STATE OF MINNESOTA
IN COURT OF APPEALS
A09-756

Brad Ronald Stevens, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed February 9, 2010
Affirmed in part, reversed in part, and remanded
Wright, Judge

Goodhue County District Court
File No. 25-K6-02-002009

Brad Stevens, Rush City, Minnesota (pro se appellant)

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

Stephen N. Betcher, Goodhue County Attorney, Erin L. Kuester, Assistant County Attorney, Redwing, Minnesota (for respondent)

Considered and decided by Wright, Presiding Judge; Peterson, Judge; and Ross, Judge.

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

WRIGHT, Judge

Appellant challenges the district court's denial of his motion to correct his sentence, arguing that (1) the sentence was enhanced in violation of the due-process guarantees of the Fourteenth Amendment to the United States Constitution and Article I, Section 7, of the Minnesota Constitution, and (2) the district court abused its discretion by failing to correct an unauthorized sentence. Appellant also argues that imposition of a no-contact order as part of the executed sentence is contrary to law. We affirm in part, reverse in part, and remand.

FACTS

Appellant Brad Stevens entered an *Alford* plea[1] to attempted fourth-degree criminal sexual conduct, a violation of Minn. Stat. §§ 609.17, subds. 1, 4(2), 609.345, subd. 1(c), (2002).[2] At the sentencing hearing, Stevens's attorney questioned Stevens regarding his understanding of the evidence that would be presented by the state if the case proceeded to trial, his trial rights, and the consequences of an *Alford* plea. The prosecutor also questioned Stevens at length about his understanding of his rights. The district court then confirmed with Stevens that he was voluntarily waiving a presentence

[1] An *Alford* plea is entered when a defendant maintains his or her innocence while conceding that there is a substantial likelihood that the evidence would support a jury conviction of the charged offense. *State v. Goulette*, 258 N.W.2d 758, 760-61 (Minn. 1977) (adopting holding of *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160 (1970)).

[2] Stevens also was charged with fourth-degree criminal sexual conduct, a violation of Minn. Stat. § 609.345, subd. 1(c) (2002); terroristic threats, a violation of Minn. Stat. § 609.713, subd. 1(2002); and fifth-degree criminal sexual conduct, a violation of Minn. Stat. § 609.3451, subds. 1, 2 (2002), but these charges were dismissed pursuant to the plea agreement reached with the state.

investigation and psychosexual examination. The district court accepted Stevens's *Alford* plea and imposed an executed sentence of 36 months' imprisonment followed by a ten-year conditional-release term. The district court also imposed a no-contact order prohibiting Stevens from any contact with the victim.

Approximately 20 months later, the state filed a petition to civilly commit Stevens as a sexually dangerous person. Following the civil-commitment proceeding, the district court ordered civil commitment for an indeterminate period. *See* Minn. Stat. § 253B.185 (2004).

Stevens petitioned for postconviction relief, seeking withdrawal of his guilty plea and an evidentiary hearing. The district court denied the postconviction petition, and Stevens appealed. We affirmed the district court's denial of postconviction relief in an order opinion, declining to consider two issues that Stevens raised for the first time on appeal, specifically, whether the district court erred by permitting Stevens to waive a sex-offender assessment and whether civil commitment violates the plea agreement and Stevens's constitutional rights. *Stevens v. State*, No. A07-1624 (Minn. App. Nov. 24, 2008) (order).

In January 2009, Stevens moved to correct or reduce his sentence, *see* Minn. R. Crim. P. 27.03, subd. 9, focusing primarily on the issues that we declined to address in the postconviction appeal. The district court denied the motion, and this appeal followed.

D E C I S I O N

I.

Stevens argues that his civil commitment constitutes a sentence enhancement in violation of the due-process protection of the Fourteenth Amendment to the United States Constitution and Article I, Section 7, of the Minnesota Constitution. The postconviction court's denial of relief on this ground presents an issue of law, which we review de novo. *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007).

"Minnesota courts have consistently upheld dual commitments as constitutional, recognizing one is penal and the other civil." *In re Blodgett*, 490 N.W.2d 638, 647 (Minn. App. 1992), *aff'd*, 510 N.W.2d 910 (Minn. 1994). Civil commitment provides treatment for those who are determined to be mentally ill and dangerous to the public. Minn. Stat. § 253B.185 (2008). The state's subsequent determination of whether civil commitment is warranted is independent of any plea agreement in a criminal proceeding. *See Blodgett*, 490 N.W.2d at 647 (stating that because of the separate and distinct nature between criminal and civil-commitment proceedings, "there is nothing in the criminal plea bargain to suggest the individual will not later be subject to civil commitment proceedings"). Any time served at an institution because of Stevens's civil commitment is not an enhancement of his criminal sentence. Stevens's argument that his sentence has been unconstitutionally enhanced by civil commitment, therefore, fails.

Stevens's additional due-process arguments challenge his civil commitment rather than the criminal sentence from which he now appeals. Stevens's civil commitment is not the subject of this appeal. These arguments, therefore, are not properly raised, and

we decline to consider them. *See* Minn. Civ. App. P. 103.04 (stating that "appellate courts may reverse, affirm or modify the *judgment or order appealed from*" (emphasis added)).

II.

