STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2038

State of Minnesota,
Respondent,

vs.

Antonio Williams,
Appellant.

Filed January 20, 2009
Affirmed
Halbrooks, Judge

Hennepin County District Court
File No. 03061045

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 6th Street, Minneapolis, MN 55487 (for respondent)

Melissa Sheridan, Assistant State Public Defender, 1380 Corporate Center Curve, Suite 320, Eagan, MN 55121 (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Halbrooks, Judge; and Stoneburner, Judge.

U N P U B L I S H E D O P I N I O N

HALBROOKS, Judge

Appellant challenges his sentence on the ground that the district court abused its discretion when he was sentenced. Because the evidence supports the district court's decision, we affirm.

FACTS

The facts of this case are set forth in detail in *State v. Williams*, No. A04-1586, 2005 WL 2850287 (Minn. App. Nov. 1, 2005), *review denied* (Minn. Jan. 25, 2006). On February 20, 2004, a jury convicted appellant Antonio Williams of two counts of kidnapping, first-degree burglary, second-degree assault, and felon in possession of a firearm. *Williams*, 2005 WL 2850287, at *2. Appellant was sentenced to 240 months on May 25, 2004. *Id.* This sentence, which includes several upward departures, consisted of a 132-month sentence for first-degree burglary, three 36-month consecutive sentences for the two kidnapping offenses and the second-degree assault offense, and a 60-month concurrent sentence for the felon-in-possession-of-a-firearm offense. *Id.* The first-degree burglary sentence was a 21-month upward departure, and the kidnapping and second-degree-assault sentences were mandatory minimum sentences. *Id.*

Appellant raised five issues on direct appeal: (1) that he was denied his right to counsel when the district court denied his motion for a continuance in order to seek substitute counsel; (2) that there was insufficient evidence to support the kidnapping conviction; (3) that the district court committed plain error when it instructed the jury on the kidnapping charge; (4) that his sentence was improper under *Blakely v. Washington*,

542 U.S. 296, 124 S. Ct. 2531 (2004); and (5) a variety of arguments made in his pro se brief. *Id.* at *3–*8. We affirmed the district court on all issues with the exception of the sentencing issue. *Id.* at *3–*9. Because *Blakely* had been decided before the appeal was filed, we reversed and remanded to the district court for resentencing. *Id.* at *6.

On remand, per the state's request, the district court sentenced appellant to presumptive sentences of 111 months for the burglary and 21 months for each of the two kidnapping convictions to be served consecutively, for a total of 153 months. The district court sentenced consecutively in the order of (1) first-degree burglary, (2) kidnapping, and (3) kidnapping. The district court also sentenced appellant to 60 months for felon in possession of a firearm and 21 months for second-degree assault to be served concurrently. This appeal follows.

D E C I S I O N

Appellant argues that he should have been sentenced in the order of (1) kidnapping, (2) first-degree burglary, and (3) kidnapping because the kidnapping of the victim occurred before the burglary of the apartment.[1] "District courts have great discretion in imposing sentences, and we will not disturb a sentence if it is authorized by law." *State v. Munger*, 597 N.W.2d 570, 573 (Minn. App. 1999), *review denied* (Minn. Aug. 25, 1999). "[I]t is for the [district] court to resolve factual disputes bearing on the

[1] The consecutive sentences imposed by the district court: 111 months (first-degree burglary with a criminal-history score of 7) + 21 months (kidnapping with a criminal-history score of 0) + 21 months (kidnapping with a criminal-history score of 0) = 153 months. The consecutive sentences proposed by appellant: 57 months (kidnapping with a criminal-history score of 7) + 48 months (first-degree burglary with a criminal-history score of 0) + 21 months (kidnapping with a criminal-history score of 0) = 126 months.

exercise of its discretion to depart from the presumptive sentence in appropriate cases." *State v. Olson*, 379 N.W.2d 524, 527 (Minn. 1986). It is also "the [district] court's role to resolve any factual dispute bearing on the defendant's criminal history score." *Id.*

