STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0835

State of Minnesota,
Respondent,

vs.

Travis Clay Andersen,
Appellant.

Filed May 19, 2025
Affirmed in part, reversed in part, and remanded
Klaphake, Judge[*]

Carver County District Court
File No. 10-CR-22-1120

Keith Ellison, Attorney General, Lisa Lodin, Assistant Attorney General, St. Paul, Minnesota; and

Mark Metz, Carver County Attorney, Jeffrey D. Albright, Assistant County Attorney, Chaska, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Steven P. Russett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bond, Presiding Judge; Reyes, Judge; and Klaphake, Judge.

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

NONPRECEDENTIAL OPINION

KLAPHAKE, Judge

Appellant argues that the evidence is insufficient to support his convictions for false imprisonment and motor-vehicle theft. Appellant also challenges his sentences, arguing that the district court (1) erred by adding a three-month enhancement to consecutive sentences, (2) improperly imposed an upward departure, and (3) erred by imposing multiple sentences. Appellant raises additional claims in a pro se supplemental brief. We affirm the convictions, reverse the consecutive sentences, and remand for resentencing.

DECISION

Appellant Travis Clay Andersen committed several offenses when he attempted to escape from custody. In September 2023, a jury found appellant guilty of escape from custody, fourth-degree assault of a peace officer, motor-vehicle theft, and false imprisonment. *See* Minn. Stat. §§ 609.485, subd. 2(1), .2231, subd. 1(c)(1), .52, subd. 2(a)(17), .255, subd. 2 (2022). Appellant now raises several challenges to his convictions and sentences.

Sufficiency of the evidence

Appellant first argues that the evidence was insufficient to sustain his convictions for false imprisonment and motor-vehicle theft. In evaluating the sufficiency of the evidence, appellate courts "carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the [jury] to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted." *State v. Waiters*, 929 N.W.2d 895, 900 (Minn. 2019) (quotation omitted).

False-imprisonment conviction

Appellant was convicted of false imprisonment. "Whoever, knowingly lacking lawful authority to do so, intentionally confines or restrains . . . any . . . person without the person's consent, is guilty of false imprisonment." Minn. Stat. § 609.255, subd. 2.

Here, appellant was at the county government building for a hearing after a jury found him guilty of felony harassment and felony tampering with or retaliating against a judicial officer or prosecutor. A deputy brought appellant to a holding cell where the deputy removed appellant's shackles. Appellant then ran past the deputy and out the cell door—a "heavy steel door attached to a steel frame."

Appellant exited the cell door and slammed the door on the deputy's shoulder. The deputy tried to squeeze through the door opening but determined that he "would certainly break [his] right hand or possibly have [his] fingers severed" based on the way appellant was "forcefully" closing the door. After the door was closed it was secure. There is no handle on the inside of the door and the deputy was not immediately aware that he could open it. The deputy then realized that he had a key to the door. The deputy freed himself and pursued appellant.

Appellant argues that he did not "confine or restrain" the deputy because the deputy had a key and left the cell within 15 seconds of the door securing. He also argues that any "confinement or restraint" was incidental to the escape offense.

> To "confine or restrain" a person is to deprive a person of the freedom to go where the person pleases and is lawfully entitled to go, or to leave the place where the person is. The restraint or confinement may include the use of physical barriers, the use of physical force, or the threat of the immediate use of

> physical force if the person confined or restrained reasonably believes that the person making the threat has the ability to carry out the threat.

10 *Minnesota Practice*, CRIMJIG 10.05 (2015); s*ee State v. Dokken*, 312 N.W.2d 106, 108 (Minn. 1981). The evidence shows that appellant used a "physical barrier" and "physical force" to deprive the deputy of freedom to go where he was lawfully entitled.

Appellant argues that the confinement element of *kidnapping* is not satisfied when it is "incidental to the perpetration of a separate felony." He argues that he cannot be guilty of false imprisonment because it was incidental to his escape. But appellant was not convicted of kidnapping and the cases he cites to support his claim are cases that involve kidnapping. Further, appellant could have run out of the cell without locking the deputy in the cell, making the false imprisonment more than incidental to the escape. We conclude that the evidence sufficiently supports appellant's false-imprisonment conviction.

Motor-vehicle-theft conviction

Appellant was convicted of motor-vehicle theft. A person is guilty of motor-vehicle theft when he "takes or drives a motor vehicle without the consent of the owner or an authorized agent of the owner, knowing or having reason to know that the owner or an authorized agent of the owner did not give consent." Minn. Stat. § 609.52, subd. 2(a)(17).

