STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1784

State of Minnesota,
Respondent,

vs.

Thomas Mark Beaulieu, Jr.,
Appellant.

Filed April 14, 2014
Affirmed
Schellhas, Judge

Itasca County District Court
File No. 31-CR-09-1438

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

John J. Muhar, Itasca County Attorney, James C. Austad, Assistant County Attorney, Grand Rapids, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Chang Y. Lau, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cleary, Chief Judge; Halbrooks, Judge; and Schellhas, Judge.

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

SCHELLHAS, Judge

Appellant challenges the district court's denial of his motion to correct two sentences, arguing that his convictions underlying the sentences arose from a single behavioral incident. We affirm.

FACTS

Appellant Thomas Beaulieu Jr. entered *Alford* pleas to two counts of third-degree criminal sexual conduct and testified that, "on two occasions, once on April 8 and once on April 10, . . . [he] had sexual intercourse with" T.S.M.H. and "both of those occasions happened in Itasca County," while T.S.M.H. was 14 years old and he was 19 years old. In May 2010, the district court stayed adjudication on both counts and placed Beaulieu on supervised probation for five years. In November 2010, following a probation-violation hearing, the court vacated the stay of adjudication on both counts, stayed imposition of sentence on both counts, and reinstated Beaulieu's probation. In May 2011, following another probation-violation hearing, the district court vacated the stay of imposition on both counts, sentenced Beaulieu to 48 months' imprisonment on the first count and 60 months' imprisonment on the second count, stayed execution of both sentences, and reinstated Beaulieu's probation. In February 2013, following another probation-violation hearing at which Beaulieu admitted to viewing pornography and denied six other alleged probation violations, the district court revoked Beaulieu's probation and executed his prison sentences, and this court affirmed the district court. *State v. Beaulieu*, No. A13-0875 (Minn. App. Jan. 13, 2014).

In May 2013, Beaulieu moved the district court to vacate his 60-month sentence on count two, arguing that both counts arose from a single behavioral incident. The court denied the motion. This appeal follows.

D E C I S I O N

Minnesota Rule of Criminal Procedure 27.03, subdivision 9, permits "[t]he court . . . [to] at any time correct a sentence not authorized by law." Appellate courts "review the district court's denial of a motion to correct a sentence for an abuse of discretion," reviewing legal conclusions de novo and factual findings for clear error. *Townsend v. State*, 834 N.W.2d 736, 738 (Minn. 2013). Minnesota Statutes section 609.035 (2010) "generally prohibits multiple sentences . . . for two or more offenses that were committed as part of a single behavioral incident." *State v. Ferguson*, 808 N.W.2d 586, 589 (Minn. 2012) (quotation omitted). "The single-behavioral-incident analysis presents a mixed question of law and fact," which appellate courts "[g]enerally . . . review . . . de novo." *State v. Kendell*, 723 N.W.2d 597, 607 (Minn. 2006); *see also State v. Marchbanks*, 632 N.W.2d 725, 731 (Minn. App. 2001) ("[W]here the facts are established, the [single-behavioral-incident] determination is a question of law subject to de novo review."), *cited with approval in Kendell*, 723 N.W.2d at 607. *But cf. Effinger v. State*, 380 N.W.2d 483, 489 (Minn. 1986) ("[S]ince this court reviews the district court's findings of fact under a clearly erroneous standard, we refuse to overturn the finding of the trial court that the robbery and attempted murder were one criminal objective and the unauthorized use of the cab was another criminal objective.").

The district court denied Beaulieu's motion to vacate his 60-month sentence on count two, reasoning that Beaulieu's convictions arose from "two separate and distinct acts of sexual intercourse that were separated by a period of two days" and were "not part of a single behavioral incident." Beaulieu argues that his convictions arose from a single behavioral incident. We disagree.

"The state has the burden to establish by a preponderance of the evidence that the conduct underlying the offenses did not occur as part of a single behavioral incident." *State v. Williams*, 608 N.W.2d 837, 841–42 (Minn. 2000). An appellate court analyzing "whether two intentional crimes are part of a single behavioral incident . . . consider[s] factors of time and place and whether the segment of conduct involved was motivated by an effort to obtain a single criminal objective." *State v. Bauer*, 792 N.W.2d 825, 828 (Minn. 2011) (quotation omitted); *see also State v. Bookwalter*, 541 N.W.2d 290, 294 (Minn. 1995) ("[T]he essential ingredient of any test is *whether the segment of conduct involved was motivated by an effort to obtain a single criminal objective.*" (quotation omitted)).

