

*This opinion will be unpublished and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
A18-1689**

Jose Armando Padilla, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed July 8, 2019
Affirmed in part, reversed in part, and remanded
Ross, Judge**

Kandiyohi County District Court
File No. 34-CR-05-1276

Jose Armando Padilla, Bayport, Minnesota (pro se appellant)

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

Shane D. Baker, Kandiyohi County Attorney, Aaron P. Welch, Assistant County Attorney,
Willmar, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Larkin, Judge; and Bratvold,
Judge.

UNPUBLISHED OPINION

ROSS, Judge

Jose Padilla was convicted of and sentenced for receiving stolen property, engaging
in a drive-by shooting at both an unoccupied and an occupied building, and assault. Padilla
appeals from the district court's order summarily denying his motion for a corrected

sentence, arguing that the district court erred by not considering his arguments. Because we have previously decided that Padilla can be sentenced for both drive-by shooting and assault, we affirm in part. But we reverse in part and remand for the district court to address and decide whether, under Minnesota Rule of Criminal Procedure 27.03, subdivision 9, Padilla may now challenge his sentence for receiving stolen property after having previously challenged his sentence on other grounds.

FACTS

In 2005 Willmar police investigated reports of a drive-by shooting of one occupied and one unoccupied trailer home. Officers found a woman inside one of the trailers, shot. Other officers stopped a blue minivan that matched a description a caller had given. Two guns and ammunition were inside the van. Officers arrested Jose Padilla, a passenger in the van, and the state charged him with one count of second-degree attempted murder, three counts of drive-by shooting, and one count of first-degree assault. The state later added a second count of second-degree attempted murder, dropped a drive-by-shooting count, and added a count of receiving stolen property after learning that one of the firearms had been stolen. A jury found Padilla guilty on all counts and the district court sentenced him. Padilla appealed his attempted-murder convictions, and we reversed those convictions. *State v. Padilla*, No. A06-446, 2007 WL 1746746, at *1–*2 (Minn. App. Jun. 19, 2007).

Padilla has challenged his convictions and sentences multiple times. We have addressed one of his sentencing arguments, holding that the district court could sentence him for both drive-by shooting and assault because of the multiple-victim rule. *State v. Padilla*, No. A08-0224, 2009 WL 749171, at *1–*2 (Minn. App. Mar. 24, 2009), *review*

denied (Minn. May 27, 2009). In his most recent motion to correct his sentence, Padilla again argued that he could not be sentenced for both drive-by shooting of an occupied building and assault because they both involved the same victim and they were part of the same behavioral incident. But he also argued, apparently for the first time, that he could not be sentenced for receiving stolen property because it was part of the same behavioral incident as his other convictions. The district court denied Padilla's request for relief.

Padilla appeals.

D E C I S I O N

Padilla argues that the district court erred by summarily denying his motion to correct his sentence. We evaluate a district court's decision to deny a motion to correct a sentence for abuse of discretion, reviewing legal conclusions *de novo* and factual findings for clear error. *Townsend v. State*, 834 N.W.2d 736, 738 (Minn. 2013).

We observe that Padilla's argument that he cannot be sentenced for both drive-by shooting of an occupied building and first-degree assault fails under the law-of-the-case doctrine. A district court may deny a successive petition for relief if the issue raised was previously decided by an appellate court in the same case. Minn. Stat. § 590.04, subd. 3 (2018). We held in a prior appeal that Padilla could be sentenced for both drive-by shooting of an occupied building and assault under the multiple-victims exception. *Padilla*, 2009 WL 749171, at *1–*2. Under the law-of-the-case doctrine, the holding stands.

But the district court overlooked Padilla's argument that he could not be sentenced on his receiving-stolen-property conviction. The district court rejected Padilla's motion based on *State v. Knaffla*, 243 N.W.2d 737, 741 (Minn. 1976), which bars a defendant from

raising an issue in a postconviction petition if the defendant has already raised the issue in a direct appeal or knew of the issue but failed to raise it. The district court did not address how *Knaffla* applies to a motion to correct a sentence under Minnesota Rule of Criminal procedure 27.03, subdivision 9. A motion to correct a sentence under that rule is procedurally distinct from a postconviction petition filed under Minnesota Statutes, section 590.01, subdivision 1 (2018). *Reynolds v. State*, 888 N.W.2d 125, 132–33 (Minn. 2016). Neither this court nor the supreme court has expressly decided whether *Knaffla* bars a defendant from raising successive but substantively distinct challenges to his sentence.

There may be persuasive arguments for and against applying *Knaffla* to bar multiple motions to correct a sentence, but because the issue was not addressed by the district court or adequately briefed by either party on appeal, we offer no opinion on whether or to what extent a *Knaffla* forfeiture theory applies to challenges raised under rule 27.03. We therefore reverse and remand for the district court to properly address the issue. On remand, the district court may, in its discretion, request additional argument from the parties.

Affirmed in part, reversed in part, and remanded.