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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0872**

Robert Lee Crum, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed January 7, 2019
Affirmed
Stauber, Judge***

Olmsted County District Court
File No. 55-CR-14-3840

Robert Lee Crum, Faribault, Minnesota (pro se appellant)

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

Mark A. Ostrem, Olmsted County Attorney, Jennifer D. Plante, Assistant County Attorney,
Rochester, Minnesota (for respondent)

Considered and decided by Rodenberg, Presiding Judge; Hooten, Judge; and
Stauber, Judge.

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

UNPUBLISHED OPINION

STAUBER, Judge

On appeal from the denial of a motion to correct his sentence, appellant argues that the district court erred in calculating his criminal history score based on two prior decayed convictions. Because the convictions were not decayed, we affirm.

FACTS

Beginning in May 2014, appellant Robert Crum sold cocaine to a confidential informant. After the fourth sale, police executed a search warrant on Crum's home and discovered 5.6 grams of cocaine. The state charged Crum with first-degree sale in violation of Minn. Stat. § 152.021, subd. 1(1) (2012), third-degree sale in violation of Minn. Stat. § 152.023, subd. 1(1) (2012), and four counts of second-degree controlled substance in violation of Minn. Stat. § 152.022, subd. 1(1) (2012). A jury subsequently found Crum guilty of all counts.

Before sentencing, Crum filed a motion contesting the accuracy of his criminal-history score. His score was 10 points, which included: four felony convictions from Illinois, each assigned 1.5 points; two felony convictions from Minnesota, each assigned 1.5 points; and 1 custody status point. He argued that his 10-point criminal-history score was inaccurate because the prior convictions used in the calculation were decayed. The district court found that the state proved by a preponderance of the evidence that "the felony weight that was assigned to these offenses was appropriate and also accurate." Additionally, the court found that the expiration date of the Illinois convictions was December 17, 2001, and they had not decayed.

Crum challenged his sentence under Minn. R. Crim. P. 27.03, arguing that the district court miscalculated his criminal-history score. This appeal followed after the district court denied his motion.

DECISION

“The court may at any time correct a sentence not authorized by law.” Minn. R. Crim. P. 27.03. A sentence that is “based on an incorrect criminal history score is an illegal sentence.” *State v. Outlaw*, 748 N.W.2d 349, 356 (Minn. App. 2008), *review denied* (Minn. July 15, 2008). This court reviews “a district court’s decision to deny a motion under rule 27.03 for an abuse of discretion.” *State v. Provost*, 901 N.W.2d 199, 201 (Minn. App. 2017).

Crum challenges his criminal-history score, which falls squarely under the potential relief afforded by Minn. R. Crim. P. 27.03. However, Crum’s additional arguments, including claims of a defective complaint, prosecutorial misconduct, Fourth Amendment violations, and ineffective assistance, fall outside the scope of challenging his sentence and instead challenge his conviction. These arguments are thus treated as if filed in a postconviction petition. *Washington v. State*, 845 N.W.2d 205, 215 (Minn. App. 2014). Crum was aware of but did not assert these arguments in his previous direct appeals, but his claims of a defective complaint, prosecutorial misconduct, Fourth Amendment violations, and ineffective assistance are procedurally barred because he *could* have raised them. *See State v. Knaffla*, 243 N.W.2d 737, 741 (Minn. 1976) (noting that “where direct appeal has once been taken, all matters raised therein, and all claims known but not raised,

will not be considered upon a subsequent petition for postconviction relief”). We do not consider these barred claims.

Criminal-History Score

This court may reverse a district court’s determination of a defendant’s criminal-history score only if it has abused its discretion. *State v. Maley*, 714 N.W.2d 708, 711 (Minn. 2006). The Minnesota Sentencing Guidelines provide that prior felony convictions are included in a defendant’s criminal-history score. *See* Minn. Sent. Guidelines 2.B.1.a (2016). However, points may not be assigned for prior felony convictions that have decayed. *See* Minn. Sent. Guidelines 2.B.1.c (2016). “A prior felony conviction has decayed if, when computing the criminal history score . . . a period of fifteen years has elapsed since the date of discharge from or expiration of the sentence to the date of the current offense.” *State v. Washington*, 894 N.W.2d 168, 172 (Minn. App. 2017).

Crum argues that the district court should not have considered his out-of-state convictions when it calculated his criminal-history score. He states that his 1995 Illinois convictions are decayed because more than fifteen years passed before his 2014 offense. However, as the sentencing guidelines prescribe, it is not the year of the conviction that matters but instead the date of discharge or expiration of the sentence. Minn. Sent. Guidelines 2.B.1.c. The expiration date of Crum’s prior Illinois convictions was December 17, 2001. Thus, his current 2014 offense fell within fifteen years of 2001, and his prior convictions may be considered when computing his criminal-history score. Further, even if Crum urged this court to consider his parole date in 2000, the fifteen-year time bar still

does not apply. Crum's Illinois convictions were not decayed and the record supports the finding that his criminal-history score was 10 points.

Affirmed.