STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1890

Brad Ronald Stevens, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed May 12, 2014
Affirmed
Hudson, Judge

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

Brad Ronald 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, Red Wing, Minnesota (for respondent)

Considered and decided by Stauber, Presiding Judge; Hudson, Judge; and Rodenberg, Judge.

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

HUDSON, Judge

In this pro se postconviction appeal, appellant challenges the district court's order denying his motion to correct or reduce an unauthorized sentence. We affirm.

FACTS

In 2003, appellant Brad Ronald Stevens entered an *Alford* plea to charges of attempted fourth-degree criminal sexual conduct. At a combined plea and sentencing hearing, appellant was informed that, because he had two recent prior first-degree criminal sexual conduct convictions, he was subject to a 36-month mandatory minimum sentence. Appellant, who was represented by a public defender, waived a psycho-sexual evaluation and a presentence investigation. He stated that he understood the evidence that would be presented at trial, acknowledged that a jury would most likely find him guilty of the charged offense, and waived his jury-trial rights. The district court imposed sentence, informing appellant:

> [y]ou are committed to the custody of the Commissioner of Corrections for a total of 36 months. At least two-thirds or 24 months of that sentence . . . shall [be] served in prison. You shall serve a maximum of one-third, or 12 months of that time on supervised release, and 10 years on conditional release, minus any time served on supervised release, assuming that you commit no disciplinary offenses that may result[] in the execution of a disciplinary confinement period.
>
> In other words, if you committed a disciplinary offense in or out of prison, your actual time served in prison could be extended to the entire 36 months, plus the 10 years of conditional release time.

Appellant did not seek direct review of his sentence.

In 2004, a petition was filed to commit appellant as a sexually dangerous person (SDP); after a contested initial commitment hearing and a 60-day review, the district court issued initial and indeterminate orders committing him as SDP. In 2005, appellant filed a postconviction petition seeking to withdraw his 2003 plea, arguing that it was not

intelligent or voluntary because he lacked effective assistance of counsel, that he was not adequately informed of the conditional-release term, and that he was told that the state would not initiate civil-commitment proceedings. The district court denied appellant's motion, concluding that his plea was knowing, voluntary, and intelligent, and that he had been on notice that a conditional-release term was a mandatory addition to the plea agreement. By order opinion, this court affirmed the district court's denial of relief. *Stevens v. State*, No. A07-1624 (Minn. App. Nov. 24, 2008).

In 2009, appellant, representing himself, moved to correct his sentence under Minn. R. Crim. P. 27.03, subd. 9, arguing, inter alia, that he had been committed on the basis of facts to which he did not admit and that his commitment impermissibly enhanced the sentence permitted by law for his offense. The district court denied these motions and a subsequent related claim, stating that it considered his arguments to be collateral attacks on the civil-commitment process. On appeal, this court affirmed all issues except the imposition of a no-contact order in appellant's sentence, which it reversed on the ground that it was unauthorized by statute. *Stevens v. State*, No. A09-756, 2010 WL 431495 (Minn. App. Feb. 9, 2010), *review denied* (Minn. Apr. 20, 2010). In 2010, appellant again moved to correct his sentence, and the district court vacated the no-contact order, but ordered all other sentencing terms and conditions to remain in effect. On appeal, this court affirmed. *Stevens v. State*, No. A10-2030, 2011 WL 2623433 (Minn. App. July 5, 2011).

In 2012, appellant filed a fourth postconviction petition, seeking judicial review of a disciplinary judgment by the Minnesota Department of Corrections (DOC), which

found that he had failed to complete sex-offender treatment. Appellant also argued that the district court lacked jurisdiction to order his civil commitment after it had imposed conditional-release terms. The district court denied the petition.

In November 2012, the DOC issued an administrative notice extending the expiration date of appellant's conditional-release period by one day, stating that, based on this court's opinion in *State ex rel. Peterson v. Fabian*, 784 N.W.2d 843 (Minn. App. 2010), conditional-release dates for certain offenses must be served consecutive to the sentences imposed. Appellant then filed another pro se motion to correct his sentence, arguing that it was unauthorized by law because the DOC's recalculation of his conditional-release period improperly extended his sentence. He also argued that, in sentencing him, the district court had erroneously informed him that his supervised-release period would run concurrent to his conditional-release period and that this "mutual mistake" should be corrected.

In August 2013, the district court issued an order denying the motion. The district court rejected appellant's arguments, stating that, under Minnesota law, "it is well established that the [c]onditional [r]elease term is a statutorily defined time period of possible imprisonment that is separate and distinct from the sentence imposed." The district court found that a valid sentence had been imposed and that the DOC's administrative action did not change its terms, but only changed the administrative determination of the expiration-release date of appellant's conditional-release term, with credit for time served on supervised release. The district court noted that appellant had been placed on supervised release on November 22, 2004, remained in custody pending

the civil-commitment trial, and completed supervised release in November 2005. The district court further found that on November 2, 2006, the DOC had revoked conditional release, and appellant was returned to MCF-Lino Lakes until the expiration of his conditional-release period in November 2014. Appellant also remained incarcerated under the civil-commitment order. This appeal follows.

