STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0132

State of Minnesota,
Respondent,

vs.

Antonio Dion Washington-Davis,
Appellant.

Filed September 18, 2017
Affirmed
Jesson, Judge

Ramsey County District Court
File No. 62-CR-13-2492

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

John J. Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Jesson, Judge; and Toussaint, Judge.*

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

U N P U B L I S H E D O P I N I O N

JESSON, Judge

Appellant Antonio Dion Washington-Davis challenges his resentencing on multiple convictions of prostitution-related offenses following a remand from this court, arguing that (1) the Minnesota Sentencing Guidelines Commission exceeded its authority by establishing a sentence enhancement based upon a prior human-trafficking conviction; and (2) his sentence unfairly exaggerates the criminality of his conduct. We affirm.

FACTS

Appellant Antonio Dion Washington-Davis was involved in a family-operated prostitution scheme run out of his uncle's home. In 2013, he was convicted of six prostitution-related offenses:

- Count 1: aiding and abetting the solicitation or inducement of a minor to practice prostitution, with an aggravating factor;[1]
- Counts 2-4: aiding and abetting the promotion of the prostitution of an individual, with an aggravating factor;[2]
- Count 6: aiding and abetting the solicitation or inducement of an individual to practice prostitution, with an aggravating factor;[3] and
- Count 7: conspiracy to engage in the sex trafficking of an individual, with an aggravating factor.[4]

Washington-Davis's convictions resulted from acts occurring between September 2010 and July 2012 that involved five women—J.M., B.R., S.A., C.B., and T.B.—four of

[1] *See* Minn. Stat. §§ 609.05, subd. 1, 609.322, subd. 1(a)(1), (b)(1) (2010).
[2] *See* Minn. Stat. §§ 609.05, subd. 1, 609.322, subds. 1a(2), 1(b)(1) (2010).
[3] *See* Minn. Stat. §§ 609.05, subd. 1, 609.322, subds. 1a(1), 1(b)(1) (2010).
[4] *See* Minn. Stat. §§ 609.175, subd. 2(3), 609.322, subds. 1a(4), 1(b)(1) (2010).

whom testified at his trial. He was deeply involved in the prostitution scheme and engaged in acts such as assigning women to sexual encounters with men at outside locations, posting website advertisements for the prostitutes, and driving women to hotels and other locations for sex. *State v. Washington-Davis*, 867 N.W.2d 222, 228 (Minn. App. 2015), *aff'd*, 881 N.W.2d 531 (Minn. 2016).

Washington-Davis was initially sentenced to a total of 432 months in prison on his prostitution-related convictions. On appeal, we affirmed those convictions, but vacated the sentence on count 7 because that offense was committed as part of a single behavioral incident; we remanded for resentencing. *Id*. at 241.[5] On remand, the district court resentenced Washington-Davis to 396 months in prison. The district court imposed a 300-month sentence on count 1, to be served concurrently with lesser sentences imposed on counts 2-4. On count 6, soliciting or inducing a person to engage in prostitution, the district court imposed a 96-month sentence, to be served consecutively to the 300-month sentence. The district court enhanced the presumptive 48-month sentence on count 6 by adding an additional 48 months based on the aggravating factor of Washington-Davis's prior stipulated qualified human-trafficking-related offense. *See* Minn. Stat. § 609.322, subd. 1(b)(1) (2010). The sentence on count 7 was vacated. This appeal follows.

[5]The supreme court affirmed Washington-Davis's convictions in 2016. *Washington-Davis*, 881 N.W.2d 531, 545 (Minn. 2016).

D E C I S I O N

I. The Minnesota Sentencing Guidelines Commission did not exceed its authority by enhancing Washington-Davis's sentence on his conviction of soliciting a person to engage in prostitution, based on his prior human-trafficking offense.

Washington-Davis first argues that the sentencing guidelines commission exceeded its authority by establishing a 48-month sentence enhancement based upon his prior human-trafficking conviction. He contends that Minn. Stat. § 244.09 (2010), which establishes the guidelines commission and sets forth its duty to promulgate advisory, presumptive sentences, does not grant authority to create sentencing enhancements apart from the sentencing grid. He also argues that the enhancement was not authorized by law because the statute criminalizing his conduct, Minn. Stat. § 609.322, subd. 1(b), contains no reference to a sentencing enhancement, but only increases the statutory maximum term of imprisonment by 5 years for a conviction under that statute. We reject these arguments.

Interpretation of a statute and the sentencing guidelines present question of law, which we review de novo. *State v. Williams*, 771 N.W.2d 514, 520 (Minn. 2009). Washington-Davis was sentenced on count 6, soliciting or inducing an individual to practice prostitution, in violation of Minn. Stat. § 609.322, subd. 1a(1).[6] The district court imposed a 96-month sentence, which included a 48-month sentence enhancement based on his stipulated-to aggravating factor, having "committed a prior qualified human trafficking-related offense." Minn. Stat. § 609.322, subd. 1(b)(1).

