STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1400

William Edwin Lehman, Jr., petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed May 12, 2014
Affirmed
Johnson, Judge

St. Louis County District Court
File No. 69HI-CR-05-1341

William Edwin Lehman, Jr., Rush City, Minnesota (*pro se* appellant)

Mark S. Rubin, St. Louis County Attorney, Brian D. Simonson, Assistant County Attorney, Hibbing, Minnesota (for respondent)

Considered and decided by Johnson, Presiding Judge; Rodenberg, Judge; and Crippen, Judge.*

*Retired judge of the Minnesota Court of Appeals serving by appointment pursuant to Minn. Const. art. VI, § 10.

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

JOHNSON, Judge

In 2006, a St. Louis County jury found William Edwin Lehman, Jr., guilty of two counts of assault and one count of making terroristic threats. The district court imposed consecutive seven-year prison sentences on the assault convictions and a concurrent 60-month prison sentence on the terroristic-threats conviction. In 2013, Lehman sought to correct his sentence, arguing that the district erred by imposing consecutive sentences. The district court construed Lehman's request as a postconviction petition and denied it on the ground that it is untimely and procedurally barred. We conclude that the district court did not err and, therefore, affirm.

FACTS

One evening in December 2005, A.M. and C.P. were recording music in their apartment in the city of Chisholm when they heard a knock on the door. When they opened the door, Lehman was holding a two-foot-long machete in one hand and a smaller knife in his other hand. Lehman demanded that they turn the music down and said, "I'm going to kill you mother f-ckers." C.P. and A.M. attempted to calm Lehman, but Lehman stepped forward and slashed A.M.'s arm. C.P. tried to disarm Lehman, but Lehman stabbed him in the abdomen.

The state charged Lehman with one count of second-degree assault and one count of third-degree assault for his attack on C.P., one count of second-degree assault and one count of third-degree assault for his attack on A.M., and one count of making terroristic threats. The complaint alleged that Lehman is a danger to public safety under section

609.1095 of the Minnesota Statutes because he had committed a third violent felony and, thus, was subject to enhanced punishment up to the maximum sentence permitted by statute.

The case was tried to a jury on four days in July 2006. During the trial, Lehman assaulted his public defender in open court, in front of the jury, in an apparent attempt to cause a mistrial. *See State v. Lehman*, 749 N.W.2d 76, 79-80 (Minn. App. 2008), *review denied* (Minn. Aug. 5, 2008). The jury found Lehman guilty on all counts and also found that he is a danger to public safety. The district court granted Lehman's request to waive a pre-sentence investigation and sentenced him immediately after the jury's verdict. The district court imposed consecutive prison sentences of seven years on each of the two second-degree assault convictions based on the finding that he was a danger to public safety. The district court also imposed a concurrent prison sentence of 60 months on the terroristic-threats conviction.

On direct appeal, Lehman sought a new trial based on certain alleged errors in trial procedures. *See id.* at 80-81. This court affirmed. *Id.* at 88. Lehman later filed a petition for writ of habeas corpus in the United States District Court for the District of Minnesota, which denied the petition. *Lehman v. Carlson*, Civ. No. 09-1982 (PAM/JSM), 2010 WL 5071980 (D. Minn. Dec. 7, 2010).

In March 2013, Lehman filed a "postconviction petition to correct sentence," which expressly referred to both chapter 590 of the Minnesota Statutes and to rule 27.03, subdivision 9, of the Minnesota Rules of Criminal Procedure. He asked the district court to correct his sentence by ordering that the sentences on the two assault convictions be

served concurrently instead of consecutively. The district court construed Lehman's motion as a postconviction petition and denied it on the ground that it is untimely and procedurally barred. Lehman appeals.

D E C I S I O N

In his *pro se* appellate brief, Lehman argues that the district court erred by denying his petition on the ground that, at sentencing, the district court did not state its reasons for imposing consecutive sentences on his second-degree assault convictions.

A.

