STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0774
A24-0781

State of Minnesota,
Respondent,

vs.

Jacob Carl Smith,
Appellant.

Filed June 2, 2025
Affirmed
Wheelock, Judge

Rice County District Court
File Nos. 66-CR-22-2350, 66-CR-22-2443

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Brian M. Mortenson, Rice County Attorney, Sean R. McCarthy, Assistant County Attorney, Faribault, Minnesota (for respondent)

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

Considered and decided by Wheelock, Presiding Judge; Bjorkman, Judge; and Halbrooks, Judge.[*]

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

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

In these consolidated appeals, appellant challenges numerous convictions for violations of domestic-abuse no-contact orders prohibiting contact with two different victims, arguing that the district court (1) erred by determining that each violation was a separate behavioral incident and (2) abused its discretion by imposing permissive consecutive sentences because they exaggerated the criminality of his conduct. We affirm.

FACTS

The parties do not dispute the following facts. Appellant Jacob Carl Smith was in jail on domestic-assault charges in September 2022 for hitting Y.S.R. with a helmet and throwing objects at her. While he was in jail, law-enforcement officers monitored his phone calls and identified 16 individual phone and video calls in which Smith and Y.S.R. had contact. Law enforcement knew that Smith was prohibited from talking with Y.S.R. because the district court had imposed a domestic-abuse no-contact order (DANCO) prohibiting Smith from having contact with Y.S.R. Respondent State of Minnesota charged all 16 calls as individual DANCO violations pursuant to Minn. Stat. § 629.75, subd. 2(d)(1) (2022) (collectively, Y.S.R. DANCO violations).

Law enforcement also observed that, while he was in jail, Smith was in contact with another person, S.L.B., via phone. A separate DANCO prohibited Smith from having contact with S.L.B. except during counseling sessions. Law enforcement identified 26 individual calls between Smith and S.L.B., and the state charged each as an individual DANCO violation pursuant to Minn. Stat. § 629.75, subd. 2(d)(1) (collectively, S.L.B.

DANCO violations). The state later amended its complaint charging Smith with the S.L.B. DANCO violations, dismissing ten of these counts and leaving 16 counts.

The two complaints charging Smith with DANCO violations proceeded before two different district court judges. The parties were scheduled for a jury trial in the S.L.B. DANCO-violation case, but they reached a resolution, and Smith pleaded guilty to all 16 counts. In the Y.S.R. DANCO-violation case, Smith agreed to plead guilty to eight of the 16 counts. Thus, Smith pleaded guilty to a total of 24 counts of DANCO violations.

Smith was sentenced in the Y.S.R. DANCO-violation case first. Although the state sought consecutive sentencing for each of the eight convictions, the district court imposed concurrent sentences. Smith was then sentenced in the S.L.B. DANCO-violation case. The state urged the district court to sentence three of Smith's 16 convictions to run consecutively and the remaining 13 convictions to run concurrently. The state argued that sentencing Smith concurrently for all 16 convictions would not "honor[] or fulfill[] . . . the purpose of the sentencing guidelines" given Smith's criminal-history score and the severity of the offenses. In arguing against consecutive sentencing, Smith first noted that it was within the district court's discretion to consecutively sentence him without departing from the sentencing guidelines, and then, relying on Minnesota Sentencing Guidelines comment 2.F.01 (2022), he argued that consecutive sentencing should be reserved for offenses more severe than the offenses he committed.

The district court that sentenced Smith in the S.L.B. DANCO-violation case acknowledged that both parties had made good arguments at the sentencing hearing but stated that it was "persuaded by the State's argument" regarding consecutive sentencing.

The district court thus granted the state's motion for consecutive sentencing as to three of the S.L.B. DANCO-violation convictions, imposing three 12-month-and-one-day consecutive sentences for them, and, as to Smith's remaining 13 convictions, imposing concurrent 12-month-and-one-day sentences for each of them. Ultimately, Smith was sentenced to 75 total months of imprisonment.[1]

Smith appeals in both cases, and we consolidated the appeals.