As to time and place, the transcript of Beaulieu's *Alford* pleas reveals that Beaulieu admitted that, "on two occasions, once on April 8 and once on April 10, . . . [he] had sexual intercourse with" T.S.M.H. and "both of those occasions happened in Itasca County." Beaulieu asserts on appeal that "both incidents occurred in [his] apartment in Grand Rapids," that he and T.S.M.H. "spent the entirety of the time together" between the incidents, and that both offenses were motivated by his goal of "satisfy[ing] his

sexual impulses with" T.S.M.H. But Beaulieu's assertions on appeal are not supported by facts contained in the plea transcript.

An appellate court may conclude that "two crimes were independent of each other" when, as here, "nothing in the record reveals that either crime was in furtherance of the other or that defendant had a single criminal objective." *Mercer v. State*, 290 N.W.2d 623, 626 (Minn. 1980), *quoted with approval in Bauer*, 792 N.W.2d at 829–30. *But cf. State v. Bertsch*, 707 N.W.2d 660, 666 (Minn. 2006) (concluding that district court clearly erred by finding that two offenses "were not a single behavioral incident" when "[t]he state ha[d] not shown that Bertsch's acts . . . took place at significantly different times or with significantly different criminal objectives"). Even if both of Beaulieu's offenses were motivated by his goal of "satisfy[ing] his sexual impulses with T.S.M.H.," that motivation is too broad to constitute a single criminal objective for a single behavioral incident. *See State v. Suhon*, 742 N.W.2d 16, 24 (Minn. App. 2007) ("[M]otivation by perverse sexual desires is too broad to constitute a single criminal objective." (quotation omitted)), *review denied* (Minn. Feb. 19, 2008); *cf. Bauer*, 792 N.W.2d at 830 ("[T]he 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." (quotation omitted)).

Beaulieu relies on *State v. Herberg*, 324 N.W.2d 346, 349 (Minn. 1982), to support his argument that his offenses took place during a single behavioral incident, but his reliance is misplaced. In *Herberg*, the supreme court relied on Herberg's motivation "to satisfy his perverse sexual needs" to conclude that his "various acts of assault,

penetration, and degradation" took place during a single behavioral incident. 324 N.W.2d at 349. But, in *Herberg*, the acts took place during one afternoon. *Id.* at 347; *see also State v. Spears*, 560 N.W.2d 723, 727 (Minn. App. 1997) (following *Herberg*'s sexual-needs rationale when "[a]ll three offenses took place in Spears's parked car within a 45-minute period, and were committed against a single victim"), *review denied* (Minn. May 28, 1997). And "[t]he application of [the single-behavioral-incident] test depends heavily on the facts and circumstances of the particular case." *Bauer*, 792 N.W.2d at 828. Unlike in *Herberg*, the record before us reflects that Beaulieu committed his crimes on two different dates, April 8 and April 10.

Beaulieu also argues that his case is "indistinguishable" from *Langdon v. State*, 375 N.W.2d 474, 475, 477 (Minn. 1985), in which the supreme court held that "multiple punishment was improper" when Langdon "burglarized four buildings within a single apartment complex, taking money from coin boxes on washers and dryers in several laundry rooms within the complex." The supreme court reasoned that Langdon's "ultimate overall criminal objective . . . was to steal as much money as he could *that afternoon*." *Langdon*, 375 N.W.2d at 476 (emphasis added). Unlike in *Langdon*, Beaulieu's offenses took place on two different days.

The district court did not err by concluding that Beaulieu's offenses arose from separate behavioral incidents. *Cf. State v. McLemore*, 351 N.W.2d 927, 928 (Minn. 1984) (concluding that sentences did not violate section 609.035 when "[t]he charges were based on [McLemore] having sexual contact with a 7-year-old girl on three separate occasions during a weekend"); *State v. Stevenson*, 286 N.W.2d 719, 720 (Minn. 1979)

(concluding that sentences did not violate section 609.035 when, "[w]hile the offenses both involved coerced sexual intercourse with the same 15-year-old girl and both occurred in the same general place and on the same day, the offenses were separated by a period of approximately 5 hours and neither act bore any essential relationship to the other").

Affirmed.