Here, after appellant escaped the holding cell, he ran out of the government building toward the parking lot with an officer in pursuit. J.G. was in the parking lot removing snow from her running vehicle. J.G. was on the passenger side of her vehicle when appellant opened the driver side door and entered the vehicle. The officer and appellant struggled, resulting in the officer suffering injuries. During the struggle, J.G. reached in the passenger

side door, shut off the vehicle, and grabbed the keys. Appellant grabbed at J.G.'s hand, but she quickly pulled her hand back.

There is no dispute that appellant did not drive the vehicle. And appellant argues that he did not "take" the vehicle, because he never had complete or exclusive control of the vehicle. To "take" a motor vehicle is to adversely possess it. *State v. Thonesavanh*, 904 N.W.2d 432, 439 (Minn. 2017). "[T]o adversely possess a movable object is to exercise control over it to the exclusion of all others." *State v. Kimmes*, 962 N.W.2d 487, 495 (Minn. 2021).

We conclude that the jury could find that appellant adversely possessed the vehicle because he entered the driver side of a running vehicle. J.G. removed the keys and the officer removed appellant from the vehicle, but when appellant was in the driver's seat of the running vehicle, he adversely possessed it because nobody else had exclusive control of the vehicle. We conclude that the evidence sufficiently supports appellant's motor-vehicle-theft conviction.

Sentences

The presumptive sentencing range for the escape conviction was 44 to 60 months in prison. The district court sentenced appellant to 120 months in prison for the escape conviction. This was an enhanced sentence based on the jury finding aggravating factors. This sentence was to be served consecutive to sentences appellant was already serving.

The district court stated that appellant would be sentenced to 17.4 months in prison for the false-imprisonment conviction.[1] The district court stated: "This is also a permissive consecutive sentence under 2.F.2a(2)." The district court sentenced appellant to 17.4 months in prison for the assault-of-a-peace-officer conviction. The district court stated: "I'm running this consecutive to . . . all of the crimes for which [appellant is] in prison." The district court sentenced appellant to a concurrent 30 months in prison for the motor-vehicle-theft conviction.[2]

Three-month enhancement on consecutive sentences

Appellant first argues that the district court erred by imposing both a permissive consecutive sentence and a three-month enhancement because when a district court imposes a permissive consecutive sentence it must use a criminal-history score of zero, and a three-month enhancement applies when a criminal-history score is seven or greater.

"Under Minnesota law, all felony sentencing is governed by the Sentencing Guidelines." *Ballweber v. State*, 457 N.W.2d 215, 218 (Minn. App. 1990). Whether a sentence conforms to the sentencing guidelines is a question of law reviewed de novo. *State v. Williams*, 771 N.W.2d 514, 520 (Minn. 2009). Whether a sentencing statute has been properly construed is also subject to de novo review. *State v. Gilbert*, 634 N.W.2d 439, 441 (Minn. App. 2001), *rev. denied* (Minn. Dec. 11, 2001).

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[1] The 17.4-month sentences were pronounced by the district court at sentencing. *See State v. Staloch*, 643 N.W.2d 329, 329, 331 (Minn. App. 2002) ("[O]rally pronounced sentence controls.").

[2] Appellant does not challenge this concurrent sentence.

Generally, when an offender is convicted of multiple offenses at the same time, concurrent sentencing is presumptive. *State v. Rannow*, 703 N.W.2d 575, 577 (Minn. App. 2005); *see also* Minn. Sent'g Guidelines 2.F (2022). But a district court may impose permissive consecutive sentences in certain instances. Minn. Sent'g Guidelines 2.F.2.a.1.

Here, the district court correctly determined that appellant's escape conviction qualified for consecutive sentencing. *See* Minn. Sent'g Guidelines 2.F.2.a.2. "For each felony offense sentenced consecutively to another felony offense(s), the court must use a [c]riminal[-][h]istory [s]core of 0, or the mandatory minimum for the offense, whichever is longer, to determine the presumptive duration. A consecutive sentence at any other duration is a departure." Minn. Sent'g Guidelines 2.F.2.b.

The district court stated that the state moved for a departure. "[I]f the person who escapes is in lawful custody for a felony, [he may be sentenced] to imprisonment for not more than five years." Minn. Stat. § 609.485, subd. 4(a)(1). "If the escape . . . was effected by violence or threat of violence . . . the sentence may be increased to not more than [ten years (the statutory maximum)]." *Id.*, subd. 4(b). The jury found the existence of these two factors and the district court used the jury's findings to enhance appellant's sentence to 120 months in prison, which was twice the high-end of the presumptive range (44-60 months). The district court did not impermissibly apply a three-month enhancement to appellant's sentence for escape because the district court imposed a departure.

When a felony offense is sentenced consecutively to another felony, the district court must use a criminal-history score of zero. Minn. Sent'g Guidelines 2.F.2.b. A district court may impose a three-month enhancement if: "(1) at least one-half custody status point

is assigned, and (2) the offender's total [c]riminal[-][h]istory [s]core exceeds the maximum score on the applicable Grid (i.e., 7 or more)." Minn. Sent'g Guidelines 2.B.2.c.