DECISION

I. The district court did not err by determining that each of Smith's offenses was a separate behavioral incident pursuant to Minn. Stat. § 609.035, subd. 1 (2022).

Smith argues that, in both the Y.S.R. case and the S.L.B. case, the state did not prove that each of his DANCO violations was a separate behavioral incident pursuant to Minn. Stat. § 609.035, subd. 1, and thus that we must reverse all but two of his 24 DANCO-violation convictions—specifically leaving only one conviction for violating the Y.S.R. DANCO and one conviction for violating the S.L.B. DANCO. In making this

[1] The district court *Hernandized* Smith's sentences, increasing his criminal-history score upon the imposition of each subsequent sentence. "*Hernandizing*" is a method of sentencing whereby district courts, when sentencing a criminal defendant for multiple felony convictions at the same time, use each of the defendant's convictions—assuming the convictions are not part of the same behavioral incident—to calculate each ensuing criminal-history score for presumptive sentencing under the guidelines. *State v. Hernandez*, 311 N.W.2d 478, 479 (Minn. 1981). The implication of *Hernandizing* is that the presumptive sentence may increase for the later-sentenced convictions.

argument, Smith urges us not to follow our nonprecedential opinion in *State v. Willis*. No. A21-0402, 2022 WL 90249 (Minn. App. Jan. 10, 2022).[2]

Pursuant to Minn. Stat. § 609.035, subd. 1, "if a person's conduct constitutes more than one offense under the laws of this state, the person may be punished for only one of the offenses and a conviction or acquittal of any one of them is a bar to prosecution for any other of them." A person's conduct "is limited to acts committed during a single behavioral incident." *State v. Branch*, 942 N.W.2d 711, 713 (Minn. 2020). Whether an offense was committed as "part of a single behavioral incident is a mixed question of law and fact, so we review the district court's findings of fact for clear error and its application of the law to those facts de novo." *State v. Bakken*, 883 N.W.2d 264, 270 (Minn. 2016). In cases with undisputed facts, "the [separate-incident] determination is a question of law subject to de novo review." *State v. Marchbanks*, 632 N.W.2d 725, 731 (Minn. App. 2001).

Appellate courts "determine whether separate intentional crimes formed part of a single behavioral incident by considering (1) whether the offenses occurred at substantially the same time and place and (2) whether the conduct was motivated by an effort to obtain a single criminal objective." *State v. Degroot*, 946 N.W.2d 354, 365 (Minn. 2020).

Caselaw informs us that multiple criminal acts can occur within a short span of time. *Id.* at 365-66 (affirming that a 45-minute break in time supported a conclusion that two behavioral incidents of criminal acts occurred). In *State v. Barthman*, the supreme court reaffirmed that, when determining whether separate intentional crimes formed part of a

[2] "Nonprecedential opinions . . . may be cited as persuasive authority." Minn. R. Civ. App. P. 136.01, subd. 1(c).

single behavioral incident, "we ask whether all of the acts performed were necessary to or incidental to the commission of a single crime and motivated by an intent to commit that crime." 938 N.W.2d 257, 267 (Minn. 2020) (quotation omitted). And in *Bakken*, the supreme court observed that "the mere fact that [the defendant] committed multiple crimes over time for the *same* criminal objective does not mean he committed those crimes to attain a *single* criminal objective." 883 N.W.2d at 271.

In *Willis*, we addressed an argument very similar to Smith's. In that case, Willis was charged with violation of a DANCO after officers found Willis in a car with his wife, the person the DANCO protected. *Willis*, 2022 WL 90249, at *1. While in jail on that charge, Willis remained in contact with his wife, giving rise to three more DANCO violations. *Id.* The district court then issued a new DANCO, again prohibiting Willis from contact with his wife. *Id.* Willis remained in contact with his wife while he was in jail, communicating with her multiple times a day, and the state charged Willis with 38 counts of violating a DANCO, one count for each day he had contact with his wife in violation of the new DANCO. *Id.* This resulted in 42 counts total of DANCO violations. *Id.* Willis pleaded guilty to each count, and the district court sentenced Willis to 42 concurrent 30-month executed sentences. *Id.* On appeal, Willis argued that the record exhibited only three behavioral incidents of him violating a DANCO. *Id.* This court rejected Willis's argument, reasoning that each violation was a separate behavioral incident because the violations occurred "at different times and with multiple hours between" them. *Id.* at *2.

