

STATE OF MINNESOTA  
IN SUPREME COURT

A21-1095

Ramsey County

Anderson, J.

Carlos Orlandos Smith,

Appellant,

vs.

Filed: May 25, 2022  
Office of Appellate Courts

State of Minnesota,

Respondent.

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Carlos Orlandos Smith, Moose Lake, Minnesota, pro se.

Keith Ellison, Attorney General, Saint Paul, Minnesota; and

John J. Choi, Ramsey County Attorney, Jeffrey A. Wald, Assistant Ramsey County Attorney, Saint Paul, Minnesota, for respondent.

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S Y L L A B U S

1. The district court did not err by denying appellant's claim under Minn. Stat. § 609.035 (2020), that it had improperly sentenced him on two convictions that were part of a single behavioral incident because the claim was without merit.

2. The law of the case doctrine bars appellant's sentencing challenges.

3. Appellant forfeited review of his claim that the State failed to give proper notice of its intent to seek an upward durational departure under Minn. R. Crim. P. 7.03 and

Minn. Stat. § 244.10, subd. 4 (2020), by failing to raise these arguments in his motion to the district court.

Affirmed.

Considered and decided by the court without oral argument.

## OPINION

ANDERSON, Justice.

Appellant Carlos Orlandos Smith was convicted of first-degree murder and aggravated robbery in 1994. For the aggravated robbery, the district court imposed a 96-month sentence, which reflected an upward durational departure. For the first-degree murder, the court imposed a consecutive sentence of life without the possibility of release. On direct appeal, we affirmed Smith's convictions and sentences. In April 2021, Smith moved to correct his sentence. The district court denied Smith's motion, and Smith now appeals that decision, arguing that the court abused its discretion. The district court correctly concluded that Smith's claims under Minn. Stat. § 609.035 (2020) fail on the merits, the law of the case doctrine bars Smith's challenges to his sentence, and Smith forfeited review of his notice claim; as such, we affirm.

## FACTS

The relevant facts are not disputed. On the evening of October 5, 1993, Smith and three companions encountered Marcus Jackson and Raymond Barnett in front of Barnett's house, located approximately one block from the intersection of Selby Avenue and Milton

Street in St. Paul.<sup>1</sup> Jackson went inside the house, and Smith and his companions proceeded to assault Barnett after a disagreement about an incident that had occurred days prior. After beating Barnett, Smith and his companions took Barnett's shoes and his pager. Smith possessed a firearm during this altercation.

Smith and his companions then left Barnett's home and walked to the intersection of Selby and Milton, where Smith approached Dural Woods to buy marijuana. Smith paid Woods for the marijuana. But Smith then tried to get his money back from Woods, claiming that the goods Woods sold him were not what he wanted. Woods refused, a struggle ensued, and both men drew guns. Smith shot Woods multiple times, killing him. The police later arrested Smith in Minneapolis; he was ultimately charged with first-degree murder and second-degree murder for shooting and killing Woods, and aggravated robbery for his encounter with Barnett.

A jury found Smith guilty of first-degree murder, Minn. Stat. § 609.185(3) (1996), and aggravated robbery, Minn. Stat. § 609.245 (1992).<sup>2</sup> The district court scheduled a sentencing hearing for May 24, 1994. Five days before the sentencing hearing, the State filed written motions seeking an upward durational sentencing departure and consecutive sentences.

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<sup>1</sup> A more detailed description of the underlying offenses can be found in *State v. Smith*, 541 N.W.2d 584, 586–87 (Minn. 1996).

<sup>2</sup> The jury also found Smith guilty of second-degree murder. That offense is not at issue in this appeal because the district court did not impose a sentence for the offense.

During the 1994 sentencing hearing, defense counsel questioned the timeliness of the State’s sentencing motion. Without citing a specific rule, defense counsel argued that the Minnesota Rules of Criminal Procedure “require seven days’ notice.” After hearing the arguments of the parties and the victim impact statements, the district court imposed a 96-month sentence for the aggravated robbery conviction, which reflected an upward durational departure from the presumptive sentencing range of 44 to 52 months imprisonment. For the first-degree murder conviction, the court imposed a consecutive sentence of life without the possibility of release.

Smith filed a direct appeal, arguing among other things that the district court abused its discretion by sentencing him to a double upward departure for the aggravated robbery conviction and imposing the life sentence consecutively.<sup>3</sup> *State v. Smith*, 541 N.W.2d 584, 587 (Minn. 1996). We affirmed Smith’s sentences, concluding that the particular cruelty of Smith’s actions justified the departure and that the consecutive sentence was not a departure from the guidelines because it was permitted under Minn. Sent. Guidelines II.F.2 (1995). *Id.* at 590.

