

*This opinion will be unpublished and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
A19-0855**

Daniel Lynn Conley, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed February 3, 2020
Affirmed
Connolly, Judge**

Ramsey County District Court
File No. 62-K8-03-001055

Daniel L. Conley, Lino Lakes, Minnesota (pro se appellant)

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

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

Considered and decided by Bratvold, Presiding Judge; Worke, Judge; and Connolly,
Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Pro se appellant challenges the district court's denial of his motion to correct his sentence. Because the district court did not abuse its discretion when it determined that appellant's sentence was legally authorized, we affirm.

FACTS

In 2003, a Ramsey County jury found appellant Daniel Conley guilty of first-degree criminal sexual conduct, third-degree criminal sexual conduct, soliciting to practice prostitution, and second-degree assault. The state moved for an upward durational departure from the presumptive 158-month prison sentence on the first-degree criminal sexual conduct conviction based on the existence of aggravating factors. The sentencing judge agreed and imposed a 300-month prison sentence, which included a five-year conditional-release term. Appellant also received an 18-month consecutive prison sentence on the prostitution conviction and a 36-month consecutive prison sentence on the second-degree assault conviction.

Since then, appellant's case has had a long procedural history, detailed in this court's most recent opinion affirming his sentence. *See State v. Conley*, No. A11-0278, 2012 WL 360385 (Minn. App. Feb. 6, 2012), *review denied* (Minn. Apr. 25, 2012). After two remands from this court, the respective sentencing juries found that one or more

aggravating factors existed. *Id.* at *1-2.¹ The sentencing judge thus reimposed a 300-month sentence on appellant's first-degree criminal sexual conduct conviction. *Id.* at *3.

In November 2018, appellant moved to correct his sentence under Minn. R. Crim. P. 27.03, subd. 9. The district court denied this motion. Although appellant did not timely file this appeal, we accepted jurisdiction.

DECISION

Appellant argues both that the district court erred in denying his motion to correct his sentence and that the Minnesota Department of Corrections (DOC) has unlawfully administered his conditional-release term.

I. Appellant's challenge to the DOC's administration of his sentence is not properly before us.²

To begin, we consider appellant's arguments on the DOC's administration of his sentence. This appeal stems from the denial of appellant's motion to correct his sentence under Minn. R. Crim. P. 27.03, subd. 9 (allowing a court, at any time, to correct a sentence not authorized by law).

¹ These remands followed *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004), and *State v. Vance*, 765 N.W.2d 390 (Minn. 2009). Appellant later petitioned for a writ of habeas corpus in federal court. The federal district court dismissed his petition with prejudice. *Conley v. United States*, Civ. No. 13-1069, 2013 WL 5567453, at *12 (D. Minn. Oct. 9, 2013) (order adopting R&R).

² We note that neither the state nor the district court addressed this issue. But whether appellant used the proper procedure affects our ability to consider his arguments. "We may affirm the district court on any ground, including one not relied on by the district court." *State v. Fellego*, 819 N.W.2d 700, 707 (Minn. App. 2012), *review denied* (Minn. Oct. 16, 2012).

Appellant asserts first that the DOC unlawfully extended his conditional-release term. In particular, appellant highlights a 2013 DOC memorandum discussing a policy change to the administration of certain offenders' conditional-release terms. Under this policy change, certain offenders, like appellant, now serve their conditional-release term consecutive to, rather than concurrent with, their supervised-release term. Second, appellant contends that the DOC should release him from prison to serve his five-year conditional-release term after he serves two-thirds of his 300-month criminal sexual conduct sentence before serving the imprisonment portion of his other two sentences.

These arguments share a common flaw: they relate to the DOC's administration of appellant's sentence, not to the sentence's legality. The supreme court's decision in *State v. Schnagl* is instructive. 859 N.W.2d 297 (Minn. 2015). There, Schnagl received a mandatory five-year conditional-release term after a conviction for first-degree criminal sexual conduct. *Id.* at 299. Following his release from prison, Schnagl twice violated his supervised-release conditions, leading to the revocation of his supervised release. *Id.* Once Schnagl's conditional-release term began, the commissioner informed him that he would not receive credit for the time he spent in custody for his supervised-release violations. *Id.* Schnagl challenged the extension of his conditional-release date under Minn. R. Crim. P. 27.03, subd. 9. *Id.* at 299-300. The supreme court held that rule 27.03 does not serve as the proper method for challenges to the DOC's administration of a sentence. *Id.* at 303.

