STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1539

Reggie Griffin, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed July 8, 2008
Affirmed
Wright, Judge

Hennepin County District Court
File No. 02101945

Reggie Griffin, Prairie Correctional Facility, 445 South Munsterman Street, Appleton, MN 56208 (pro se appellant)

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

Michael O. Freeman, Hennepin County Attorney, Donna J. Wolfson, Assistant County Attorney, C-2000 Government Center, 300 South Sixth Street, Minneapolis, MN 55487 (for respondent)

Considered and decided by Minge, Presiding Judge; Wright, Judge; and Muehlberg, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals 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

WRIGHT, Judge

Appellant challenges the district court's denial of his pro se petition for postconviction relief, arguing that his sentence violates the constitutional principle articulated in *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004), and that he received ineffective assistance of counsel. We affirm.

FACTS

In March 2003, appellant Reggie Griffin was convicted of first-degree criminal sexual conduct (causing fear of great bodily harm), Minn. Stat. § 609.342, subd. 1(c) (2002); kidnapping to facilitate a felony or flight thereafter, Minn. Stat. § 609.325, subd. 1(2) (2002); and kidnapping resulting in great bodily harm or terrorizing the victim, Minn. Stat. § 609.325, subd. 1(3) (2002).[1] The district court sentenced Griffin to 144 months' imprisonment for the first-degree criminal-sexual-conduct offense and 21 months' imprisonment for the kidnapping offense. Finding that his crime involved particular cruelty, the district court ordered these sentences be served consecutively, an upward dispositional departure resulting in a total sentence of 165 months' imprisonment.

We affirmed Griffin's conviction on direct appeal. *State v. Griffin*, No. A03-963, 2004 WL 1925829 (Minn. App. Aug. 31, 2004), *review denied* (Minn. Nov. 23, 2004). But because the imposition of consecutive sentences constituted an upward departure based on aggravating factors found by a judge, not a jury, we directed the district court to

[1] The facts of these offenses, which are not relevant here, are set forth in *State v. Griffin*, No. A03-963, 2004 WL 1925829 (Minn. App. Aug. 31, 2004), *review denied* (Minn. Nov. 23, 2004).

consider whether resentencing was warranted in light of *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004), which had been released two weeks after Griffin's case was submitted for appellate review. *Griffin*, 2004 WL 1925829, at *7.

On remand, the district court imposed concurrent sentences of 144 months' imprisonment for the first-degree criminal-sexual-conduct offense and 33 months' imprisonment for the kidnapping offense. The district court also ordered a five-year period of conditional release. After unsuccessfully seeking federal habeas corpus relief from his conviction, Griffin brought a pro se motion for postconviction relief, arguing that (1) the sentence imposed on remand was inconsistent with *Blakely*, and (2) he received ineffective assistance of counsel. The district court denied Griffin's motion, and this appeal followed.

D E C I S I O N

Griffin challenges his sentence as contrary to the rule set forth in *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004). This issue presents a question of constitutional law, which we review de novo. *State v. Hagen*, 690 N.W.2d 155, 157 (Minn. App. 2004). In *Blakely*, the United States Supreme Court held that the Sixth Amendment to the United States Constitution guarantees the right to have a jury determine beyond a reasonable doubt any fact, other than a prior conviction, that increases the punishment for an offense beyond the maximum authorized by the jury's verdict and the defendant's admissions. 542 U.S. 296 at 303-05, 124 S. Ct. at 2537-38. Because a district court is not authorized to depart from the presumptive guidelines sentence absent additional factual findings, *Blakely* applies to aggravating factors used as

a basis for an upward departure. *State v. Shattuck*, 704 N.W.2d 131, 141-42 (Minn. 2005).

Griffin first argues that his mandatory minimum sentence of 144 months' imprisonment is unconstitutional because it constitutes an upward departure without a jury determination. This argument is without merit. A district court violates the *Blakely* standard when it imposes a sentence based on any fact beyond those reflected in the jury verdict itself because "the jury has not found all the facts which the law makes essential to the punishment." 542 U.S. at 303-04, 124 S. Ct. at 2537 (quotation and citation omitted). When imposing a sentence for first-degree criminal sexual conduct, a district court "shall presume that an executed sentence of 144 months must be imposed on an offender *convicted of violating this section*." Minn. Stat. § 609.342, subd. 2(b) (2002) (emphasis added). Thus, under section 609.342, subdivision 2(b), the only fact that is essential to the imposition of a 144-month sentence is conviction of first-degree criminal sexual conduct. When the jury convicted Griffin of first-degree criminal sexual conduct, it also found the relevant facts for sentencing as *Blakely* requires.[2]

Griffin also challenges the five-year conditional-release period, arguing that it is an unconstitutional increase in the length of his sentence beyond the statutory maximum.

[2] Indeed, unless the sentencing guidelines require imprisonment for a longer period—for example, based on the defendant's criminal-history score—anything other than an executed 144-month sentence would be a departure from the guidelines. Minn. Stat. § 609.342, subd. 2(b); *see also* Minn. Sent. Guidelines II.E (stating that presumptive sentence for an offense subject to mandatory minimum is either minimum mandated by statute or applicable guidelines sentence, "whichever is longer"), IV (providing presumptive sentence of 144 months' imprisonment for conviction of first-degree criminal sexual conduct when offender's criminal-history score is zero).

This argument also is unavailing. "Notwithstanding the statutory maximum sentence otherwise applicable to the offense or any provision of the sentencing guidelines," a person convicted of first-degree criminal sexual conduct "shall be placed on conditional release for five years, minus the time the person served on supervised release." Minn. Stat. § 609.109, subd. 7 (2002). Under *Blakely*, the relevant "statutory maximum" is the maximum punishment that a district court may impose without any additional findings other than those made by the jury. 542 U.S. at 303-04, 124 S. Ct. at 2537. Like the mandatory-minimum sentence addressed above, the five-year conditional-release period "is authorized on the basis of the jury verdict, and does not require any additional findings of fact to be made by the district court." *State v. Jones*, 659 N.W.2d 748, 753 (Minn. 2003). The conditional-release term imposed here also complies with *Blakely* because further fact-finding was not necessary after the jury returned a guilty verdict for first-degree criminal sexual conduct.

Finally, Griffin argues that he received ineffective assistance of counsel on remand because his attorney failed to object to his sentence as a violation of the *Blakely* decision. To prevail on a claim of ineffective assistance of counsel, a defendant must demonstrate that (1) counsel's performance was deficient, such that counsel "made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment"; and (2) the defendant was prejudiced by counsel's performance. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984); *Gates v. State*, 398 N.W.2d 558, 561 (Minn. 1987). An insufficient showing on one of these requirements defeats a claim of ineffective assistance of counsel. *Strickland*, 466 U.S. at

687, 104 S. Ct. at 2064; *Gates*, 398 N.W.2d at 561. Because the sentence imposed complies with the *Blakely* decision, Griffin's counsel did not have a legal basis to object to the sentence. The performance of Griffin's attorney was not deficient; therefore, the claim of ineffective assistance of counsel fails.

Affirmed.