STATE OF MINNESOTA

IN SUPREME COURT

A21-1229

Hennepin County McKeig, J.

Ronald Lewis Greer,

Appellant,

vs.

Filed: May 11, 2022
Office of Appellate Courts

State of Minnesota,

Respondent.

Ronald L. Greer, Moose Lake, Minnesota, pro se.

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

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

S Y L L A B U S

1. Because the district court imposed a mandatory life sentence, the denial of appellant's right to allocution was not a structural error.

2. Even if we assume the district court erred when it concluded that defendant's right to allocution could not be raised in a motion to correct a sentence under Minn. R. Crim. P. 27.03, subd. 9, appellant is entitled to no relief because the alleged error was harmless.

3. A district court is not required to hold a sentencing hearing under Minn. Stat. § 244.10, subd. 1 (2020), when it vacates a conviction for a lesser-included offense.

Affirmed.

Considered and decided by the court without oral argument.

O P I N I O N

McKEIG, Justice.

Appellant Ronald Lewis Greer, who is serving a sentence of life in prison for first-degree murder, argues that the district court committed reversible error when it denied his motion to correct a sentence. Three main issues are raised in this appeal. First, we consider whether the violation of Greer's right to allocution—the opportunity to personally address the court before it imposed a sentence—was a structural error, and thus not subject to a harmless-error analysis, when the district court imposed a mandatory life sentence.[1] Second, we consider whether the district court committed a reversible procedural error when it concluded that the allocution claim could not be raised in a motion to correct a sentence. Finally, we consider whether the district court was required to hold a sentencing hearing before it vacated a conviction for a lesser-included offense. Because the violation of Greer's right to allocution was not a structural error, the alleged procedural error was harmless, and the district court was not required to hold a sentencing hearing, we affirm.

[1] Greer also argues that the alleged violation of his right to be present when his life sentence was pronounced constitutes a structural error. Because the sentencing-hearing transcript indicates that Greer was in fact present when his life sentence was pronounced, we need not address this argument.

FACTS

A Hennepin County grand jury indicted Greer with two counts of murder in the shooting death of Kareem Brown. Count one charged Greer with first-degree premeditated murder and count two charged Greer with second-degree intentional felony murder. Greer pleaded not guilty.

On May 13, 1999, a jury found Greer guilty of both counts. The State moved for immediate sentencing. Defense counsel objected and requested a continuance to prepare a motion for a new trial. After considering the parties' arguments, the district court said, "All right. The Court is going to deny your request for a continuance and sentence you at this time. Please stand, Mr. Greer. Deputy, would you send Mr. Greer up?" at which point defense counsel interjected. After responding to defense counsel's interjection, the court said, "Mr. Greer, after being found guilty by a Jury of your peers, of First and Second Degree Murder, I am adjudging you guilty of the same. It is the sentence of the law and the judgment of this Court that you be sentenced to life imprisonment immediately, to the Commissioner of Corrections."

The May 13, 1999, written judgment of the district court mistakenly stated that Greer was confined to the Commissioner of Corrections for a term of "Ct1-Life, Ct2-Life." Five months later, on October 18, 1999, the court corrected the written judgment to reflect that it only sentenced Greer on Count One. The corrected judgment states that Greer was

confined to the Commissioner of Corrections for a term of "Ct1-Life." It also contains a notation stating "Count 2 merged."[2]

We affirmed Greer's conviction of first-degree premeditated murder. *State v. Greer* (*Greer II*), 662 N.W.2d 121, 121–22 (Minn. 2003). Between 2003 and 2012, Greer filed three postconviction petitions. We affirmed the district court orders denying those petitions. *Greer v. State* (*Greer III*), 673 N.W.2d 151, 154 (Minn. 2004) (affirming denial of first petition); *Greer v. State* (*Greer IV*), 836 N.W.2d 520, 523 (Minn. 2013) (affirming denial of second and third petitions).