Smith argues that this court in *Willis* misapplied the single-behavioral-incident rule. We are not persuaded. In *Willis*, this court relied on the supreme court's articulation of the

single-behavioral-incident rule in *Degroot*. *Willis*, 2022 WL 90249, at *2 (citing *Degroot*, 946 N.W.2d at 365). We apply the same rule here.

The state proved that each of Smith's contacts with Y.S.R. and S.L.B. was an independent call, eachoccurring at a different time and with a distinct beginning and end. Thus, each of Smith's offenses did not occur at substantially the same time and place. In addition, the conduct here was not motivated by a *single* criminal objective, although it may at times have been for the *same* criminal objective of contacting the individuals subject to each DANCO's protections; each call between Smith and either Y.S.R. or S.L.B. was an independent event. *See Bakken*, 883 N.W.2d at 271. Thus, the conduct underlying each of the 24 DANCO-violation convictions did not form mere parts of a single behavioral incident. *See Degroot*, 946 N.W.2d at 365.

Because each of Smith's contacts with Y.S.R. and S.L.B. was a separate call and occurred at a different time, we conclude that the state met its burden of establishing that each of Smith's contacts with Y.S.R. and S.L.B. was a separate behavioral incident.

II. The district court did not abuse its discretion when it sentenced Smith in the S.L.B. DANCO-violation case.

Smith next argues that the district court in the S.L.B. DANCO-violation case abused its discretion when it sentenced him because "[t]he number of sentences imposed, the cumulative effect on his criminal history score, and the use of consecutive sentencing" all unfairly exaggerate the criminality of his conduct. During sentencing in each DANCO-violation case, the state argued for consecutive sentencing. The district court imposed concurrent sentences for all of Smith's convictions in the Y.S.R.

DANCO-violation case, whereas the district court in the S.L.B. DANCO-violation case sentenced three of the 16 convictions consecutively.

A district court's decision to impose consecutive sentences is reviewed for an abuse of discretion. *State v. Ali*, 895 N.W.2d 237, 247 (Minn. 2017). The reviewing court "will interfere with the district court's sentencing discretion only when the sentence is disproportionate to the offense or unfairly exaggerates the criminality of the defendant's conduct." *Id.* (quotation omitted). In determining whether the district court abused its discretion, "we look to past sentences received by other offenders." *Id.* (quotation omitted). "Multiple current felony convictions for crimes against persons may be sentenced consecutively to each other, without constituting a departure from the Minnesota Sentencing Guidelines, only when the presumptive disposition is commitment to the Commissioner of Corrections." *State v. Rannow*, 703 N.W.2d 575, 576 (Minn. App. 2005).

In the Y.S.R. DANCO-violation case, the district court sentenced Smith for his DANCO violations in accordance with the sentencing guidelines, *Hernandizing* Smith's criminal-history score with each sentence. Smith had a criminal history prior to this sentencing hearing, and by the time the district court had sentenced Smith for each of his eight DANCO-violation convictions in the Y.S.R. DANCO-violation case, Smith's criminal-history score was 11 points.

In the S.L.B. DANCO-violation case, the district court sentenced Smith to a total of 69 months' imprisonment. The district court first imposed three executed 12-month-and-one-day sentences to run consecutively. Then it imposed 13 33-month sentences to run concurrently with Smith's other sentences.