Nearly 25 years later, on April 5, 2021, Smith moved pro se to correct his sentence under Minn. R. Crim. P. 27.03, subd. 9. Liberally construed, Smith’s motion appeared to assert four claims. First, Smith claimed that the district court violated Minn. Stat. § 609.04 (2020), which prohibits conviction of a crime and an included offense for the same act,

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<sup>3</sup> Smith also challenged his convictions, arguing that the prosecutor committed misconduct and, additionally, that the district court abused its discretion by admitting evidence pursuant to *State v. Spreigl*, 139 N.W.2d 167 (Minn. 1965). We rejected these challenges. *Smith*, 541 N.W.2d at 588–89.

when it convicted him of aggravated robbery and first-degree murder because the offenses were part of the same act. Second, he claimed that the court violated Minn. Stat. § 609.035, which prohibits the imposition of sentences for multiple crimes arising out of a single behavioral incident, when it sentenced him on both convictions because the conduct was part of a single behavioral incident. Third, he claimed that the district court violated *Blakely v. Washington*, 542 U.S. 296 (2004), when it relied on aggravating factors that were not found by a jury. Fourth, he claimed the district court abused its discretion because his sentences unfairly exaggerated his criminality. Smith asked the district court to either vacate his aggravated robbery sentence or reduce his aggravated robbery sentence to the presumptive 48-month duration and then run his life sentence concurrently.

The district court denied Smith's motion to correct his sentence. Relying on a variety of legal theories, the court concluded that Smith's claims failed. In analyzing Smith's first claim, which alleged that the district court violated section 609.04 when it *convicted* him of both robbery and murder because the two offenses were part of the same act, the court concluded that the claim implicated more than just his sentence and therefore was not properly brought in a Rule 27 motion. Rather, Smith should have brought the claim under the postconviction statute, and the claim failed because it was barred by the postconviction statute of limitations.

In two separate footnotes, the district court addressed Smith's second claim, which alleged a violation of section 609.035 on the basis that the aggravated robbery and first-degree murder convictions were part of a single behavioral incident. In footnote 2 of the order, the court rejected the claim on its merits, concluding that because Smith's

conduct involved more than one victim, it comprised more than a single behavioral incident. In footnote 3 of the order, the district court questioned whether Smith's section 609.035 claim could be raised in a motion to correct a sentence and described in more detail why the claim failed on the merits.

In analyzing Smith's third claim, which alleged a *Blakely* violation, the district court observed that the *Blakely* rule does not apply retroactively. Because Smith's conviction became final 8 years before *Blakely* was decided, the court concluded that Smith's *Blakely* argument failed on its merits.

As for Smith's fourth claim, which alleged that his sentences unfairly exaggerated his criminality, the district court observed that under the law of the case doctrine, courts will not revisit an issue that was previously raised and rejected. Because the issue in question was raised and rejected in Smith's direct appeal, the court concluded that the law of the case doctrine barred Smith's fourth claim.

On appeal to this court, Smith renews his argument that the district court violated section 609.035 when it imposed separate sentences for the convictions of aggravated robbery and first-degree murder because the convictions arose out of a single behavioral incident. He also asserts that the district court erred by questioning whether his section 609.035 claim could be raised in the motion to correct his sentence. Smith further claims that the record does not contain aggravating factors that justify an upward departure. Lastly, Smith contends for the first time that the State violated Minn. R. Crim. P. 7.03, and Minn. Stat. § 244.10, subd. 4 (2020), by filing its written motion for a sentencing departure 5 days before the 1994 sentencing hearing.

## ANALYSIS

We review a district court’s denial of a motion to correct a sentence for an abuse of discretion. *Evans v. State*, 880 N.W.2d 357, 359 (Minn. 2016). The district court abuses its discretion when it “exercise[s] its discretion in an arbitrary or capricious manner, base[s] its ruling on an erroneous view of the law, or [makes] clearly erroneous factual findings.” *Reed v. State*, 793 N.W.2d 725, 729 (Minn. 2010).

A defendant may move to “correct a sentence not authorized by law” at any time. Minn. R. Crim. P. 27.03, subd. 9; *see Reynolds v. State*, 888 N.W.2d 125, 133 (Minn. 2016) (holding that applying the 2-year time bar in the postconviction statute to motions to correct sentence violates the separation of powers and affirming that motions to correct sentence have no time limit). A sentence is unauthorized when it is “contrary to law or applicable statutes.” *State v. Schnagl*, 859 N.W.2d 297, 301 (Minn. 2015). Additionally, the right to challenge an unauthorized sentence cannot be waived. *State v. Maurstad*, 733 N.W.2d 141, 146–47 (Minn. 2007).

