STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1051

Gavin Christopher Combs, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed January 13, 2014
Affirmed
Stauber, Judge

Crow Wing County District Court
File No. 18KX99001492

Gavin Christopher Combs, Bloomington, Indiana (pro se appellant)

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

Donald F. Ryan, Crow Wing County Attorney, Bruce F. Alderman, Assistant County Attorney, Brainerd, Minnesota (for respondent)

Considered and decided by Bjorkman, Presiding Judge; Schellhas, Judge; and Stauber, Judge.

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

STAUBER, Judge

On appeal from the denial of his motion to correct his sentence, appellant argues that the district court erred by using the *Hernandez* method when it sentenced him because both

counts of which appellant was convicted involve the same behavioral incident under Minn. Stat. § 609.035, subd. 1 (2012). We affirm.

FACTS

In July 1999, appellant Gavin Christopher Combs was charged with one count of first-degree controlled substance crime (sale), one count of aiding and abetting first-degree controlled substance crime (sale), and one count of solicitation of a juvenile. The complaint alleged that on April 12, 1999, appellant sold approximately 13.6 grams of cocaine to a confidential informant (CI) in a McDonald's parking lot. The complaint also alleged that on June 14, 1999, the CI went to appellant's apartment where he purchased approximately 12 grams of cocaine from a juvenile. According to the CI, "he had been advised that the juvenile was being 'trained' in by [appellant] to sell drugs for [appellant]."

Pursuant to a plea agreement with the state, appellant pleaded guilty to the two controlled-substance crimes. The plea agreement contained several requirements, and if appellant successfully complied with its terms, he would be sentenced to no more than 48 months. If he failed to comply with the terms of the agreement, he would be sentenced to no more than 110 months.

Immediately prior to sentencing, appellant fled the courthouse, remained at large for almost two years, and was eventually arrested in Indiana. At sentencing, the state requested a 110-month sentence. The district court imposed the presumptive 86-month sentence on count one, the first-degree sale charge, and a concurrent 105-month sentence on count two, the aiding and abetting charge. This court subsequently affirmed

appellant's convictions and sentence. *State v. Combs*, No. A03-1181 (Minn. App. May 11, 2004).

In May 2013, appellant moved to modify his sentence, arguing that the district court improperly used the *Hernandez* method when it sentenced appellant, alleging that counts one and two were part of a single behavioral incident. The district court denied appellant's motion, concluding that "[t]he *Hernandez* method was the proper method for calculating [appellant's] sentence." This appeal followed.

D E C I S I O N

The district court has substantial discretion when imposing sentences. *State v. Munger*, 597 N.W.2d 570, 573 (Minn. App. 1999), *review denied* (Minn. Aug. 25, 1999). This court will not disturb a sentence unless the district court abused its discretion and the sentence is not authorized by law. *State v. Noggle*, 657 N.W.2d 890, 893 (Minn. App. 2003).

The *Hernandez* method permits sentencing a defendant for multiple offenses on the same day to increase the defendant's criminal-history score to reflect each conviction on which he or she is sentenced. *State v. Williams*, 771 N.W.2d 514, 521 (Minn. 2009). The *Hernandez* method may not be used to increase an offender's criminal-history score for a subsequent offense if the offenses arose from a single behavioral incident within the meaning of Minn. Stat. § 609.035, subd. 1. *State v. Hartfield*, 459 N.W.2d 668, 670 (Minn. 1990).

In determining whether a series of offenses constitutes a single behavioral incident, the relevant factors are: (1) unity of time and place and (2) whether the segment

of conduct involved was motivated by an effort to obtain a single criminal objective. *State v. Bookwalter*, 541 N.W.2d 290, 294 (Minn. 1995). The district court's determination of whether multiple offenses are part of a single behavioral incident is a fact determination and should not be reversed unless clearly erroneous. *State v. Carr*, 692 N.W.2d 98, 101 (Minn. App. 2005). The state has the burden of proving that the offenses were not part of a single behavioral incident. *State v. Williams*, 608 N.W.2d 837, 841-42 (Minn. 2000).

Appellant argues that both counts one and two involve a single behavioral incident under Minn. Stat. § 609.035, because they "are the product of [appellant's] involvement in an uninterrupted course of illegal conduct by operating an illegal drug business." Thus, appellant argues that the district court's use of the *Hernandez* method was improper.

We disagree. Minnesota courts have properly used the *Hernandez* method under circumstances that are substantially similar to this case. *See State v. Soto*, 562 N.W.2d 299, 302-04 (Minn. 1997); *State v. Gould*, 562 N.W.2d 518, 521 (Minn. 1997) (concluding that the district court appropriately used the *Hernandez* method to determine the defendant's sentence for three controlled-substance convictions arising out of separate controlled buys). In *Soto*, police purchased cocaine from the defendant during four controlled buys, and the state separately charged the defendant for each sale. 562 N.W.2d at 301-02. The supreme court concluded that the *Hernandez* method was appropriate because the controlled buys took place on separate occasions over a one-month period. *Id.* at 304.

Here, the two controlled buys did not occur at the same time or place. The first controlled buy occurred on April 12, 1999, in the McDonald's parking lot. The second controlled buy occurred two months later, took place in appellant's apartment, and involved a juvenile who claimed that appellant was "train[ing]" him to sell drugs. Further, because appellant lived across the street from a middle school, the second transaction occurred in a school zone. Although both offenses arguably had the same criminal objective of making money, the "criminal plan of obtaining as much money as possible is too broad an objective to constitute a single criminal goal within the meaning of section 609.035." *Soto*, 562 N.W.2d at 304. Because the offenses did not occur at the same time or place and did not have a single criminal objective, the district court did not err by imposing multiple sentences. The district court properly used the *Hernandez* method when it sentenced appellant. *See id.* (concluding that the district court did not err when using the *Hernandez* method in determining sentence).

Affirmed.