Smith argues that the length of his sentences unfairly exaggerates the criminality of his conduct, relying on *State v. Goulette*. 442 N.W.2d 793, 794-95 (Minn. 1989). In *Goulette*, the district court sentenced the defendant to an aggregate sentence of 251 months after imposing consecutive sentences for five identical convictions. *Id.* at 794. The supreme court concluded that the defendant's sentence unfairly exaggerated the criminality of his conduct because the sentence imposed, although permissible, was more than double the maximum sentence for one of the five convictions, and therefore, it reduced his sentence from 251 months to 214 months. *Id.* at 795. In addressing Smith's argument, we observe that the defendant in *Goulette* was convicted of five counts of aggravated robbery rather than DANCO violations. *Id.* at 794.

Smith then argues that his invocation of *Goulette* is persuasive by positing that his conduct might be less severe than the defendant's conduct in another case—*State v. Alger*, 941 N.W.2d 396 (Minn. 2020)—in which the supreme court's opinion discussed *Goulette*. Smith reasons that, because the supreme court declined to follow *Goulette* in *Alger* and because Smith's conduct is possibly less severe than the defendant's conduct in *Alger* but his sentence was greater than that in *Alger*, this court should follow *Goulette* and reduce Smith's sentence.

In *Alger*, the defendant had been in contact with two individuals protected from contact with him by two orders for protection (OFP). 941 N.W.2d at 399. After the state charged the defendant with two OFP violations, he repeatedly contacted one of the protected parties. *Id.* Based on this behavior, the state amended its complaint against him to include two counts of stalking. *Id.* The defendant pleaded guilty to two counts of felony

violation of an OFP, and the state dismissed the two counts of felony stalking. *Id.* The district court sentenced him to 36 months and one day, which was consistent with the plea agreement. *Id.* He appealed his sentences; this court affirmed them. *Id.* at 400. The supreme court affirmed this court, concluding that "[the defendant]'s sentences do not exaggerate the criminality of his behavior" because, "unlike [in] *Goulette*, [the defendant] did not receive the longest possible sentence without departing from the sentencing guidelines." *Id.* at 404. In so concluding, the supreme court declined to extend *Goulette* to the appeal in *Alger*. *Id.*

We do not find Smith's reliance on *Goulette* and *Alger* persuasive. Although Smith's conduct may be comparable to Alger's insofar as they both violated orders prohibiting their contact with protected persons, the defendant in *Alger* was convicted of two felony OFP violations while Smith was convicted of 24 felony DANCO violations. *See id.* at 399. We discern no basis on which to conclude that Smith's conduct was less severe than the conduct in *Alger* such that it can support a determination that the sentences here exaggerated the criminality of Smith's behavior. We further conclude that *Goulette* does not compel the result Smith seeks. We agree with the supreme court's determination in *Alger* that the defendant's situation in that case "was strikingly different" as compared to the defendant's situation in *Goulette*. *Id.* at 404. Here, Smith's total sentence duration of 75 months is substantially shorter than the 251-month sentence duration in *Goulette*, it is for 24 DANCO violations rather than five counts of aggravated robbery, and unlike the defendant in *Goulette*, Smith did not receive the longest possible sentence without

departing from the sentencing guidelines for each of his 24 convictions.[3] *See Goulette*, 442 N.W.2d at 794-95. Although we consider past sentences received by other offenders in determining whether the district court abused its discretion when sentencing Smith, *Goulette* is distinguishable and thus we are not persuaded by Smith's reliance on *Goulette* and *Alger*. It is clear that the district court, particularly in the S.L.B. DANCO-violation case, took care to impose an appropriate sentence that would not unfairly exaggerate the criminality of Smith's conduct when it elected to impose three executed 12-month-and-one-day sentences to run consecutively and the 13 remaining sentences to run concurrently.

In sum, we conclude that the district court did not abuse its discretion when it sentenced Smith consecutively for three of his S.L.B. DANCO-violation convictions.

Affirmed.

[3] In the Y.S.R.-DANCO-violations case, the district court imposed the longest possible sentence without departing from the sentencing guidelines for one of his convictions.