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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A09-2057**

Danny Aleck Bowie, Jr., petitioner,  
Appellant,

vs.

State of Minnesota,  
Respondent.

**Filed August 24, 2010  
Affirmed  
Peterson, Judge**

Hennepin County District Court  
File Nos. 27-CR-06-5391  
27-CR-06-5391

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

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

Michael O. Freeman, Hennepin County Attorney, Lee W. Barry III, Assistant County  
Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Peterson, Presiding Judge; Lansing, Judge; and  
Stauber, Judge.

**UNPUBLISHED OPINION**

**PETERSON**, Judge

In this postconviction appeal, appellant argues that his consecutive sentences for  
an aggravated-robbery conviction and a second-degree murder conviction must be

modified to run concurrently because the imposition of consecutive sentences unfairly exaggerates the criminality of his conduct. We affirm.

## **FACTS**

Appellant entered a convenience store wearing a mask over his face and armed with a semiautomatic handgun. Appellant threatened the cashier with the gun, and the cashier turned over \$100 to appellant.

After appellant learned that a shotgun that he had been keeping at a friend's house had been stolen by P.W., appellant and a friend made two trips to P.W.'s apartment building. On the second trip, the friend kept the security door open as she was leaving, and appellant got inside the building and went to P.W.'s apartment and knocked on the door. P.W. opened the door, and appellant saw that P.W. was holding appellant's shotgun. Appellant shot P.W. with a semiautomatic handgun. P.W. fell to the floor at the first shot, and appellant shot P.W. at least two more times. Appellant paused between shots one, two, and three.

Appellant was charged with one count of first-degree aggravated robbery and indicted for first-degree premeditated murder and second-degree intentional murder. Appellant pleaded guilty to first-degree aggravated robbery and second-degree intentional murder. The plea agreement provided for a 48-month sentence for the aggravated robbery and a 432-month sentence for the intentional murder to run consecutively. The intentional-murder sentence was a 41-month upward departure from the guidelines sentence.

At the plea hearing, appellant admitted that by pulling the trigger and shooting P.W. three times, appellant intended to cause P.W.'s death. Appellant testified that P.W. never had the chance to fire the shotgun because the safety was on. Appellant admitted that he was standing outside P.W.'s apartment, and P.W. was trying to close the door, so appellant could have left the building. Appellant admitted that the first shot did not kill P.W. and that it was the second or third shot in the back when P.W. was lying on the floor that killed P.W.

At the sentencing hearing, it was determined that a mistake had been made in calculating appellant's criminal-history score and that the maximum guidelines sentence for his intentional-murder offense was 367 months, not 391 months. The parties agreed to proceed with the reduced sentence. With the agreed-on 41-month upward departure, appellant's sentence for intentional murder was 408 months, resulting in a total sentence of 456 months rather than 480 months.

Appellant filed a postconviction petition for relief, challenging his sentence. The district court denied relief. This appeal followed.

## **D E C I S I O N**

“We review a postconviction court's decision to deny relief under an abuse of discretion standard.” *State v. Rhodes*, 675 N.W.2d 323, 326 (Minn. 2004). We review the postconviction court's legal determinations de novo but do not set aside factual findings unless they are clearly erroneous. *Pippitt v. State*, 737 N.W.2d 221, 226 (Minn. 2007).

A district court's decision to impose consecutive sentences generally falls within its broad discretion in sentencing. *State v. Munger*, 597 N.W.2d 570, 573 (Minn. App. 1999), *review denied* (Minn. Aug. 25, 1999). We will not interfere with this decision unless the sentence is "disproportionate to the offense or unfairly exaggerates the criminality of the defendant's conduct." *State v. McLaughlin*, 725 N.W.2d 703, 715 (Minn. 2007) (quotation omitted). Consecutive sentences for convictions of second-degree murder and first-degree aggravated robbery are permissive and not a departure from the guidelines. Minn. Sent. Guidelines II.F.2, VI.

Appellant does not dispute that the upward durational departure was supported by aggravating factors. He argues that imposition of consecutive sentences together with the upward durational departure unfairly exaggerated the criminality of his conduct. Appellant relies on *Neal v. State*, 658 N.W.2d 536, 548-49 (Minn. 2003) (holding that 480-month sentence for kidnapping, which was more than a quadruple departure, was abuse of discretion and remanding for determination of reasonable sentence of up to 240 months but permitting imposition of consecutive 96-month sentence for aggravated robbery); and *State v. Norris*, 428 N.W.2d 61, 71 (Minn. 1988) (modifying life sentence for first-degree murder and five consecutive sentences for second-degree aggravated assault to have three of the five sentences for aggravated assault run concurrently). Here, unlike *Neal* and *Norris*, the district court imposed only two consecutive sentences, and the departure on the murder sentence was only 11% of the presumptive sentence.

Appellant cites his age as a basis for modifying his sentence. But the supreme court has upheld consecutive sentences involving youthful offenders numerous times.

*See State v. Fardan*, 773 N.W.2d 303, 322 (Minn. 2009) (upholding consecutive sentences of life imprisonment and 486 months for 15-year-old defendant) (citing *McLaughlin*, 725 N.W.2d at 717 (concluding that district court sentencing 15-year-old defendant did not abuse its discretion in imposing 144-month sentence consecutive to life sentence)); *State v. Ouk*, 516 N.W.2d 180, 186 (Minn. 1994) (affirming consecutive life sentences and 180-month sentences for 15-year-old defendant convicted of two counts of first-degree murder and two counts of attempted first-degree murder); *State v. Brom*, 463 N.W.2d 758, 765 (Minn. 1990) (holding that the district court did not abuse its discretion when it sentenced a 16-year-old defendant to three consecutive life terms).

Because the authority cited by appellant does not establish that the imposition of the durational departure together with consecutive sentences unfairly exaggerated the criminality of appellant's conduct, the district court properly denied postconviction relief. *See State v. Hough*, 585 N.W.2d 393, 397-98 (Minn. 1998) (upholding imposition of double durational departures on two assault sentences and permissive consecutive sentences when defendant failed to show that sentences unfairly exaggerated criminality of his conduct).

**Affirmed.**