D E C I S I O N

Appellant argues that the district court abused its discretion by denying his motion to correct an unauthorized sentence. *See* Minn. R. Crim. P. 27.03, subd. 9 (stating that the district court may, at any time, "correct a sentence not authorized by law"). The district court treated appellant's motion as a petition for postconviction relief. *See Powers v. State*, 731 N.W.2d 499, 501 & n.2 (Minn. 2007) (stating that the postconviction statute "is broad enough to encompass a motion pursuant to Minn. R. Crim. P. 27.03"). "On review of a postconviction decision, we determine whether there is sufficient evidence to support the postconviction court's findings" and "will not overturn the postconviction court's decision unless the [district] court abused its discretion." *Id*. at 501. But the interpretation of sentencing statutes presents a question of law, which this court reviews de novo. *State v. Borrego*, 661 N.W.2d 663, 666 (Minn. App. 2003).

Appellant argues that the DOC's 2012 administrative change in the expiration release date for his conditional-release period altered the terms of his original sentence and rendered it unauthorized by law. We reject this argument. A criminal sentence is unauthorized by law if it is contrary to the requirements of the applicable sentencing

statute. *State v. Humes*, 581 N.W.2d 317, 319 (Minn. 1998). The Minnesota Supreme Court has held that post-release control of offenders is a proper exercise of legislative authority delegated to the commissioner, which does not interfere with judicial authority to impose sentence. *See State v. Schwartz*, 628 N.W.2d 134, 140–41 (Minn. 2001) (stating that "the commissioner's statutory authority over supervised and conditional release operates within and does not impede the [district] court's sentencing authority"). The DOC's administrative determination relating to appellant's conditional-release period does not implicate the district court's original sentence. Here, for instance, appellant's conditional release was revoked and he was reincarcerated based on violation of conditions. "The commissioner's subsequent revocation and re-incarceration decision does not alter the sentence of the [district] court or impose a new sentence, but merely executes a condition within the parameters set by the [district] court for appellant's commitment to the commissioner." *Id.* at 140.

Appellant also argues that the district court did not follow the law in sentencing him because, under the sentence as pronounced, his time in prison could be impermissibly extended beyond the completion date of his 36-month sentence. He points to the district court's statement at sentencing that "if you committed a disciplinary offense in or out of prison, your actual time served in prison could be extended to the entire 36 months, plus the 10 years of conditional release." Appellant bases his argument on *Peterson*, in which this court concluded that, because conditional release is consecutive to supervised release, if an offender commits a supervised-release violation,

he is not yet on conditional release, and it is unlawful to extend his incarceration beyond completion of the sentence imposed. 748 N.W.2d at 847–48.

But appellant's argument reflects a misunderstanding of the difference between supervised release and conditional release. Periods of supervised release are included within the sentence duration pronounced, whereas periods of conditional release follow completion of the sentence imposed. *Id.* at 845; *compare* Minn. Stat. § 244.101, subd. 1 (2002) (stating that an executed sentence consists of a specified minimum term of imprisonment equaling two-thirds of the executed sentence and a specified supervised-release term equaling one-third of the executed sentence), *with* Minn. Stat. § 609.109, subd. 7(a) (2002) (providing that, at sentencing on a conviction of fourth-degree criminal sexual conduct "the [district] court shall provide that after the person has completed the sentence imposed, the commissioner of corrections shall place the person on conditional release [for a specified period] . . . minus the time the person served on supervised release.").[1] Here, appellant did not commit a violation during his supervised-release period; he committed a violation during his conditional-release period. The commissioner then revoked his conditional release and placed him in prison for the remainder of his conditional-release period. *See* Minn. Stat. § 609.109, subd. 7(b) (2002) (stating that, if an inmate fails to meet conditions of release, the commissioner may revoke conditional release). Appellant's reincarceration following a conditional-release violation did not reflect an unauthorized sentence.

[1] Minn. Stat. § 609.109, subd. 7, has been superseded by Minn. Stat. § 609.3455, subd. 6 (2012), which is currently in effect and has substantially similar provisions. *See* 2005 Minn. Laws ch. 136, art. 2, § 21, at 929–31, 933.

Appellant also argues that he should be allowed to withdraw his plea based on the district court's failure to inform him that his conditional-release term would run consecutive to his sentence. But in appellant's first postconviction appeal, we affirmed the district court's rejection of his plea-withdrawal request, which was based in part on his asserted misunderstanding that he would never be incarcerated after he was placed on conditional release. In appellant's second appeal, we concluded that his plea-withdrawal argument was *Knaffla*-barred because it had been addressed in a prior appeal. *Stevens v. State*, 2010 WL 431495, at *3 n.2; *see State v. Knaffla*, 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976) (stating that all matters raised or known at the time of a direct appeal or an earlier petition for postconviction relief will not be considered in a subsequent petition for postconviction relief). Because appellant's argument was raised and rejected in a previous postconviction challenge, we decline to consider it in this appeal.

Affirmed.