[6] We cite generally to the 2010 version of the Minnesota Statutes, which was in effect at the time that Washington-Davis's offenses began, and note that section 609.322 has not been amended since 2009. *Washington-Davis*, 867 N.W.2d at 229 n.1.

A defendant convicted of violating section 609.322, subdivision 1a, is subject to imprisonment for not more than 15 years. Minn. Stat. § 609.332, subd. 1a. But if the actor violates subdivision 1a and certain aggravating factors are present, the maximum term of imprisonment is increased to not more than 25 years. Minn. Stat. § 609.322, subd. 1(b). When a defendant is sentenced for a completed crime under Minn. Stat. § 609.322, subd. 1(b), as occurred here, "the presumptive sentence is determined by the sentencing guidelines grid cell defined by the offender's criminal history score and the severity level of the underlying crime with the highest severity level, or the mandatory minimum, whichever is greater, plus an additional 48 months." Minn. Sent. Guidelines II.G (2010).

As Washington-Davis acknowledges, the legislature authorized the Minnesota Sentencing Guidelines Commission to establish presumptive sentences. Minn. Stat. § 244.09, subds. 1, 5(2). Here, the guidelines commission established a presumptive sentence for a defendant who is convicted of solicitation or inducement of an individual to practice prostitution when an aggravating factor is present. According to the sentencing guidelines, "the *presumptive* sentence is determined by the [appropriate] sentencing guidelines grid cell . . . plus an additional 48 months." Minn. Sent. Guidelines II.G (emphasis added).

Washington-Davis argues, with no citation to authority, that Minn. Stat. § 244.09 does not grant the guidelines commission authority to create sentencing enhancements apart from the sentencing grid. We reject this argument. Section 244.09 contains no requirement that the advisory sentences promulgated by the guidelines commission must appear in a grid. *See* Minn. Stat. § 244.09, subd. 5. And the Minnesota Supreme Court

has recognized the use of sentencing modifiers that exist outside of the grid. *See State v. Kangbateh*, 868 N.W.2d 10, 12 (Minn. 2015) (stating that Minn. Sent. Guidelines 2.G "outlines the procedures for calculating the presumptive sentencing ranges for a number of offenses that do not appear on the standard Sentencing Guidelines Grid"). Therefore, the guidelines sentencing-enhancement provision is not unauthorized by law merely because it is not listed in the sentencing-guidelines grid. *See id*.

Washington-Davis also argues that the 48-month enhancement applied by the district court to his sentence is unauthorized because it is not contained in Minn. Stat. § 609.322, subd. 1(b), which merely increases the statutory maximum sentence when certain aggravating factors are present. We are unpersuaded by this argument as well. A similarly designed sentencing regime exists with respect to a crime committed for the benefit of a gang. Minnesota Statutes section 609.229, subdivision 3(a) (2010), increases the statutory maximum sentence by ten years for a felony committed for the benefit of a gang, if the victim was under 18 years of age. The statute provides no specific duration of presumptive-sentence modification for such a crime. *See* Minn. Stat. § 609.229, subd. 3(a). Rather, the guidelines commission set forth that specific duration: if the victim is under the age of 18, and the felony was completed for the benefit of a gang, 24 months are added to the duration listed in the appropriate cell of the grid applicable to that offender. Minn. Sent. Guidelines 2.G. In this instance, the sentencing guidelines provide a method for determining presumptive sentences outside of the standard grid. *See Kangbateh*, 868 N.W.2d at 12. We therefore do not agree that specific durations for sentence modifiers used to determine presumptive sentences must appear in the underlying criminal statute.

Washington-Davis has failed to point to any authority prohibiting the type of static sentencing enhancement used to determine his presumptive sentence. We conclude that the Minnesota Sentencing Guidelines Commission had authority in its guidelines, outside of the grid, to prescribe an additional 48 months as an aggravating factor for a person who is convicted of solicitation or promotion of prostitution. *See* Minn. Sent. Guidelines 2.G.

II. Washington-Davis's 396-month sentence does not unfairly exaggerate the criminality of his conduct.

Washington-Davis next argues that his 396-month sentence unfairly exaggerates the criminality of his conduct and is excessive compared to other sentences imposed for more egregious conduct. We disagree.

District courts are afforded great discretion in the imposition of sentences. *State v. Spain*, 590 N.W.2d 85, 88 (Minn. 1999). This includes the discretion to impose consecutive sentences for multiple felonies with multiple victims. *State v. Vang*, 847 N.W.2d 248, 264 (Minn. 2014). However, the district court may not impose sentences that unfairly exaggerate the criminality of a defendant's conduct. *Id.*; *State v. Marquardt*, 294 N.W.2d 849, 850-51 (Minn. 1980). A district court's decision to impose a consecutive sentence will not be reversed absent a clear abuse of discretion. *Vang*, 847 N.W.2d at 264.

