in persevering the integrity and finality of the plea negotiation process is great. Consequently, the public interest in allowing appellant to challenge his sentence does not outweigh the public interest in preserving the finality of appellant's convictions.

Third, appellant claims the interests of justice favor addressing his claim because his claim is meritorious. But this argument fails to account for the other factors a court may consider under an "interests of justice" analysis. The supreme court has delineated

> that in deciding whether to grant relief in the interests of justice, courts should weigh the degree to which the party alleging error is at fault for that error, the degree of fault assigned to the party defending the alleged error, and whether some fundamental unfairness to the defendant needs to be addressed.

Gassler v. State, 787 N.W.2d 575, 587 (Minn. 2010). It further noted that the integrity of the judicial proceedings, specifically the effects a reversal of a conviction may have on the "fairness, integrity, or public reputation of [the] judicial proceedings," are significant factors in the "interests of justice" analysis. *Id.*

Here, appellant's argument fails to acknowledge the benefits he gained from the plea bargain—reduced and dismissed charges—and the detriments that would result to the public interest from a voided plea agreement. If the agreement was voided, the state could be faced with recharging and prosecuting crimes that happened almost ten years ago. A ten-year delay in the prosecution of these victim-based crimes weighs heavily in our "interests of justice" analysis. *See Black v. State*, 725 N.W.2d 772, 776 (Minn. App. 2007) (factoring in "whether the delay causes undue prejudice to the state's prosecution of the case" when ruling on appellant's postconviction petition to withdraw a plea agreement under the "interests of justice" exception). Thus, on this record, we conclude the interests of justice do not favor appellant.

In sum, because appellant cannot use the language of rule 27.03, subd. 9, to ignore the substance of his petition and limit the district court's review of the subsequent consequences that may result from a successful challenge, we decline to extend our holding in *Vazquez* to a sentencing challenge that implicates the underlying convictions.

Finally, for the first time in his reply brief, appellant cites, but does not discuss, *State v. Amundson*, 828 N.W.2d 747 (Minn. App. 2013), to support his contention that the postconviction two-year time limit does not apply to motions properly filed under rule 27.03, subd. 9. Because appellant provides no legal analysis in support of his citation, we decline to address it. *See Ganguli v. Univ. of Minn.*, 512 N.W.2d 918, 919 n.1 (Minn. App. 1994) (declining to address allegation unsupported by analysis or citation). Moreover, *Amundson* is not controlling because the state in *Amundson* waived its right to claim the motion was time-barred by conceding that *Vazquez* applied and that

Amundson's motion was properly filed under rule 27.03, subd. 9. *Amundson*, 828 N.W.2d at 751; *see also Carlton v. State*, 816 N.W.2d 590, 606 (holding that the limitations period in Minn. Stat. § 590.01, subd. 4(c), does not operate as a jurisdictional bar, and is subject to waiver if not raised).

Because the district court properly construed appellant's petition for relief as a time-barred postconviction motion, we need not address the merits of appellant's sentencing arguments.

Affirmed.