"Multiple current felony convictions for crimes against persons may be sentenced consecutively to each other." Minn. Sent. Guidelines II.F. (2002). "Consecutive sentencing is permissive under these circumstances even when the offenses involve a single victim." *State v. Rannow*, 703 N.W.2d 575, 577 n.2 (Minn. 2005) (citing Minn. Sent. Guidelines cmt. II.F.04). "For each offense sentenced consecutive to another offense(s), . . . a zero criminal history score, or the mandatory minimum for the offense, whichever is greater, shall be used in determining the presumptive duration." Minn. Sent. Guidelines II.F. "The order of sentencing when consecutive sentences are imposed by the same judge is to sentence in the order in which the offenses occurred." *Id.* cmt. II.F.02; *see also id.* cmt. II.B.101. In *State v. Anderson*, the supreme court held that the district court improperly sentenced the burglary conviction before the criminal-damage-to-property conviction because the burglary was completed first. 345 N.W.2d 764, 766 (Minn. 1984).

The first-degree-burglary statute states:

> Whoever enters a building without consent and with intent to commit a crime, or enters a building without consent and commits a crime while in the building, either directly or as an accomplice, commits burglary in the first degree . . . if:
>
> (a) the building is a dwelling and another person, not an accomplice, is present in it when the burglar enters or at any time while the burglar is in the building;
>
> (b) the burglar possesses, when entering or at any time while in the building, any of the following: a dangerous

> weapon, any article used or fashioned in a manner to lead the victim to reasonably believe it to be a dangerous weapon . . . ;
>
> (c) the burglar assaults a person within the building or on the building's appurtenant property.

Minn. Stat. § 609.582, subd. 1 (2002). Generally, "the crime of burglary is defined in terms of entry, and is complete upon entry." *State v. Hendrickson*, 528 N.W.2d 263, 266 (Minn. App. 1995), *review denied* (Minn. Apr. 27, 1995).

The crime of kidnapping is defined by providing that "[w]hoever, for any of the following purposes, confines or removes from one place to another, any person without the person's consent . . . is guilty of kidnapping." Minn. Stat. § 609.25, subd. 1 (2002). In *State v. Smith*, the supreme court held that "confinement or removal must be criminally significant in the sense of being more than merely incidental to the underlying crime, in order to justify a separate criminal sentence." 669 N.W.2d 19, 32 (Minn. 2003) (stating that restraint of a murder victim does not constitute kidnapping), *overruled on other grounds by State v. Leake*, 699 N.W.2d 312, 322–24 (Minn. 2005). But "there is no requirement that the person be detained for a 'substantial' period of time or transported a 'substantial' distance." *State v. Budreau*, 641 N.W.2d 919, 929 (Minn. 2002).

Here, the record supports the district court's decision to sentence the burglary conviction before the kidnapping. Appellant committed the burglary as soon as he entered the apartment. R.G. testified that appellant "rushed" her into her apartment when she was just outside her door. The kidnapping was completed after appellant entered the apartment. Therefore, the district court did not abuse its discretion in sentencing the burglary conviction first.

Appellant argues in his pro se supplemental brief that the district court erred by determining that his first-degree burglary conviction was a "crime against persons" that permitted permissive consecutive sentences for his kidnapping convictions and that this violated his Sixth Amendment right to a jury's determination of this fact under *Blakely*. *Blakely*'s application to permissive consecutive sentences is a question of law, which we review de novo. *Rannow*, 703 N.W.2d at 580. In *State v. Senske*, this court held that *Blakely* does not apply to a district court's determination of whether a conviction involves a "crime against persons" for purposes of a permissive consecutive sentence:

> *Blakely* does not apply to permissive consecutive sentencing based on a finding that the offenses are "crimes against persons." Consecutive sentencing involves separate punishments for discrete crimes. Just as our supreme court, and courts in other[] states, have not applied *Apprendi* to consecutive sentences imposed for separate offenses, there is no basis to apply *Blakely* to consecutive sentences.

692 N.W.2d 743, 748–49 (Minn. App. 2005), *review denied* (Minn. May 17, 2005); *see also Rannow*, 703 N.W.2d at 581. Because *Blakely* does not apply to permissive consecutive sentencing, the district court did not err in sentencing appellant to consecutive sentences.

Affirmed.