Washington-Davis concedes that the 300-month sentence imposed on count 1 is a presumptive sentence. *See* Minn. Sent. Guidelines 4 (Supp. 2011) (Sex Offender Grid). As previously discussed, the 96-month sentence imposed on count 6 is presumptive as well. *See id.* Nonetheless, he maintains that the district court should have sentenced count 6

concurrently to count 1, and that his 396-month sentence is excessive because it unfairly exaggerates the criminality of his conduct in committing the offenses.

Sentences received by other offenders for similar offenses provide guidance for determining whether a consecutive sentence unfairly exaggerates a defendant's conduct. *Carpenter v. State*, 674 N.W.2d 184, 189 (Minn. 2004). Published cases discussing sex-trafficking sentences are sparse. Washington-Davis points to three unpublished cases where lesser sentences were imposed. Unpublished cases from this court are not binding authority, Minn. Stat. § 480A.08, subd. 3 (2016), but we recognize that they may have some persuasive value. *Dynamic Air, Inc. v. Bloch*, 502 N.W.2d 796, 800 (Minn. App. 1993). Given the dearth of recent published cases covering the issue of sentencing for sex-trafficking crimes, we examine the three unpublished cases offered.

In *State v. Rhodes*, this court affirmed a 300-month sentence for sex trafficking of a minor and a 15-month consecutive sentence for possession of child pornography. No. A14-0433, 2015 WL 4611883, at *1, *7 (Minn. App. Aug. 3, 2015), *review denied* (Minn. Oct. 28, 2015). In that case, the defendant drove a 15-year-old girl to Minnesota for prostitution, took nude photographs of her, manipulated her into having sex with a stranger for money, and physically assaulted her while threatening to kill her so that she could not notify police. *Id.*

In *State v. Cross*, we affirmed a 158-month sentence for aiding and abetting sex trafficking of a minor and a consecutive 96-month sentence for aiding and abetting sex trafficking. No. A13-2329, 2014 WL 7236942, at *2, *6 (Minn. App. Dec. 22, 2014), *review denied* (Minn. Feb. 25, 2015). The defendant played a significant role in a sex-

trafficking operation that victimized two young women, one of whom was a minor. *Id.* In a related case, *State v. Diggs*, this court affirmed a 178-month sentence for aiding and abetting sex trafficking of a minor and a consecutive 96-month sentence for sex trafficking. No. A13-2354, 2015 WL 404453, at *2, *9 (Minn. App. Feb. 2, 2015), *review denied* (Minn. Apr. 14, 2015). The defendant sexually assaulted the two victims in order to establish control over them. *Id.*

Washington-Davis argues that, unlike in the cited cases, his conduct with respect to counts 1 and 6 involved minimal contact with the victims involved, who never worked as prostitutes and were not subjected to rape or violence. We are unpersuaded by the attempt to minimize his actions. The supreme court concluded that Washington-Davis was not a passive observer, but an active participant in soliciting the women to engage in prostitution. *Washington-Davis*, 881 N.W.2d at 544. Washington-Davis, who was actively involved in a prostitution scheme spanning multiple years and affecting multiple victims and had a prior human-trafficking-related conviction, no doubt intended to prey upon the women, to turn them into sex workers for financial gain. We cannot conclude that the consecutive, presumptive sentences imposed are excessive.

Washington-Davis also argues that his sentence would have been less severe had his crimes under counts 1 and 6 been committed earlier, under less-severe sentencing guidelines. *Compare* Minn. Sent. Guidelines 4 (Supp. 2011) *with* Minn. Sent. Guidelines IV, V (2010). We are unpersuaded by this argument as a basis for concluding that the district court abused its discretion. The heightened presumptive sentences reflect a growing societal concern with sex trafficking and a desire to treat sex trafficking as a sex

offense, with presumptive sentences similar to other offenses on the sex-offender grid. *See* 2010 Minn. Laws ch. 215, art. 11, § 23, at 286; Minn. Sentencing Guidelines Comm'n, MSGC Report to the Legislature, January 2010 at 8-9, App. E (2010).

District courts have "a unique perspective on all stages of a case, including sentencing," and are best situated "to evaluate an offender's conduct and weigh sentencing options." *State v. Hough*, 585 N.W.2d 393, 397 (Minn. 1998). For many years, Washington-Davis played an active role in soliciting and promoting the prostitution of women. *Washington-Davis*, 881 N.W.2d at 544. His numerous victims included particularly vulnerable adults, as well as a minor. *Washington-Davis*, 867 N.W.2d at 229 n.2. Yet, at his original sentencing hearing, he "described himself as 'the victim.'" *Id.* at 230. We cannot conclude that the district court clearly abused its discretion in sentencing. *See Vang*, 847 N.W.2d at 264.

Affirmed.