**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A13-0956**

Joseph Patrick Urista, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed February 18, 2014**
**Affirmed**
**Chutich, Judge**

Scott County District Court
File No. 70-CR-06-25727

Cathryn Middlebrook, Chief Appellate Public Defender, Andrea Barts, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Patrick J. Ciliberto, Scott County Attorney, Todd P. Zettler, Assistant County Attorney, Shakopee, Minnesota (for respondent)

Considered and decided by Chutich, Presiding Judge; Worke, Judge; and Larkin, Judge.

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

**CHUTICH**, Judge

Appellant Joseph Urista argues that the district court abused its discretion by denying his motion to reduce his sentence under Minnesota Rule of Criminal

Procedure 27.03. He claims that he was sentenced using the incorrect criminal history score and thus was deprived of his plea agreement's bottom-of-the-box sentence. Because Urista agreed to his current sentence as part of a plea agreement involving five other cases and because his sentence, after correcting his criminal history score, is within the presumptive range of the sentencing guidelines, we affirm.

## FACTS

Urista was arrested for first-degree controlled substance possession, fourth-degree assault of a police officer, and obstructing legal process. In 2007, he pleaded guilty to the charge of first-degree controlled substance possession, pleaded guilty to a charge of criminal damage to property from a different case, and admitted violating probation in four other unrelated cases. In exchange for Urista's guilty pleas and admissions, the state agreed to a bottom-of-the-box sentence of 125 months on the controlled substance charge; to dismiss the remaining charges (fourth-degree assault of a police officer and obstruction of legal process) in that file; and to concurrent sentences. The district court accepted Urista's guilty pleas, accepted his admissions of probation violations, dismissed the agreed-upon charges, and sentenced him to 125 months on the possession conviction, concurrent to the conviction of criminal damage to property and the probation violations.

In March 2013, Urista filed a motion under Minnesota Rule of Criminal Procedure 27.03, subdivisions 9 and 10, to correct his sentence because he discovered that, at the time of sentencing, he had four criminal history points instead of five. He asked that his sentence be reduced to a bottom-of-the-box sentence based on a criminal history score of four, which would have resulted in a sentence of 114 months instead of

the 125 months that the district court imposed. The district court agreed that Urista's criminal history score was calculated incorrectly and that his correct score was four, but it denied Urista's motion because "the original sentence is within the permissible range for a Defendant with 4 criminal history points." This appeal followed.

**D E C I S I O N**

Urista asserts that he is serving an illegal sentence of 125 months based on the wrong criminal history score. He contends that because his plea agreement required a bottom-of-the-box sentence, his sentence should be reduced to 114 months, the bottom of the box for his correct criminal history score. The state responds that it agreed to resolve six cases with Urista in exchange for him serving a 125-month sentence. It notes that Urista's original sentence is still within the presumptive sentencing guidelines range based on his correct criminal history score and is not an "illegal" sentence to be corrected by the district court. After closely reviewing the record, we are persuaded by the state's argument.

"This court will not reverse the district court's denial of a motion brought under rule 27.03, subdivision 9, to correct a sentence, unless the district court abused its discretion or the original sentence was unauthorized by law." *State v. Amundson*, 828 N.W.2d 747, 752 (Minn. App. 2013). An illegal sentence is a criminal sentence that is unauthorized by the sentencing guidelines. *See State v. Maurstad*, 733 N.W.2d 141, 147–48 (Minn. 2007). Minnesota Rule of Criminal Procedure 27.03, subdivision 9, provides that the district court "at any time may correct a sentence not authorized by law."

In addition, when a defendant enters a guilty plea based on a plea agreement with the state, "the trial court judge shall reject or accept the plea of guilty on the terms of the plea agreement." Minn. R. Crim. P. 15.04, subd. 3(1). "[P]rinciples of contract law are applied to determine the terms and enforcement of plea agreements." *State v. Spraggins*, 742 N.W.2d 1, 3–4 (Minn. App. 2007).

Applying these principles here, we conclude that the district court did not abuse its discretion by denying Urista's rule 27.03 motion. First, the record shows that the parties contemplated that the district court would impose a specific term of 125 months. Before Urista's sentencing hearing, he signed a written plea petition that made no mention of a general agreement to a bottom-of-the-box sentence, whatever its term of commitment may be. Rather, in the open space to record the substance of the plea agreement, counsel wrote in handwriting "125 mos. executed." Urista signed the plea petition, acknowledging that he was fully aware of the terms of his guilty pleas.

Moreover, at the sentencing hearing, every reference to the "bottom of the box" was directly linked to the specific term of 125 months. The prosecutor first stated, "[W]e have agreed to the bottom of the box, which is one hundred and twenty-five months commit to the Commissioner." With this statement, the prosecutor specifically qualified the phrase "bottom of the box" by stating the agreed-upon time of "one hundred and twenty-five months." Later in the proceeding, the prosecutor again explained, "Judge, I believe the agreement on the case that is set for jury trial today, 06-25727, is an agreement for a one hundred and twenty-five commitment, to - it is the bottom of the box." Urista knew from the prosecutor speaking at the hearing and from reading and

signing his plea petition that he was agreeing to a 125-month sentence to resolve all of the criminal files then pending.

Urista cites *Maurstad* and *Amundson* to support his claim that he is serving an illegal sentence, but both of these cases involved sentences that were unauthorized by the sentencing guidelines, making the sentences illegal. *Maurstad*, 733 N.W.2d at 150–51 (reversing and remanding for resentencing because appellant's sentence was unauthorized by the sentencing guidelines according to his correct criminal history score); *Amundson*, 828 N.W.2d at 754 (reversing and remanding for resentencing because "the sentence imposed was unauthorized by the sentencing guidelines in effect at the time the offense was committed and because the resulting upward departure from the guidelines was not supported by valid reasons stated at the time of sentencing").

By contrast, in this case, the sentencing guidelines expressly authorized imposition of a sentence of between 114 and 160 months for a conviction of a first-degree controlled substance crime based on a criminal history score of four. Minn. Sent. Guidelines IV (2006). Urista was sentenced to 125 months, well within the permissible range of 114–160 months. Accordingly, Urista is not serving an illegal sentence, and the district court did not abuse its discretion by denying Urista's rule 27.03 motion. *See State v. Cook*, 617 N.W.2d 417, 419 (Minn. App. 2000) ("A criminal sentence that is contrary to the requirements of the applicable sentencing statute is unauthorized by law."), *review denied* (Minn. Nov. 21, 2000).

**Affirmed.**