Here, in imposing the permissive consecutive sentences for the false-imprisonment and assault convictions, the district court calculated appellant's criminal-history score at zero. The district court then applied the three-month enhancement. But the district court cannot impose a three-month enhancement when it uses a criminal-history score of zero. *Id.* Thus, because the district court calculated appellant's criminal-history score at zero when determining the false-imprisonment and assault-of-a-peace-officer convictions, it erroneously applied the three-month enhancement. Appellant's consecutive sentences for false imprisonment and assault of a peace officer must be reversed and remanded for resentencing.

Upward departure

Appellant argues that the district court erred by imposing an upward sentencing departure, claiming that the jury's findings of aggravated factors are elements of the escape offense and were accounted for when determining appellant's sentence.

The jury found appellant guilty of escape from custody, and that "[a]t the time of the escape [appellant] was [] in lawful custody for a felony level offense," and "the escape [was] effected by violence or the threat of violence against a person." In imposing appellant's sentence, the district court stated that, because the jury found the existence of the two factors, "the sentence may . . . be increased to . . . twice the maximum listed."

The district court did not impose an impermissible sentence. The jury found appellant guilty of "escap[ing] while . . . in lawful custody on a charge or conviction of a

crime." Minn. Stat. § 609.485, subd. 2(1). Regarding sentencing for the offense, "if the person who escapes is in lawful custody for a *felony*, [he may be sentenced] to imprisonment for not more than five years." *Id.*, subd. 4(a)(1) (emphasis added). And "[i]f the escape was a violation of subdivision 2, clause (1) . . . and *was effected by violence or threat of violence against a person*, the sentence may be increased to not more than twice those permitted in [subdivision 4(a)(1)]." *Id.*, subd. 4(b) (emphasis added). The district court stated: "I do find that the aggravating factors justified this departure and that 120 months given the actions that you took on that date more than account for doubling up of this sentence." Based on the findings of aggravating factors, the district court was permitted to impose the enhanced sentence.

Multiple sentences

Appellant also argues that the district court impermissibly imposed separate sentences for offenses that were committed as part of a single behavioral incident. He claims that even if the district court could impose separate sentences for multiple victims, his sentence "unfairly exaggerates the degree of his culpability."

Generally, a district court is prohibited from imposing multiple sentences for offenses "committed as part of a single behavioral incident." *State v. Norregaard*, 384 N.W.2d 449, 449 (Minn. 1986). But a district court may impose multiple sentences when there are multiple victims, and the defendant is equally culpable to each. *State v. Whittaker*, 568 N.W.2d 440, 453 (Minn. 1997); *State v. Edwards*, 774 N.W.2d 596, 605 (Minn. 2009). If there are multiple victims, the district court must not impose sentences that "unfairly

exaggerate the criminality of the defendant's conduct." *State v. Skipintheday*, 717 N.W.2d 423, 426 (Minn. 2006).

Here, the district court imposed multiple consecutive sentences because each crime involved a separate victim whom appellant put at "serious risk of bodily injury [or] bodily harm." The district court stated that the sentences were "fair and appropriate" because appellant showed a "total disregard for the law or the rules of court, society, and anything else we live under."

The record supports the district court's determination. Appellant forced a heavy cell door closed on a deputy. The deputy testified that he feared being severely injured if he fought back. Appellant attempted to drive away in a vehicle while the vehicle's owner was clearing snow off the vehicle. If appellant had driven away, as was his intent, he could have injured her. And when the vehicle's owner put her hand in the vehicle to grab the keys, appellant grabbed at her hand. Appellant got into a physical altercation with an officer and injured his face. Appellant was equally culpable to each victim and the sentences do not unfairly exaggerate the criminality of his offenses.

Pro se claims

In a pro se supplemental brief, appellant raises claims regarding, among other things: (1) past criminal cases, (2) his detainment, (3) alleged collusion between the district court and the public defender, (4) "sham" hearings, (5) the effectiveness of his advisory counsel, and (6) the sufficiency of the evidence supporting his convictions.

Appellant's primary focus in his pro se brief is his past offenses and detention, which are irrelevant here. We have already addressed the sufficiency of the evidence

supporting appellant's convictions. And appellant does not provide legal argument or authority to support his additional allegations. Because appellant's pro se claims are without argument and authority, they are forfeited on appeal. *State v. Krosch*, 642 N.W.2d 713, 719-20 (Minn. 2002) (deeming claims forfeited when unsupported by argument or citation to legal authority).

We affirm appellant's convictions, the aggravated sentence, and the imposition of multiple sentences, but reverse the consecutive sentences that include the three-month enhancement and remand to the district court for resentencing consistent with this opinion.

Affirmed in part, reversed in part, and remanded.