FILED
May 13, 2025
OFFICE OF
APPELLATE COURTS

STATE OF MINNESOTA

IN COURT OF APPEALS

A24-1756

Delonte Ahshone Thomas, petitioner,

Appellant,

vs.

State of Minnesota,

Respondent.

ORDER OPINION

Hennepin County District Court
File No. 27-CR-14-20537

Considered and decided by Bjorkman, Presiding Judge; Wheelock, Judge; and Reilly, Judge.*

BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND BECAUSE:

1. Appellant Delonte Ahshone Thomas challenges the denial of his motion to correct sentence under Minn. R. Crim. P. 27.03, subd. 9.

2. In 2015, following a jury trial, Thomas was convicted of one count of attempted first-degree murder for shooting A.M. and two counts of attempted second-degree murder for shooting Q.W. and J.G. The district court sentenced Thomas to 333 months in prison—180 months for the attempted murder of A.M., a consecutive 153 months for the attempted murder of Q.W., and a concurrent 193 months for the attempted murder of J.G.

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

3. On direct appeal, we affirmed Thomas's convictions, concluding that (1) the district court did not abuse its discretion by denying a continuance request, (2) the district court did not commit prejudicial error in its jury instructions, and (3) the evidence was sufficient to support his conviction with respect to J.G. *State v. Thomas*, No. A15-1680, 2016 WL 4497235, at *2-6 (Minn. App. Aug. 29, 2016), *rev. denied* (Minn. Nov. 15, 2016).

4. Thomas has since filed three petitions for postconviction relief. The district court denied each petition as both procedurally barred and unsuccessful on the merits.

5. In April 2024, Thomas filed a motion to correct his sentences pursuant to Minn. R. Crim. P. 27.03, subd. 9, arguing that the district court (1) violated Minn. Stat. § 609.035 (2012) by imposing multiple sentences for conduct stemming from a single behavioral incident and (2) erred by failing to consider the dispositional departure factors articulated in *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982).

6. The district court construed Thomas's sentence-correction motion as his fourth postconviction petition and denied relief, reasoning that his Minn. Stat. § 609.035 argument was addressed in a prior postconviction proceeding and cannot be relitigated, and his *Trog* argument is procedurally barred because he could have raised it on direct appeal and it otherwise fails on the merits.

7. On appeal, Thomas first argues that the district court improperly treated his sentence-correction motion as a postconviction petition. We agree with Thomas. A defendant has two avenues for challenging their sentence after direct appeal: a motion to correct a sentence under Minn. R. Crim. P. 27.03, subd. 9, or a petition for postconviction relief under Minn. Stat. § 590.01, subd. 1(1) (2024). *Washington v. State*, 845 N.W.2d

205, 210 (Minn. App. 2014). Under Minn. R. Crim. P. 27.03, subd. 9, "[t]he court may at any time correct a sentence not authorized by law." A sentence is unauthorized by law when it is "contrary to an applicable statute or other applicable law." *Washington*, 845 N.W.2d at 213. In contrast, a postconviction petition—while affording a broader scope of relief—is subject to a two-year time limit and a procedural bar on successive challenges. Minn. Stat. § 590.01, subds. 1, 4(a) (2024); *State v. Knaffla*, 243 N.W.2d 737, 741 (Minn. 1976). These strict procedural requirements do not apply to a properly filed sentence-correction motion. *Washington*, 845 N.W.2d at 211. The standard of review that applies to a district court's decision to treat a sentence-correction motion as a postconviction petition "remains an open question." *Bolstad v. State*, 966 N.W.2d 239, 242 (Minn. 2021). But Minnesota appellate courts have routinely reviewed the decision de novo where, as here, the Minn. R. Crim. P. 27.03, subd. 9 inquiry turns on the interpretation of a statute or procedural rule. *Id.* We review the denial of a sentence-correction motion for abuse of discretion. *State v. Overweg*, 922 N.W.2d 179, 182 (Minn. 2019).

8. Minn. Stat. § 609.035, subd. 1, states that "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." (Emphasis added.) In *Munt v. State*, our supreme court determined that because the plain language of Minn. Stat. § 609.035 "limits the imposition of punishment," arguments raised under the statute fall within the scope of Minn. R. Crim. P. 27.03, subd. 9. 920 N.W.2d 410, 416 (Minn. 2018). Accordingly, Thomas's section 609.035 challenge was properly presented as a sentence-correction motion, and the district court erred by treating it as a postconviction petition.

9. We nevertheless affirm the district court's denial of Thomas's request for relief on the merits. It is well-established that Minn. Stat. § 609.035 does not "bar multiple sentences when the defendant commits crimes against multiple victims." *State v. Alger*, 941 N.W.2d 396, 400 (Minn. 2020). Under this "multiple-victim exception," a court is not prevented from imposing multiple sentences for multiple crimes arising out of a single behavioral incident if (1) multiple victims are affected and (2) the sentences do not "unfairly exaggerate the criminality of the defendant's conduct." *State v. Ferguson*, 808 N.W.2d 586, 590 (Minn. 2012) (quotation omitted).

10. Thomas's sentences easily satisfy the multiple-victim exception to Minn. Stat. § 609.035. During the incident in question, Thomas shot A.M. ten times between her ribcage and buttocks. He shot Q.W. eight times in her torso and shot J.G. eight times in her lower extremities. All three victims sustained significant injuries. Indeed, these circumstances permitted the district court to impose three consecutive sentences. *See id.*; Minn. Sent'g Guidelines 6.A, B (2012). Instead, the court weighed the extremely violent nature of Thomas's crime against the fact that all three shootings occurred in a single behavioral incident and fairly imposed partially consecutive, partially concurrent sentences. We discern no abuse of discretion by the district court. Moreover, Thomas provides no authority to support his contention that his sentences unfairly exaggerate the criminality of his conduct.

11. Thomas also contends that he is entitled to relief because his sentences violate his right under *Blakely v. Washington*, 542 U.S. 296, 303-04 (2004), to have a jury determine the presence of aggravating factors and violate the Minn. Stat. § 609.04 (2012)

bar against multiple convictions for an offense and its included offenses. He further asserts that the district court should have considered the dispositional-departure factors laid out in *Trog*. But Thomas did not raise the first two arguments in his sentence-correction motion. And although Thomas did make his *Trog* argument in connection with his sentence-correction motion, our review of the record reveals that he did not request a dispositional departure at the time of sentencing. Because Thomas did not make these arguments in the district court, he has forfeited them on appeal. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996) (stating that appellate courts generally do not decide issues that were not raised before the district court).

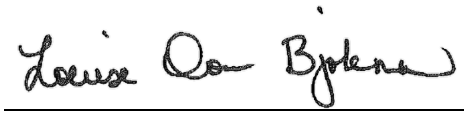
IT IS HEREBY ORDERED:

1. The district court's order denying sentence correction is affirmed.

2. Pursuant to Minn. R. Civ. App. P. 136.01, subd. 1(c), this order opinion is nonprecedential, except as law of the case, res judicata, or collateral estoppel.

Dated: 5/13/25

BY THE COURT



Judge Louise Dovre Bjorkman