In light of the district court's reasons for denying Lehman's request for relief, we first must consider whether the district court properly construed Lehman's request as a postconviction petition filed pursuant to chapter 590. Lehman does not challenge the district court's decision to treat his request as a postconviction petition. The state contends that the district court properly deemed Lehman's motion to be a postconviction petition because of Lehman's own label for the document: "*Postconviction* Petition to Correct Sentence." (Emphasis added.) But in the first sentence of the document, Lehman expressly relies on both chapter 590 and rule 27.03, subdivision 9. Lehman's submission is ambiguous, but it reflects that he intended to invoke the remedy available in rule 27.03, subdivision 9, at least in part.

This court recently held that the "remedy in rule 27.03, subdivision 9, . . . coexist[s] with the postconviction remedy." *Vazquez v. State*, 822 N.W.2d 313, 317 (Minn. App. 2012). Accordingly, we held that an offender potentially may challenge a sentence by filing either a petition for postconviction relief under chapter 590 of the

Minnesota Statutes or a motion to correct sentence pursuant to rule 27.03, subdivision 9. *See id.* A petition filed pursuant to chapter 590 is subject to a two-year statute of limitation and to a prohibition on challenges that previously were made or could have been made. *See* Minn. Stat. §§ 590.01, subd. 4(a), 590.04, subd. 3 (2012); *see also Hooper v. State*, 838 N.W.2d 775, 780-82 (Minn. 2013); *Quick v. State*, 757 N.W.2d 278, 280 (Minn. 2008); *State v. Knaffla*, 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976). A motion to correct sentence filed pursuant to rule 27.03, subdivision 9, is not subject to the same procedural requirements. *See Vazquez*, 822 N.W.2d at 318; *see also State v. Amundson*, 828 N.W.2d 747, 751 (Minn. App. 2013).

This court also has held that if an offender files a motion to correct sentence pursuant to rule 27.03, subdivision 9, a district court may not construe the motion as a postconviction petition if the motion is "properly filed under" rule 27.03, subdivision 9. *Vazquez*, 822 N.W.2d at 318. This court further has held that an offender's challenge to a sentence is "properly filed" under rule 27.03, subdivision 9, only in limited circumstances:

> [A]n offender may file a motion to correct sentence pursuant to the first sentence of rule 27.03, subdivision 9, only if the offender challenges the sentence on the ground that it is "unauthorized by law" in the sense that the sentence is contrary to an applicable statute or other applicable law. If an offender wishes to challenge his or her sentence for any other reason, the offender must do so pursuant to chapter 590 of the Minnesota Statutes.

State v. Washington, ___ N.W.2d ___, ___, 2014 WL 1344321, at *7 (Minn. App. Apr. 7, 2014).

Lehman's appellate brief does not argue that his sentence is unauthorized by law. He does not argue that his sentence is "contrary to an applicable statute or other applicable law." *See id.* Lehman challenges his sentence solely on the ground that the district court did not state its reasons for imposing consecutive sentences instead of concurrent sentences. Lehman's rationale for correcting his sentence is similar to the rationale of the district court in *State v. Borrego*, 661 N.W.2d 663 (Minn. App. 2003), a case on which this court relied in *Washington*. *See* 2014 WL 1344321, *6-7. The district court in *Borrego* had relied on rule 27.03, subdivision 9, to correct a concurrent sentence, which was based on a mistaken understanding of certain relevant facts, by ordering two sentences to be served consecutively. 661 N.W.2d at 665-66. This court held that "the original sentence was not unauthorized" because it was not forbidden by any statute or caselaw. *Id.* at 667. Rather, the original sentence was "legally permissible," even though it was based on a "mistaken" premise and was "unintentional." *Id.* The *Borrego* court relied on *State v. Walsh*, 456 N.W.2d 442 (Minn. App. 1990), a case in which a defendant-appellant sought to correct a sentence on the ground that the district court had an incorrect understanding of his criminal-history score, *id.* at 443. The *Borrego* court reasoned that *Walsh* stands for the proposition that "if what amounted to a downward departure was imposed without proper findings, such a sentence may be grounds for appeal, but not grounds for re-sentencing." *Borrego*, 661 N.W.2d at 666 (citing *Walsh*, 456 N.W.2d at 444).