### I.

We first address the district court’s treatment of Smith’s claim under Minn. Stat. § 609.035. Section 609.035 prohibits the imposition of sentences for multiple crimes arising out of a single behavioral incident. *Munt v. State*, 920 N.W.2d 410, 416–17 (Minn. 2018); *State v. Johnson*, 141 N.W.2d 517, 524 (Minn. 1966). Here, the court properly

concluded that multiple crimes did not arise out of a single behavioral incident and thus correctly denied Smith’s section 609.035 claim.<sup>4</sup>

To determine whether crimes arise out of a single behavioral incident, we look at “the factors of time and place” as well as “whether the segment of conduct involved was motivated by an effort to obtain a single criminal objective.” *Munt*, 920 N.W.2d at 416 (citation omitted) (internal quotation marks omitted). Acts committed against separate victims are not usually “conduct” for purposes of section 609.035 because “the [L]egislature did not intend in every case to immunize offenders from the consequences of separate crimes intentionally committed in a single episode against more than one individual.” *Id.* at 417 (citation omitted) (internal quotation marks omitted); *see also State v. Branch*, 942 N.W.2d 711, 715 n.4 (Minn. 2020) (explaining that “when a defendant is charged with crimes committed against multiple victims, a separate analysis under section 609.035 is conducted for each victim”).

The acts that Smith committed against Barnett and Woods are not “conduct” under section 609.035 because the acts involved multiple victims. Moreover, even if the acts constituted conduct for purposes of section 609.035, Smith’s section 609.035 claim still failed on its merits because Smith’s actions were motivated by different criminal

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<sup>4</sup> In *Munt*, we stated that, “[b]y its plain terms, section 609.035 limits the imposition of punishment,” and because of that, Munt’s claim under section 609.035 was properly brought in a motion to correct the sentence. 920 N.W.2d at 416. Like the defendant in *Munt*, Smith challenges his punishment under section 609.035. He does not challenge the facts underlying his conviction, only the application of the law to those facts for purposes of sentencing. Thus, the district court erred by questioning whether Smith’s section 609.035 claim could be raised in a motion to correct his sentence. But this error was harmless because the district court denied Smith’s claim on the merits.



objectives. The robbery of Barnett was motivated by a desire for retribution for an incident that occurred 2 days earlier, while the fatal shooting of Woods was motivated by Woods's refusal to return the money that Smith used to purchase the marijuana. Accordingly, the district court properly concluded that Smith's section 609.035 claim failed on its merits, and Smith is not entitled to relief on this ground.

## II.

Next, we address the district court's conclusion that the law of the case doctrine barred Smith's challenges to his consecutive sentences and the double upward durational departure. For the following reasons, we conclude that the district court properly applied the law of the case doctrine.

The law of the case doctrine functions to bar issues that were previously considered and denied in the same case. *Lynch v. State*, 749 N.W.2d 318, 321 (Minn. 2008). We apply this doctrine to a Rule 27 motion when the claim underlying the motion was previously denied on direct appeal. *Townsend v. State*, 867 N.W.2d 497, 501 (Minn. 2015).

In considering Smith's motion to correct his sentence, the district court applied the law of the case doctrine to deny Smith's claim that the imposition of consecutive sentences was an abuse of discretion. The district court did not apply this doctrine to Smith's challenge to the double upward durational departure because Smith based his argument on *Blakely*. In his brief to us, Smith does not challenge the district court's denial of his *Blakely*

claim.<sup>5</sup> Instead, he argues that the double upward durational departure and consecutive sentences are unlawful because these two applications of sentencing unfairly exaggerated his criminality.

The issues of whether Smith’s consecutive sentences and the upward durational departure unfairly exaggerated his criminality were raised and decided on direct appeal. *See Smith*, 541 N.W.2d at 589–90. Accordingly, the district court properly applied the law of the case to Smith’s consecutive sentence challenge. And although the district court did not explicitly apply the law of the case doctrine to Smith’s claim that the double upward durational departure unfairly exaggerated his criminality, the doctrine plainly bars that claim as well.

### III.

Lastly, we turn our focus to Smith’s claim that the State failed to give proper notice of its intent to seek an upward durational departure at the sentencing hearing. Because Smith raises this claim for the first time on appeal, we conclude that he has forfeited appellate review of the claim.

Claims raised for the first time on appeal to this court are generally considered forfeited. *Steward v. State*, 950 N.W.2d 750, 756 (Minn. 2020). We construe the motion

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<sup>5</sup> Because Smith does not challenge the district court’s denial of his *Blakely* claim, we need not review that aspect of the district court’s decision. *See Ries v. State*, 920 N.W.2d 620, 640 (Minn. 2018) (stating that issues not argued on appeal that were argued below are forfeited). In any case, the district court correctly found that *Blakely* does not apply to Smith’s sentences. *Blakely* does not apply retroactively, *State v. Houston*, 702 N.W.2d 268, 273 (Minn. 2005), and because it was decided many years after Smith’s conviction became final, *Smith*, 541 N.W.2d 584, it does not apply here.

Smith filed in the district court “liberally and with an understanding eye” because Smith is representing himself. *Id.* at 757. But even when so construed, nothing in his motion asserts that the State failed to give proper notice under section 244.10, subdivision 4, or Rule 7.03. For that reason, Smith’s notice claim is forfeited.

### **CONCLUSION**

For the foregoing reasons, we affirm the decision of the district court.

Affirmed.