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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-1484**

Jerry J. Duwenhoegger, Sr., petitioner,  
Appellant,

vs.

State of Minnesota,  
Respondent.

**Filed August 5, 2008  
Affirmed  
Toussaint, Chief Judge**

Nicollet County District Court  
File No. 52-K4-98-498

Jerry J. Duwenhoegger, Sr., OID #201857, 970 Pickett Street North, Bayport, MN 55003  
(pro se appellant)

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MN 55101; and

Michael K. Riley, Sr., Nicollet County Attorney, Kenneth R. White, Assistant County  
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respondent)

Considered and decided by Ross, Presiding Judge; Toussaint, Chief Judge; and  
Connolly, Judge.

## UNPUBLISHED OPINION

**TOUSSAINT**, Chief Judge

In this appeal from a denial of postconviction relief, appellant Jerry J. Duwenhoegger, Sr. challenges his sentences for two counts of conspiracy to commit first-degree murder. He argues that the district court erred by (1) imposing separate sentences for each count of conspiracy because his actions constituted a single behavioral incident with a single criminal objective and (2) failing to make written findings. Because the district court did not abuse its discretion in sentencing appellant and because no written findings were necessary, we affirm.

### DECISION

#### I.

Appellant argues that the district court was precluded from imposing separate sentences for each count of conspiracy because his actions constituted a single behavioral incident with a single criminal objective. This court may at any time correct a sentence not authorized by law. Minn. R. Crim. P. 27.03, subd. 9. But an appellate court will not interfere with a district court's decision regarding sentencing unless there has been a clear abuse of discretion. *State v. Lundberg*, 575 N.W.2d 589, 591 (Minn. App. 1998), *review denied* (Minn. May 20, 1998).

“[I]f a person's conduct constitutes more than one offense under the laws of this state, the person may be punished for only one of the offenses.” Minn. Stat. § 609.035, subd. 1 (2006). This means that a court may impose only one sentence when multiple offenses are part of a single behavioral incident. *State v. Schmidt*, 612 N.W.2d 871, 876

(Minn. 2000). Whether multiple offenses arose out of a single behavioral incident depends on the facts and circumstances of the particular case. *State v. Hawkins*, 511 N.W.2d 9, 13 (Minn. 1994). “Among the factors to be considered in determining whether two offenses arose out of a single behavioral incident are the singleness of purpose of the defendant and the unity of time and of place of the behavior.” *State v. Bookwalter*, 541 N.W.2d 290, 294 (Minn. 1995) (quotation omitted). The “essential ingredient of any test is whether the segment of conduct involved was motivated by an effort to obtain a single criminal objective.” *State v. Johnson*, 273 Minn. 394, 404, 141 N.W.2d 517, 525 (1966).

Consideration of the relevant factors convinces us that appellant’s convictions did not arise from a single behavioral incident. Appellant was found guilty of conspiring to murder his girlfriend’s son, J.S., and mother, E.M. He argues that the conspiracies “occurred at the same time and place” and that his singular objective was to better his relationship with his girlfriend.

The record does not support these assertions. First, evidence produced at trial indicates that the conspiracies were not united in time and place. The record demonstrates that appellant and his co-conspirator agreed to murder J.S. on September 15, 1998. Their agreement to murder E.M. occurred at least two days later during a prearranged meeting to discuss the details of their plan to murder J.S.

Moreover, the conspiracies did not involve a single criminal objective. It is clear that the objective of one conspiracy was to murder J.S., while the purpose of the other was to murder E.M. In arguing that his intention in committing the murders was to

improve his relationship with his girlfriend, appellant confuses his motive for entering into the conspiracies with their underlying criminal purpose, which was to cause the death of two persons.

In addition, a judicially created exception to this single-behavioral-incident rule permits the imposition of multiple sentences when (1) the offenses involve multiple victims and (2) the multiple sentencing does not unfairly exaggerate the criminality of the defendant's conduct. *State v. Marquardt*, 294 N.W.2d 849, 850-51 (Minn. 1980). Here, the conspiracies involved multiple victims, and this court previously concluded that the consecutive sentences appellant received did not unfairly exaggerate the criminality of his conduct. *State v. Duwenhoegger*, No. C5-99-1237, 2000 WL 821483, at \*4 (Minn. App. June 27, 2000). Thus, the district court did not abuse its discretion by imposing separate sentences for each conspiracy.

## II.

Appellant argues that the district court erred by failing to make written findings of fact to justify imposing consecutive sentences. Written findings supporting the imposition of consecutive sentences must be made whenever the imposition constitutes a departure from the sentencing guidelines. Minn. Stat. § 244.10, subd. 2 (2006). But a departure does not occur, and written findings are not required, if consecutive sentences are imposed for multiple current felony convictions against separate persons. Minn. Sent. Guidelines II.F.2; *see also O'Meara v. State*, 679 N.W.2d 334, 341 (Minn. 2004). In such cases, the district court has the discretion to impose consecutive sentences so long as the punishment does not unfairly exaggerate the criminality of appellant's conduct. *State*

*v. Sanders*, 598 N.W.2d 650, 656-57 (Minn. 1999).

Appellant asserts that this exception does not apply to him because he did not commit crimes against persons. He notes that the conspiratorial agreement and overt acts he performed in furtherance of the conspiracy did not result in harm to the intended victims. But, despite the fact that neither murder was carried out, these offenses still constitute crimes against persons because the object of the co-conspirators' agreements and actions was to murder J.S. and E.M. Minn. Stat. § 609.185(a)(1) (2006) (defining first-degree murder as premeditated, intentional killing of *human being*); *see also State v. Ford*, 322 N.W.2d 611, 613, 615-16 (Minn. 1982) (holding that co-conspirators in aggravated-robbery plot committed "crimes against persons" and were subject to consecutive sentencing despite fact that robbery was not completed and no one was harmed). Furthermore, on direct appeal, this court noted that appellant's consecutive sentences were not a departure and did not unfairly exaggerate the criminality of his conduct. *Duwenhoegger*, 2000 WL 821483 at \*4. Thus, appellant's argument is without merit.<sup>1</sup>

**Affirmed.**

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<sup>1</sup> Appellant also claims that the district court was required to file a departure report with the Minnesota Sentencing Guidelines Commission within 15 days of the imposition of his sentences. *See* Minn. R. Crim. P. 27.03, subd. 4(C). But because we conclude that his sentences did not constitute a departure, no report was necessary.