Consistent with *Walsh*, *Borrego*, and *Washington*, Lehman may not obtain a correction of his sentence under rule 27.03, subdivision 9, on the ground that the district

court did not state its reasons for imposing consecutive sentences. The rule provides that a district court "may at any time correct a sentence not authorized by law." Minn. R. Crim. P. 27.03, subd. 9. Lehman's sentence plainly is authorized by law because section 609.1095, subdivision 2, allows a district court to sentence a person who is a danger to public safety to seven years of imprisonment for a conviction of second-degree assault, *see* Minn. Stat. §§ 609.1095, subd. 2, .222, subd. 1 (2004), and because the sentencing guidelines allow a district court to order two such sentences to run consecutively, *see* Minn. Sent. Guidelines II.F., VI (Supp. 2005). But Lehman wishes to obtain a correction of his sentence on the ground that the district court did not state its reasons for imposing consecutive sentences. Because Lehman wishes to obtain a correction of his sentence for a reason other than the reason that his sentence is "not authorized by law," he must seek relief pursuant to the procedures of chapter 590. *See Washington*, 2014 WL 1344321, at *7; *Borrego*, 661 N.W.2d at 667; *see also Walsh*, 456 N.W.2d at 444.

Thus, the district court did not err by construing Lehman's petition as a postconviction petition.

B.

In light of the district court's reasons for denying Lehman's request for relief, and in light of our conclusion that the district court properly construed Lehman's petition to be a postconviction petition filed pursuant to chapter 590, we next must consider whether the district court properly concluded that Lehman's petition is untimely and is procedurally barred.

A postconviction petition must be filed within the time period provided by the legislature. As a general rule, "[n]o petition for postconviction relief may be filed more than two years after" a judgment of conviction becomes final. Minn. Stat. § 590.01, subd. 4(a); *see also Hooper*, 838 N.W.2d at 780-82. In addition, a postconviction petition may not assert a challenge to a sentence that previously was asserted or could have been asserted. After a direct appeal, "all matters raised therein, and all claims known but not raised, will not be considered upon a subsequent petition for postconviction relief." *Knaffla*, 309 Minn. at 252, 243 N.W.2d at 741. Accordingly, a district court may summarily deny "a second or successive petition for similar relief on behalf of the same petitioner" or a petition raising issues that "have previously been decided" by an appellate court "in the same case." Minn. Stat. § 590.04, subd. 3. The procedural bar also applies to claims that an offender should have known at the time of the direct appeal. *Quick*, 757 N.W.2d at 280.

Lehman filed his postconviction petition in March 2013, more than four years after the conclusion of his direct appeal. Lehman has not attempted to invoke any of the exceptions to the two-year limitations period. *See* Minn. Stat. § 590.01, subd. 4(b). Thus, Lehman's postconviction petition is untimely. *See id.*, subd. 4(a). In addition, Lehman did not challenge his sentence in his direct appeal. *See Lehman*, 749 N.W.2d at 79-88. The challenge he now asserts plainly was either known to him or should have been known to him at the time of his direct appeal. Lehman has not attempted to invoke any of the exceptions to the *Knaffla* rule. *See Erickson v. State*, 842 N.W.2d 314, 318-19 (Minn. 2014). Thus, Lehman's postconviction petition is procedurally barred. *See*

Quick, 757 N.W.2d at 280; *Knaffla*, 309 Minn. at 252, 243 N.W.2d at 741; *see also* Minn. Stat. § 590.04, subd. 3.

In sum, the district court did not err by treating Lehman's petition as a postconviction petition and by denying the petition on the grounds that it is untimely and is procedurally barred.

Affirmed.