In April 2021, Greer filed a motion to correct his sentence under Minn. R. Crim. P. 27.03, subd. 9 (providing that "[t]he court may at any time correct a sentence not authorized by law"). In his motion, Greer claimed that his sentence was unlawful for three main reasons. First, Greer asserted that he was not present during the pronouncement of his sentence. Based on this assertion, Greer claimed that the district court violated Minn. R. Crim. P. 26.03, subd. 1(1)(h) (stating that a defendant must be present at sentencing), and Minn. R. Crim. P. 27.03, subd. 2(A) (stating that a defendant must be present at the

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[2] In the past, we have used the term "merged" when referring to lesser-included offenses that are subject to Minn. Stat. § 609.04 (2020). *See, e.g.*, *State v. Fardan*, 773 N.W.2d 303, 323 (Minn. 2009) (stating that "[t]he law reflects, and the State concedes, that Fardan's convictions should merge"); *State v. Davis*, 735 N.W.2d 674, 677 n.1. (Minn. 2007) (explaining that "[t]he district court held that Davis's convictions . . . merged with the other two offenses"). More recently, the court of appeals has said that the word "merging" should be avoided when discussing counts because it does "not clearly indicate the disposition intended by the district court." *State v. Walker*, 913 N.W.2d 463, 467 (Minn. App. 2018). Because the district court's use of the phrase "Count 2 merged," does not affect our analysis, we do not further consider the court of appeals opinion in *Walker*.

sentencing hearing and sentencing, unless excused under Rule 26.03, subd. 1(3)). Second, Greer claimed that the district court violated Minn. R. Crim. P. 27.03, subd. 3(C) (stating that before pronouncing a sentence, the court must allow statements from "the defendant, personally"), when the court failed to provide him an opportunity to personally address the court before it imposed a sentence. Such an opportunity is commonly referred to as "allocution." Third, Greer asserted that the district court sentenced him for both the first and second-degree murder offenses. Based on this assertion, Greer claimed that the court violated Minn. Stat. § 609.035, subd. 1 (2020) (providing that when a person's conduct constitutes more than one offense, the person may be punished for only one of the offenses).

In response to Greer's motion, the State argued that the record failed to support Greer's assertion that he was not present during the pronouncement of his sentence. Citing the sentencing-hearing transcript, the State emphasized that the district court personally addressed Greer when it pronounced the life sentence. As for Greer's second claim, the State conceded that the district court violated Greer's right to allocution. Nevertheless, it argued that the violation was harmless. Finally, the State acknowledged an error that was not identified by Greer—the district court entered convictions on both the first- and second-degree murder offenses in violation of Minn. Stat. § 609.04 (2020) (stating that a defendant "may be convicted of either the crime charged or an included offense, but not both"); the

State further noted that Minn. Stat. § 609.035, which prohibits the imposition of multiple sentences for one behavioral incident, relates to Minn. Stat. § 609.04.[3]

In August 2021, the district court granted Greer's request for relief in part and denied it in part. The court concluded that Greer was convicted of both first- and second-degree murder in violation of section 609.04. Accordingly, the court vacated the second-degree intentional murder conviction. As for Greer's two other claims, the court concluded that they did not fall within the scope of Rule 27.03, subd. 9, which permits a court at any time to correct a sentence not authorized by law. The court explained that it had found no caselaw, and Greer had cited no caselaw, showing that procedural defects "in the sentencing proceedings prior to the imposition of a lawful sentence are subject to correction under Rule 27.03, [s]ubd. 9." Treating the claims as requests for postconviction relief under Minn. Stat. § 590.01 (2020), the district court concluded that they were barred by *State v. Knaffla*, 243 N.W.2d 737, 741 (Minn. 1976), because Greer knew or should have known about the claims when he filed his earlier postconviction petitions.

ANALYSIS

On appeal, Greer challenges the district court's August 2021 order on three main grounds. First, Greer argues that the violation of his right to allocution was a structural error that does not allow for harmless-error analysis. Second, Greer contends that even as a procedural error, the district court

[3] In its response to Greer's motion to correct his sentence, the State also observed that the district court's use of the phrase "Count 2 merged" in the October 1999 corrected judgment was inconsistent with *State v. Walker*, 913 N.W.2d 463, 467 (Minn. App. 2018).

committed reversible error when it concluded that the allocution violation could not be raised in a motion to correct a sentence. Finally, Greer argues that the district court erred when it vacated his conviction of second-degree murder without providing him notice and an opportunity to request a hearing under Minn. Stat. § 244.10, subd. 1 (2020). We consider each argument in turn.

I.

Greer argues that the violation of his right to allocution when the district court imposed the mandatory life sentence was a structural error. We disagree.

