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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1575**

Timothy Ayman Bakdash, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed April 10, 2017
Affirmed in part and vacated in part
Larkin, Judge**

Hennepin County District Court
File No. 27-CR-11-11987

Timothy Bakdash, Bayport, Minnesota (pro se appellant)

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

Michael O. Freeman, Hennepin County Attorney, Jean Burdorf, Assistant County
Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Reyes, Presiding Judge; Connolly, Judge; and Larkin,
Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Appellant argues that the district court erroneously determined that it lacked jurisdiction to decide his motion for sentence correction while his appeal of his earlier postconviction proceeding was pending. Because appellant's motion for sentence correction, like his earlier petition for postconviction relief, challenged the validity of his convictions, we affirm the district court's conclusion that it lacked jurisdiction to decide the motion, and we vacate as void the district court's other rulings on the motion.

FACTS

In March 2012, a jury found appellant Timothy Ayman Bakdash guilty of second-degree intentional murder, felony murder, and criminal vehicular homicide for the death of B.V.H., as well as two counts of attempted second-degree murder, two counts of second-degree assault, and two counts of criminal vehicular operation against S.B. and K.H. The district court sentenced Bakdash to two concurrent prison terms of 173 months for the two counts of attempted second-degree murder to be served consecutively with his sentence of 307 months for second-degree murder. This court affirmed the convictions, and the supreme court denied review. *State v. Bakdash*, 830 N.W.2d 906, 909 (Minn. App. 2013), *review denied* (Minn. Aug. 6, 2013).

Bakdash petitioned for postconviction relief, challenging his convictions on the grounds of newly discovered evidence, inconsistent verdicts, and ineffective assistance of counsel. The postconviction court denied relief, Bakdash appealed, and this court affirmed. *Bakdash v. State*, No. A16-0337, 2016 WL 7439086, at *1 (Minn. App. Dec. 27, 2016),

pet. for review filed (Minn. Feb. 23, 2017). While Bakdash’s postconviction appeal was pending, he moved for sentence correction under Minn. R. Crim. P. 27.03, subd. 9. The district court concluded, in response to an argument by the state, that it did not have “jurisdiction to make a determination on the present motion” because the postconviction appeal was pending. Despite this conclusion, the district court construed the sentence-correction motion as a petition for postconviction relief, concluded that the claims were time-barred and procedurally-barred, and denied Bakdash’s additional motions challenging the state’s response to his motion for sentence correction. Bakdash appeals.

D E C I S I O N

Bakdash contends that the district court retained jurisdiction to decide his motion for sentence correction while his postconviction appeal was pending. He argues that his motion for sentence correction “in no way require[d] consideration of the issues being appealed from the denial of his [postconviction petition], nor do they depend on the merits of the issues on appeal.”

This court reviews “[q]uestions concerning the authority and jurisdiction of [district] courts” de novo. *State v. Pflepsen*, 590 N.W.2d 759, 763 (Minn. 1999). Generally, “the filing of a timely and proper appeal suspends the [district] court’s authority to make any order that affects the order or judgment appealed from.” Minn. R. Civ. App. P. 108.01, subd. 2. “The purpose of this rule is to avoid the confusion and waste of time potentially arising from having the same issue before two courts at the same time.” *State v. Dwire*, 409 N.W.2d 498, 502 (Minn. 1987) (quotation omitted). However, the rule is subject to exceptions.

Pending a duly executed appeal, the jurisdiction of a [district] court is suspended only as to those matters necessarily involved in the appeal, not as to those matters which are independent of, or which are supplemental to, the appeal or collateral to the proceeding in which the appealed order or judgment was rendered. Among the matters over which the [district] court retains jurisdiction pending an appeal are those which are ancillary or supplemental to the appeal as in aid of its proper presentation, such as orders to correct the record, to make and certify a settled case or bill of exceptions.

State v. Barnes, 249 Minn. 301, 302-03, 81 N.W.2d 864, 866 (1957) (footnotes omitted); see Minn. R. Civ. App. P. 108.01, subd. 2 (“[T]he [district] court retains jurisdiction as to matters independent of, supplemental to, or collateral to the order or judgment appealed from.”).

