

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1005**

State of Minnesota,
Respondent,

vs.

Devontre Jordan Vann,
Appellant.

**Filed March 25, 2019
Affirmed
Hooten, Judge**

Ramsey County District Court
File No. 62-CR-17-4174

Keith Ellison, Attorney General, St. Paul, Minnesota; and

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

Charles F. Clippert, St. Paul, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Reyes, Judge; and Reilly,
Judge.

UNPUBLISHED OPINION

HOOTEN, Judge

Appellant participated in a brutal rape and robbery involving multiple victims. He
pleaded guilty and was sentenced in accordance with his plea agreement. Appellant now

asks this court to reduce his sentence because he claims that it unduly exaggerates the criminality of his conduct. We affirm.

FACTS

This appeal arises from a brutal rape and robbery of a group of teenagers in mid-2017. The group consisted of four teenagers, two girls and two boys, ranging in ages 15 to 18. They were attacked by appellant and three or four other individuals around 11:15 p.m. at Harriet Island in St. Paul. All four of the victims were held at gunpoint and threatened with death if they did not comply with the attackers' demands. The two girls were each sexually penetrated multiple times by multiple assailants. The assailants also robbed all four victims, taking a small amount of cash and each of their cell phones. Appellant covered his face during the attack. To facilitate both the robbery and the assailants' escape, the male victims were forced to strip to their underwear. After the attack, the assailants left on foot. Three of the assailants were arrested early the following morning during an attempted robbery of a nearby gas station. A fourth assailant fled the scene of the robbery, but was arrested shortly thereafter. Appellant's three co-defendants are allegedly affiliated with local gangs.

After initially charging appellant with eight counts by complaint, the state amended the complaint to a total of 14 counts, either directly or by aiding and abetting, with: two counts of criminal sexual conduct in the first degree, penetration by means of creating fear of great bodily harm in violation of Minn. Stat. § 609.342, subd. 1(d) (2016); four counts of crime committed for the benefit of a gang in violation of Minn. Stat. § 609.229, subd. 2 (2016); four counts of aggravated robbery in the first degree in violation of Minn. Stat.

§ 609.245, subd. 1 (2016); and four counts of kidnapping to facilitate felony or flight in violation of Minn. Stat. § 609.25, subd. 1(2) (2016).

While appellant claimed innocence, the evidence against him that the state could have presented at trial was strong. The evidence included: DNA evidence sampled from appellant's genital area immediately after the arrest excluding 99.98 percent of the population but not either of the female victims; the victims' expected testimony identifying appellant as one of the assailants; appellant's post-*Miranda* statement where he admitted to receiving oral sex from one of the victims, though he claimed it was consensual; photographs and physical evidence of the items the assailants took at gunpoint; the female victims' expected testimony about being made to perform sexual acts at gunpoint; appellant's fingerprint found in the car where the rapes occurred; one of the male victims' expected testimony that he witnessed appellant sexually penetrate both of the female victims; video posted to social media shortly before the assault showing appellant with the other assailants with footage of the firearm that the victims would later identify as "looking just like the gun" that was used in the rape and robbery; and finally footage of another video on YouTube showing appellant in the background—posted shortly before the rape and robbery—of one of the other assailants rapping about robbing people.

In exchange for the state dismissing 10 of the 14 counts, appellant submitted an *Alford* plea¹ on the remaining four counts. These consisted of two counts of first-degree

¹ An "*Alford* plea" refers to a guilty plea where a defendant agrees to plead guilty to a charge based on a belief that a jury would convict him, while still maintaining actual innocence before the court. *State v. Theis*, 742 N.W.2d 643, 647 (Minn. 2007) (citing *North Carolina v. Alford*, 400 U.S. 25, 38, 91 S. Ct. 160, 167–68 (1970)).

criminal sexual conduct and two counts of first-degree aggravated robbery. Because these charges included multiple victims, the plea agreement called for the sentences for the two aggravated-robbery charges and one of the criminal sexual conduct charges to be served consecutively, for a total of 270 months, while the sentence for the remaining criminal sexual conduct charge (of 201 months) would be served concurrently. This appeal follows.

D E C I S I O N

Appellant argues that “the imposition of multiple consecutive sentences” makes his total prison sentence “excessive.” The state argues that appellant’s arguments fail on their merits, but that, “At the risk of stating the obvious, appellant’s sentence should be upheld as an initial matter because he specifically negotiated and agreed to it.”

Minn. Stat. § 609.035, subd. 1 (2016) provides that when “a person’s conduct constitutes more than one offense . . . , the person may be punished for only one of the offenses.” The purpose of this statute is “to protect against exaggerating the criminality of a person’s conduct and to make both punishment and prosecution commensurate with culpability.” *State ex rel. Stangvik v. Tahash*, 161 N.W.2d 667, 672 (Minn. 1968). There is an exception to this statute when multiple victims are involved in a single behavioral incident. *State v. Whittaker*, 568 N.W.2d 440, 453 (Minn. 1997). “Under the multiple-victim exception, courts are not prevented from giving a defendant multiple sentences for multiple crimes arising out of a single behavioral incident if: (1) the crimes affect multiple victims; and (2) multiple 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).

Appellant “requests that this Court review his sentence to determine whether it was excessive and consistent with statutory grounds.” The plea agreement only called for the three lesser charges to be served consecutively. Were all four counts sentenced consecutively, appellant would have received a 471-month sentence.

Appellant makes two arguments to support his claim that his sentence unfairly exaggerates his criminality.² First, he argues that the court should compare his sentence to that of his co-defendants. Appellant received a sentence of 270 months. Of the other three individuals who have been charged in conjunction with this attack, one received a sentence of 300 months pursuant to a plea agreement, another received a sentence of 354 months following a jury trial that resulted in a conviction on all counts, and there has not yet been a disposition of the final co-defendant’s charges.³

Appellant argues that he had a “limited role” in the attack. But he does not develop this argument or explain how his role was “limited” when the evidence shows that appellant concealed his face during the attack and the DNA evidence shows that he sexually penetrated both female victims.

It is unclear how it could possibly be that appellant’s sentence of 270 months unfairly exaggerates the criminality of his participation in the brutal rape and robbery of four victims. Appellant has received significantly less prison time than the other

² Appellant pleaded guilty to four charges, each of which involved a different victim. Appellant does not challenge that the first element of *Ferguson*—that there were multiple victims—is met.

³ The final co-defendant was a juvenile at the time of the offense. Likely because the state sought to certify him as an adult, this defendant’s matter is still ongoing.

defendants who have been sentenced. And appellant has failed to establish that his role was somehow limited.

Appellant also argues that his sentence should be reduced based on a report that opined that he was gullible and naive. But appellant has failed to give this court any legal authority that would support a conclusion that such an opinion makes the defendant's conduct so much less culpable that we should actually reverse his sentence, especially given that he specifically negotiated for the sentence he received.

Furthermore, the report that appellant relies upon does not appear to reduce the criminality of his conduct. While the report's author did opine that appellant was gullible, the report established:

He did participate in the rape of the victims and apparently tried to cover his face or identity in the process. . . . By his own account, he was experiencing positive emotions in anticipation of sexual gratification when he forced the Victim to perform oral sex on him. . . . He has a history of getting caught up in aggressive behavior when with his friends such as when he was involved in a riot in school.

When considered as a whole, the report does not support reducing appellant's sentence.

Based upon these arguments, and the strong evidence supporting his participation in the commission of these brutal crimes, we conclude that appellant has failed to establish that his sentence unfairly exaggerates the criminality of his conduct.

Affirmed.