"Structural errors are errors that affect the entire conduct of the [proceeding] from beginning to end." *Greer v. United States*[4], ___ U.S. ___, 141 S. Ct. 2090, 2100 (2021) (alteration in original) (citation omitted) (internal quotation marks omitted); *State v. Dorsey,* 701 N.W.2d 238, 252 (Minn. 2005). Such errors defy analysis under harmless-error standards. *Weaver v. Massachusetts*, ___ U.S. ___, 137 S. Ct. 1899, 1907–08 (2017). Although the precise reason why a particular error is unamenable to a harmless-error analysis varies greatly from error to error, there are at least three broad rationales. *Id.* at 1908. First, the error always results in fundamental unfairness. *Id.* For example, fundamental unfairness exists when an indigent defendant is denied an attorney or if the judge fails to give a reasonable-doubt instruction. *Id.* Second, the effects of the error are simply too hard to measure, such as when a defendant is denied the right to select his or her own attorney. *Id.* Finally, the right at issue is not designed to protect the defendant

[4] The Mr. Greer before the U.S. Supreme Court is not the same Ronald Greer at issue in this case.

from erroneous conviction but instead protects some other interest. *Id.* For example, the right to conduct one's own defense protects "the fundamental legal principle that a defendant must be allowed to make his own choices about the proper way to protect his own liberty." *Id.* Having in mind these principles, we consider whether the violation of Greer's right to allocution when the district court imposed a mandatory life sentence is unamenable to a harmless-error analysis.

The right of allocution—the court's responsibility to ask the defendant if he has anything to say before a sentence is imposed—is a right that traces back to common law and was later codified in the Federal Rules of Criminal Procedure. *Green v. Unites States,* 365 U.S. 301, 304 (1961). The right of allocution is also codified in Minn. R. Crim. P. 26.03, subd. 3(C). Although we have never considered whether the right to allocution is a constitutional right, the United States Supreme Court has held that it is not. *Hill v. United States*, 368 U.S. 424, 428–29 (1962). The Court has also held that the denial of the right to allocution does not always result in fundamental unfairness. *Id.* at 428. More specifically, the Court has said, "[t]he failure of a trial court to ask a defendant represented by an attorney whether he has anything to say before sentence . . . *is not a fundamental defect which inherently results in a complete miscarriage of justice*, nor an omission inconsistent with the rudimentary demands of fair procedure." *Id.* (emphasis added). Like the United States Supreme Court, we conclude that the failure of a district court to ask a defendant represented by an attorney whether he has anything to say before imposing a sentence is not a fundamental defect which inherently results in a complete miscarriage of justice, nor an omission inconsistent with the rudimentary demands of fair procedure.

Consequently, an allocution violation does not satisfy the first rationale for a structural error.

Although neither we nor the United States Supreme Court have considered whether the effects of an allocution violation are too hard to measure, numerous federal circuit courts have considered the issue. These courts have said that the impact of an allocution violation on a district court's discretionary sentencing decision is "usually enormously difficult to ascertain." *United States v. De Alba Pagan*, 33 F.3d 125, 130 (1st Cir. 1994); *see also United States v. Knight*, 266 F.3d 203, 207 (3d Cir. 2001) (same); *United States v. Doyle*, 857 F.3d 1115, 1119 (11th Cir. 2017) (same). As a result, most federal circuit courts presume that the violation of the defendant's right to allocution is prejudicial when the possibility of a lower sentence exists. *See*, *e.g.*, *United States v. Luepke*, 495 F.3d 443, 451 (7th Cir. 2007) (explaining that "[w]hen there has been a violation of the right to allocute, a reviewing court should presume prejudice when there is any possibility that the defendant would have received a lesser sentence had the district court heard from him before imposing sentence"); *United States v. Perez*, 661 F.3d 568, 586 (11th Cir. 2011) (stating that "we presume that the denial of a defendant's right to allocute was prejudicial whenever the possibility of a lower sentence exists"). But when a defendant is sentenced to the statutory mandatory minimum sentence, there is no need to presume prejudice because in such a case the lack of prejudice is easily ascertained. *Doyle*, 857 F.3d at 1121; *see also United States v. Bustamante-Conchas*, 850 F.3d 1130, 1140 (10th Cir. 2017).

Like the federal circuit courts, we conclude that the lack of prejudice from an allocution violation is easily ascertained when a defendant is sentenced to a statutory

mandatory minimum sentence. In those cases, as here, no possibility exists that the defendant would have received a lesser sentence had he been allowed to speak before sentencing. Consequently, an allocution violation in such a case does not satisfy the second rationale for a structural error.

As for the third rationale for a structural error, Greer does not contend that the right to allocution protects any interest other than protecting a defendant from an erroneous sentence. Because we cannot conceive of any other interest that is implicated when a district court imposes the mandatory life sentence, we conclude that the allocution violation in this case does not satisfy the third rationale for a structural error.