For example, jurisdiction is not suspended where the district court does not need to consider the merits of any issue on appeal in making its decision. See, e.g., *Spaeth v. City of Plymouth*, 344 N.W.2d 815, 825-26 (Minn. 1984) (concluding that district court retained jurisdiction over a claim for attorney and expert fees because such a claim “should be treated as a matter independent of the merits of the litigation”); *In re Thulin*, 660 N.W.2d 140, 143 (Minn. App. 2003) (concluding that the district court retained jurisdiction over a determination regarding continued commitment because it involved “a different standard of proof and a new set of facts” than the initial commitment order). In contrast, the district court’s jurisdiction is suspended when the district court must consider the merits of an issue on appeal. See, e.g., *State v. Friberg*, 435 N.W.2d 509, 512 n.1 (Minn. 1989) (noting that the district court “should have refused to hear the motion to vacate judgment since the judgment of conviction was being appealed”); *In re Welfare of C. Children*, 348 N.W.2d

94, 99 (Minn. App. 1984) (stating that the juvenile court retains jurisdiction to modify a disposition of a child but it “does not have the power to alter its adjudication of neglect once an appeal of this determination has been perfected”).

Bakdash asserts that his motion to correct his sentence and his postconviction petition “could not be more dissimilar.” He generally argues that his motion for sentence correction challenged his sentence, whereas the postconviction petition challenged his convictions. For the reasons that follow, we disagree.

Bakdash moved for sentence correction under Minn. R. Crim. P. 27.03, subd. 9, which states that the “court may at any time correct a sentence not authorized by law.” Although Bakdash’s motion was captioned as a motion for sentence correction under rule 27, the substance of his memorandum in support of the motion shows that he actually challenged his convictions. As a basis for relief, Bakdash discussed Minn. Stat. § 609.035, subd. 1 (2010), which prohibits multiple punishments for crimes committed during a single behavioral incident. *See Langdon v. State*, 375 N.W.2d 474, 476 (Minn. 1985) (stating that the bar against multiple punishments in section 609.035 refers to sentences, not to convictions). However, Bakdash did not argue for the district court to resentence his existing convictions under section 609.035. Instead, he relied on section 609.035, as well as Minn. Stat. § 609.04 (2010) (prohibiting conviction of both the crime charged and an included offense) and Minn. Stat. § 611.02 (2010) (requiring conviction of the lowest degree when an offense has been proved, if there is reasonable doubt as to the degree), and argued that the district court should vacate all but one of his convictions and resentence him on the remaining conviction. Specifically, Bakdash’s memorandum asserted that “[a]ll

convictions are in violation of section 609.035 and only [one] can remain” and that he “must be resentenced consistent with the law once the convictions in violation of the law have been vacated.” In sum, Bakdash’s motion for sentence correction and his postconviction petition both challenged the validity of his convictions.

Bakdash also argues that his motion for sentence correction and his postconviction petition did not raise the same issues because his grounds for challenging his convictions in his postconviction petition were different than the grounds he asserted in support of his motion for sentence correction. Once again, Bakdash’s motion for sentence correction actually challenged the validity of his convictions, and he does not cite any authority that allows a district court to determine a challenge to a conviction when the validity of the same conviction is pending appeal.

As reflected in the purpose of the rule generally suspending the district court’s jurisdiction over a case that is pending appeal, we do not favor piecemeal appeals. *Cf. Emme v. C.O.M.B., Inc.*, 418 N.W.2d 176, 179 (Minn. 1988) (“[T]he thrust of the rules governing the appellate process is that appeals should not be brought or considered piecemeal.”). To hold otherwise would create the possibility of a district court considering the validity of a conviction on one theory while this court is considering the validity of the same conviction on another theory. Such a result is a potential waste of judicial resources. *See Spaeth*, 344 N.W.2d at 825 (recognizing that “the rule divesting a [district] court of jurisdiction is designed to avoid the confusion and waste of time potentially arising from having the same issues before two courts at the same time” and is based on the policy against piecemeal appeals).

In conclusion, the district court lacked jurisdiction to consider Bakdash's motion for sentence correction because the motion challenged the validity of his convictions and that issue was pending appeal. Because the district court lacked jurisdiction, it correctly concluded that it could not determine Bakdash's motion. We therefore affirm the district court's ruling that it lacked jurisdiction, hold that its remaining rulings on Bakdash's motion are void, and vacate those rulings. *Cf. Vang v. State*, 788 N.W.2d 111, 117 (Minn. 2010) ("When the court lacks subject-matter jurisdiction over a proceeding at the time it imposes a sentence, the sentence is void.").

Affirmed in part and vacated in part.