Here too, appellant challenges the DOC's administration of his conditional-release term under Minn. R. Crim. P. 27.03, subd. 9, in particular its 2013 policy change. But the DOC's policy change affecting appellant's conditional-release term was an administrative

decision. *See State v. Schwartz*, 628 N.W.2d 134, 140-41 (Minn. 2001) (observing that statutes grant the commissioner authority to administer conditional release).³

In sum, we hold that appellant’s challenge to the DOC’s administration of his sentence is not properly before us. *See Schnagl*, 859 N.W.2d at 303-04; *State v. Andersen*, 871 N.W.2d 910, 915 (Minn. 2015) (explaining that “a motion in a criminal case is not the proper procedural vehicle to seek review of the administrative actions of the DOC”).

II. The district court did not abuse its discretion by denying appellant’s motion to correct his sentence.

A district court’s denial of a motion to correct a sentence is reviewed for an abuse of discretion. *Munt v. State*, 920 N.W.2d 410, 414 (Minn. 2018). “A postconviction court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record.” *Andersen v. State*, 913 N.W.2d 417, 422 (Minn. 2018) (quotation omitted). We interpret Minnesota’s statutes and rules of criminal procedure de novo. *Reynolds*, 888 N.W.2d at 129-30.

As noted above, Minn. R. Crim. P. 27.03, subd. 9, allows a court to correct an unauthorized sentence at any time. “A sentence is unauthorized [under Minn. R. Crim. P. 27.03, subd. 9,] if it is contrary to law or applicable statutes.” *Munt*, 920 N.W.2d at 414 (quotation omitted). To that end, we must consider the legality of appellant’s sentence.

³ An offender may use Minn. R. Crim. P. 27.03, subd. 9, to correct a district court’s imposition of an unlawful conditional-release term when the district court has originally imposed an incorrect sentence. *See, e.g., Reynolds v. State*, 888 N.W.2d 125, 130 (Minn. 2016). As discussed below, the sentencing court here correctly imposed a five-year conditional-release term.

Sentences for persons convicted of felony crimes in Minnesota after 1993 have two components: “(1) a specified minimum term of imprisonment that is equivalent to two-thirds of the executed sentence; and (2) a specified maximum supervised release term that is equal to one-third of the executed sentence.” Minn. Stat. § 244.101, subd. 1 (2018); *see also State ex rel Ford v. Schnell*, 933 N.W.2d 393, 396-97 (Minn. 2019). Yet appellant’s sex offense also required the imposition of a five-year conditional-release term under Minn. Stat. § 609.109, subd. 7(a) (2002), the statute in effect at the time of his crime.

We conclude that appellant’s sentence is legally authorized. Appellant received consecutive sentences. For consecutive sentences, “[t]he institutional records officer will aggregate the separate durations into a single fixed sentence, as well as aggregate the terms of imprisonment and the periods of supervised release.” Minn. Sent. Guidelines cmt. II.F.02 (2002). Appellant’s sentence totals 354 months.⁴ This means that he becomes eligible to serve the supervised release portion of his sentence after serving two-thirds of that time, or 236 months in prison.⁵ The district court also properly imposed a five-year conditional-release term under Minn. Stat. § 609.109, subd. 7(a). This sentence follows the law and applicable statutes. *See Munt*, 920 N.W.2d at 414.

Appellant offers three additional arguments for reversal. First, he contends that the district court unlawfully lengthened his conditional-release term from five years to ten years because its order stated “[appellant] is subject to a ten-year conditional release period.” This statement was incorrect. But the order also stated that appellant’s initial

⁴ 300 months + 18 months + 36 months = 354 months.

⁵ 200 months + 12 months + 24 months = 236 months.

sentence included a five-year conditional-release term, and because Minn. Stat. § 609.109, subd. 7(a), controlled appellant's conditional-release term, his conditional-release term remains five years.

Second, appellant posits that a statement from the sentencing judge invalidates his sentence. When pronouncing appellant's most recent sentence in 2010, the judge expressed her understanding that conditional release would begin after appellant served the two-thirds imprisonment portion of his sentence. Appellant now claims his sentence is invalid because the DOC will administer his conditional-release term consecutive to his supervised-release term. But the sentencing court imposed the statutorily required conditional-release term. *See* Minn. Stat. § 609.109, subd. 7(a). While the DOC later changed its policy on the administration of conditional release, this policy change does not affect the legality of the originally imposed sentence.

Lastly, appellant raises a separation of powers issue, arguing that the district court had a duty to prevent the DOC from modifying his sentence. For this argument, he relies on *State v. Ford*, 539 N.W.2d 214 (Minn. 1995). *Ford* held that the district court erred when it delegated its sentencing authority to the DOC to modify an offender's sentence. *Id.* at 230. But *Ford* is distinguishable because here, the sentencing judge did not authorize the DOC to modify appellant's sentence. Indeed, the record shows that the DOC independently changed its conditional-release policy and did not encroach on the judiciary's sentencing power.

Affirmed.