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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-2076**

Eldon Paul Koestler, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed July 24, 2017
Affirmed
Schellhas, Judge**

Faribault County District Court
File No. 22-K2-00-000114

Eldon Paul Koestler, Lino Lakes, Minnesota (pro se appellant)

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

Troy Timmerman, Faribault County Attorney, Blue Earth, Minnesota (for respondent)

Considered and decided by Schellhas, Presiding Judge; Halbrooks, Judge; and
Randall, Judge.*

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

UNPUBLISHED OPINION

SCHELLHAS, Judge

Pro se appellant challenges the district court's denial of his "motion to correct sentence" under Minn. R. Crim. P. 27.03, subd. 9, as a time-barred petition for postconviction relief. We affirm.

FACTS

On March 15, 2000, appellant Eldon Paul Koestler shot and killed his estranged wife in her mother's home in front of six other people, including her mother and brother. Respondent State of Minnesota charged Koestler with second-degree murder and indicated its intent to seek an indictment for first-degree murder and add second-degree assault charges as to the six others present when Koestler brandished a pistol and shot his wife to death.

Koestler quickly reached a plea agreement under which he pleaded guilty to second-degree murder and agreed to an upward-departure sentence of 459 months' imprisonment. The state agreed not to seek an indictment for first-degree murder or add any second-degree assault charges. Koestler also agreed to concurrent sentences based on his guilty pleas to gross-misdemeanor obstructing arrest/legal process and misdemeanor driving while intoxicated (DWI), charges that arose from an unrelated incident on February 28, 2000. The state agreed to dismiss seven other charges that arose from the February 28 incident, including a felony charge of first-degree criminal damage to property.

In May 2000, Koestler entered his guilty pleas, testified that his wife made a "little snotty remark" that "set [him] off" so he "pulled out the gun and shot her," consented to

an upward departure of 459 months' imprisonment, and acknowledged that he was "voluntarily and knowingly giving up th[e] right" to seek the presumptive guidelines sentence of 306 months' imprisonment. The district court stated that the upward departure was based on the parties' plea agreement and the aggravating factors of (1) zone of privacy, (2) impact on others, and (3) lack of remorse. The court sentenced Koestler to 459 months' imprisonment.

In October 2016, Koestler moved the district court pro se to correct his sentence under Minn. R. Crim. P. 27.03, subd. 9. Koestler claimed that his sentence was "illegal" because "two aggravating factors had to be present to receive an upward departure," his wife's murder did not take place in her zone of privacy, and a murder's impact on others is not a valid aggravating factor. The court denied Koestler's filing as a time-barred petition for postconviction relief.

This appeal follows.

D E C I S I O N

"The court may at any time correct a sentence not authorized by law." Minn. R. Crim. P. 27.03, subd. 9. The district court also may "correct [a] sentence" on a petition for postconviction relief if the sentence is illegal "under the Constitution or laws of the United States or of the state." Minn. Stat. § 590.01, subd. 1 (2016). While "[r]ule 27 authorizes the district court to correct an illegal sentence *at any time*," *State v. Schnagl*, 859 N.W.2d 297, 301 (Minn. 2015) (quotation omitted), "[n]o petition for postconviction relief may be filed more than two years after . . . the entry of judgment of conviction or sentence if no direct appeal is filed," Minn. Stat. § 590.01, subd. 4(a) (2016).

“[A]pplying the 2-year limitations period in Minn. Stat. § 590.01, subd. 4, to a Minn. R. Crim. P. 27.03, subd. 9 motion violates the separation of powers.” *Reynolds v. State*, 888 N.W.2d 125, 133 (Minn. 2016). But if a defendant’s “challenge to his sentence implicates more than simply his sentence,” the filing in which he asserts that challenge “is properly viewed as a petition for postconviction relief under Minn. Stat. § 590.01, not as a motion to correct a sentence under Rule 27.03,” regardless of how the defendant labels the filing. *State v. Coles*, 862 N.W.2d 477, 482 (Minn. 2015). “[W]here the sentence at issue is imposed as part of a plea agreement, a motion to change that sentence impacts more than simply the sentence,” at least where the sentence “was a crucial reason” for the state’s entry into the plea agreement. *Id.* at 481–82. Such a filing implicates the plea agreement itself and therefore is subject to the two-year limitations period on postconviction petitions. *Id.*

After examining the record in this case, we are confident that Koestler’s upward-departure sentence was central to the plea agreement, under which Koestler received significant benefits including (1) the state’s abandonment of its expressed intent to seek an indictment for first-degree murder and add up to six second-degree assault charges and (2) the dismissal of seven charges, including one felony charge. As a result, any attack on the upward-departure sentence is tantamount to an attack on the plea agreement itself. Because Koestler’s October 2016 filing attacks the legality of the upward-departure sentence, which the district court imposed under the terms of a plea agreement more than 16 years before the filing, we conclude that the filing is properly viewed as a petition for postconviction relief, and we further conclude that the petition is time-barred.

Affirmed.