Based on our analysis, we conclude that the denial of Greer's right to allocution was not a structural error because the district court imposed a mandatory life sentence.

II.

We now turn to Greer's argument that the district court committed a reversible procedural error when it concluded that his allocution claim could not be raised in a motion to correct a sentence. As part of this argument, Greer focuses on the language of Minn. R. Crim. P. 27.03, subd. 9, which provides in relevant part that "[t]he court may at any time correct a sentence not authorized by law." According to Greer, the phrase "sentence not authorized by law" should be broadly interpreted to include the violation of his right to allocution. Relying on the requirement that "the court *must* allow statements from . . . the defendant, personally," in our allocution rule, Minn. R. Crim. P. 27.03, subd. 3(C) (emphasis added), Greer argues that a sentence imposed in violation of the allocution rule is not authorized by law.

In contrast, the State argues that Rule 27.03, subd. 9, should be narrowly limited only to those errors that "deprive a court of the legal authority to impose the sentence at issue." Under such an interpretation, the State argues that the district court did not err because Greer's claim relates to the sentencing process—"the *manner* in which the sentencing hearing was conducted"—and not the district court's *legal authority* to impose a life sentence.

Whether the phrase "sentence not authorized by law" should be broadly interpreted to include the violation of Greer's right to allocution is a question that we review de novo. *See Reynolds v. State,* 888 N.W.2d 125, 129 (Minn. 2016) (stating that we review interpretations of the Minnesota Rules of Criminal Procedure de novo). We have previously held that a sentence is "not authorized" for purposes of Minn. R. Crim. P. 27.03, subd. 9, if it is "contrary to law or applicable statutes." *State v. Schnagl,* 859 N.W.2d 297, 301 (Minn. 2015).

But we need not resolve the parties' procedural dispute because even if we assume that the phrase "sentence not authorized by law" should be broadly interpreted to include the violation of a defendant's right to allocution, the alleged error was harmless. As explained in section I of this opinion, the lack of prejudice from an allocution violation is easily ascertained when a defendant is sentenced to a statutory mandatory minimum sentence. Because Greer received a mandatory life sentence, he was not prejudiced even though he did not have the opportunity to allocute. Therefore, even if the district court had concluded that Greer's allocution claim was properly raised in his motion to correct his sentence, Greer would not have been entitled to any relief.

III.

Finally, Greer argues that the district court was required to hold a sentencing hearing under Minn. Stat. § 244.10, subd. 1, when it vacated his second-degree murder conviction. We disagree.

Minnesota Statutes § 244.10, subd. 1, provides that "[w]henever a person is *convicted* of a felony, the court, upon motion of either the defendant or the state, *shall* hold a sentencing hearing." (Emphasis added). This mandate does not necessarily extend to the correction of a previously imposed sentence. For example, in *State v. Calmes*, we held that when a court corrects a sentence to include a mandatory and nonwaivable conditional release term, the decision to hold such a hearing is left to the discretion of the court. 632 N.W.2d 641, 650 (Minn. 2001). We also stated that the correction of the defendant's sentence without a hearing did not violate due process or the rules of criminal procedure because the defendant did not allege any facts to suggest that he was not required to serve the mandatory conditional release term. *Id.* at 650–51.

Greer's reliance on section 244.10, subd. 1, is misplaced. In its August 2021 order, the district court did *not impose a sentence*. Instead, it *vacated the conviction* for the lesser-included offense of second-degree intentional murder. Although the May 1999 judgment stated that the district court imposed a life sentence for the lesser-included offense of second-degree intentional murder, that erroneous statement was corrected more than 21 years ago when the district court filed the corrected judgment in October 1999 to reflect that Greer was only sentenced on Count 1. Consequently, when Greer filed his April 2021 motion to correct his sentence, he was serving only one sentence in this case—the life

sentence imposed for his conviction under Count 1 of first-degree premeditated murder. The August 2021 order simply clarified the disposition intended by the district court when it used the language "Count 2 merged" in its October 1999 order: specifically, that the conviction for the lesser-included offense of second-degree intentional murder be vacated. Because the August 2021 order neither imposed an initial sentence, nor modified the previously imposed life sentence for the conviction of first-degree premeditated murder, the district court did not abuse its discretion when it chose not to hold a sentencing hearing under section 244.10, subd. 1.

CONCLUSION

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

Affirmed.