Stevens argues that the district court erred by denying his motion to correct or reduce an unauthorized sentence.[3] The district court may correct a sentence that is not authorized by law. Minn. R. Crim. P. 27.03, subd. 9. A sentence is unauthorized by law when it is contrary to the requirements of the applicable sentencing statute. *State v. Cook*, 617 N.W.2d 417, 419 (Minn. App. 2000), *review denied* (Minn. Nov. 21, 2000). We will not reverse a district court's denial of a motion for sentence correction when the denial represents a proper exercise of the district court's discretion and the sentence is authorized by law. *Miller v. State*, 714 N.W.2d 745, 747 (Minn. App. 2006).

Stevens first contends that the plea agreement was the result of "mutual mistakes" as to its terms, arguing that, although the plea agreement included the state's agreement to forgo seeking Stevens's civil commitment, civil commitment was ordered. The district court rejected this claim because there is no evidence that, in exchange for Stevens's guilty plea, the state agreed to forgo a referral for Stevens's civil commitment. This

[3] A reviewing court may correct an unauthorized sentence that has not been affirmed in a prior appeal. *State v. Stutelberg*, 435 N.W.2d 632, 634 (Minn. App. 1989). Stevens makes certain arguments here that also were made in his earlier appeal from the district court's denial of his motion to withdraw his guilty plea. But because the issue of whether Stevens's sentence is unauthorized by law was not raised in the previous appeal, the sentence was not affirmed. Therefore, this issue and the accompanying arguments are properly before us. Arguments addressing withdrawal of Stevens's guilty plea, however, are barred because they were raised and addressed in the prior appeal. *State v. Knaffla*, 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976).

factual finding, which we review for clear error, *Blodgett*, 490 N.W.2d at 642, is legally sound.

Stevens relies on his mother's affidavit to support his claim that the plea agreement included a promise that the state would not pursue civil commitment. But this affidavit does not provide evidence of a promise from the state. Rather, it merely indicates that Stevens and his mother shared this understanding. Stevens also relies on his waiver of a presentence investigation and psychosexual examination as evidence of a promise from the state. This waiver also fails to constitute record support for Stevens's contention that the state agreed to forgo civil-commitment proceedings in exchange for this waiver. Accordingly, the district court's finding that the state did not agree to forgo pursuing civil commitment was not clearly erroneous.

Stevens also argues that the district court imposed an unlawful sentence because it erroneously permitted the parties to waive the statutorily required presentence investigation and psychosexual assessment. The district court concluded that, although a court-ordered sex-offender assessment is required by statute, failure to order the assessment does not render the sentence invalid because the psychosexual evaluation has no effect on the imposed sentence.

A psychosexual assessment is required for offenders convicted of a sex offense. Minn. Stat. § 609.3457, subds. 1, 1a (2008). But there is no authority to support a legal conclusion that permitting a defendant to waive the psychosexual assessment invalidates an otherwise lawful sentence. The district court did not err when it concluded that

Stevens's waiver of a psychosexual evaluation does not warrant a correction or reduction of his sentence.

Stevens next argues that the ten-year conditional-release term renders the sentence imposed contrary to law because the purpose of conditional release will not be fulfilled in light of the civil commitment. The purpose of the conditional-release statute is "to promote [offenders'] successful re-entry into society during a potentially difficult period of transition." *Miller*, 714 N.W.2d at 748. This purpose does not reflect a legislative intent to guarantee those receiving a conditional-release term a successful transition into society. Rather, the legislative purpose is to assist the transition for those who are released. *Id*. That Stevens was unable to serve the conditional-release term because he is civilly committed does not render the criminal sentence invalid.

Stevens also maintains that a correction of his sentence is warranted because he has served more time in prison than authorized by the sentencing guidelines. This argument is contrary to the record. Stevens was sentenced to 36 months' imprisonment and ten years' conditional release, a sentence that is authorized by the statute. *See* Minn. Stat. § 609.109, subds. 2, 7 (2002) (stating that minimum permissible sentence for violation of Minn. Stat. § 609.345, subd. 1(c), by repeat sex offender is 36 months' imprisonment plus ten-year conditional-release term). Confinement resulting from civil commitment does not constitute imprisonment. *See Blodgett*, 490 N.W.2d at 647 (stating that Minnesota courts have upheld dual commitments because imprisonment is penal and civil commitment is civil and that "[t]he courts have recognized the underlying purpose of civil commitment is treatment, not punishment"). The time that Stevens has spent in

confinement under the civil commitment is distinct from any time served in prison pursuant to his criminal sentence. The civil commitment is not an enhancement of that sentence. Thus, Stevens is not entitled to a correction or reduction of his sentence on this ground.

III.

Stevens argues that the sentence imposed is contrary to law because it includes a no-contact order. Stevens is correct. "[A] district court may not impose a no-contact order as part of an executed sentence unless the order is expressly authorized by statute." *State v. Pugh*, 753 N.W.2d 308, 311 (Minn. App. 2008) (holding that no-contact order imposed in first-degree criminal sexual conduct case was not statutorily authorized), *review denied* (Minn. Sept. 23, 2008). The relevant statute provides that a person convicted under Minn. Stat. § 609.345, subd. 1, may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than $20,000, or both. Minn. Stat. § 609.345, subd. 2 (2002). Because section 609.345 does not authorize imposition of a no-contact order in conjunction with the executed sentence ordered here, the district court erred when it imposed a no-contact order as part of the executed sentence. Therefore, we reverse *only* as to the imposition of the no-contact order and remand to the district court with directions to vacate this portion of Stevens's executed sentence.

Affirmed in part, reversed in part, and remanded.