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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1828**

Robert Lee Crum, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed May 26, 2020
Affirmed
Johnson, Judge**

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

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

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

Mark A. Ostrem, Olmsted County Attorney, Geoffrey A. Hjerleid, Assistant County Attorney, Rochester, Minnesota (for respondent)

Considered and decided by Slieter, Presiding Judge; Johnson, Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

Robert Lee Crum appeals from the denial of his motion to correct his 128-month prison sentence. The district court denied the motion on the ground that it raised the same

issue that Crum had raised in a prior motion to correct sentence, which this court had considered and rejected. We conclude that Crum’s second motion to correct sentence is barred by the law-of-the-case doctrine. Therefore, we affirm.

FACTS

In June 2014, the state charged Crum with six drug-related offenses based on allegations that he sold cocaine on four occasions between May 7, 2014, and June 13, 2014. An Olmsted County jury found him guilty of all six charges. The district court sentenced him to 161 months of imprisonment.

Crum pursued a direct appeal from his conviction and sentence. He argued to this court that the district court erred by denying his pre-trial motion for a continuance, which he had requested so that he could hire a private attorney. We rejected the argument and affirmed the conviction. *State v. Crum*, No. A15-1372, 2016 WL 4420691 (Minn. App. Aug. 22, 2016).

In October 2016, the supreme court granted Crum’s petition for review and stayed further proceedings pending a final disposition in two other cases. *State v. Crum*, No. A15-1372 (Minn. Oct. 26, 2016) (order). In September 2017, the supreme court vacated the stay and remanded the case to this court “for consideration of the application of section 18 of the Drug Sentencing Reform Act to petitioner’s sentence for first-degree controlled substance crime, in light of *State v. Kirby*, 899 N.W.2d 485 (Minn. 2017).” *State v. Crum*, No. A15-1372 (Minn. Sept. 19, 2017) (order). We reversed the district court’s sentencing order and remanded the case for resentencing. *State v. Crum*, No. A15-1372 (Minn. App. Dec. 14, 2017) (order op.).

On remand, Crum challenged the district court's calculation of his criminal-history score. In February 2018, the district court sentenced him to 128 months of imprisonment. Crum did not seek appellate review of the amended sentencing order.

In April 2018, Crum filed a *pro se* motion to correct his sentence pursuant to rule 27.03, subdivision 9, of the rules of criminal procedure. The district court denied the motion on the ground that the issues raised by the motion had been considered and rejected. Crum appealed. This court construed Crum's *pro se* appellate brief to make one argument: that the district court miscalculated his criminal-history score by including prior Illinois convictions from 1995, which, he asserted, had decayed. We affirmed on the ground that the three Illinois convictions had not decayed because Crum committed his Olmsted County offenses within 15 years of the expiration of the Illinois sentences. *Crum v. State*, No. A18-0872, 2019 WL 115332, at *2 (Minn. App. Jan. 7, 2019) (citing Minn. Sent. Guidelines 2.B.1.c (2016)).

In August 2019, Crum filed a second *pro se* motion to correct his sentence pursuant to rule 27.03, subdivision 9. Crum again argued that the district court miscalculated his criminal-history score by including prior Illinois convictions from 1995. The district court filed a short order in which it denied the motion. The district court stated that the motion "does not raise any new issues" and that "Defendant's arguments have already been rejected by the court several times and by the court of appeals." The district court further stated, "Defendant is not entitled to seek post-conviction relief on the same grounds as an earlier motion that was appealed and affirmed." Crum appeals.

DECISION

Crum argues that the district court erred by denying his second motion to correct sentence pursuant to rule 27.03, subdivision 9. He contends that the district court erred by construing his motion as a petition for post-conviction relief and by impliedly reasoning that it is procedurally barred by *State v. Knaffla*, 243 N.W.2d 737 (Minn. 1976). He also reiterates his argument that the district court miscalculated his criminal-history score by relying on prior convictions from Illinois. In response, the state argues that the district court did not err by dismissing Crum’s motion because his “arguments had been raised and rejected by the Court several times and by the court of appeals.”

A.

A district court “may at any time correct a sentence not authorized by law.” Minn. R. Crim. P. 27.03, subd. 9. An offender may obtain a correction of his or her sentence by filing a motion to correct sentence. *See, e.g., Townsend v. State*, 834 N.W.2d 736, 739 (Minn. 2013); *Johnson v. State*, 801 N.W.2d 173, 175 (Minn. 2011). An offender also may challenge his or her sentence in a petition for post-conviction relief. Minn. Stat. § 590.01, subd. 1(1) (2018). This court has stated that the “remedy in rule 27.03, subdivision 9, . . . coexist[s] with the postconviction remedy.” *Vazquez v. State*, 822 N.W.2d 313, 317 (Minn. App. 2012).

The two means of challenging a sentence are subject to different procedural requirements. For example, an offender may not file a post-conviction petition to assert a claim that previously was raised on direct appeal or that could have been but was not raised on direct appeal. *Knaffla*, 243 N.W.2d at 741; *see also Quick v. State*, 757 N.W.2d 278,

280 (Minn. 2008). Similarly, “matters raised or known but not raised in an earlier petition for postconviction relief will generally not be considered in subsequent petitions for postconviction relief.” *Powers v. State*, 731 N.W.2d 499, 501 (Minn. 2007). But a motion to correct sentence filed pursuant to rule 27.03, subdivision 9, is not barred by the *Knaffla* doctrine. *State v. Amundson*, 828 N.W.2d 747, 751-52 (Minn. App. 2013); cf. *Townsend*, 834 N.W.2d at 739 (“We have not yet addressed whether . . . the procedural bar under *Knaffla* appl[ies] to a motion to correct a sentence under rule 27.03, subdivision 9.”).

Crum is correct that he invoked rule 27.03, subdivision 9. His filing clearly states that he moved “for correction of unlawful sentence pursuant to Minn. R. Crim. P. 27.03, subd. 9.” The district court referred to Crum’s filing as a “post-conviction motion pursuant to Minn. R. Crim. P. 27.03, subd. 9.” The district court cited *Powers* as the legal basis for its dismissal of Crum’s motion. In that case, *Powers* filed a motion to correct sentence pursuant to rule 27.03, subdivision 9, but the district court treated the motion as a post-conviction petition. *Powers*, 731 N.W.2d at 500-01 n.2. *Powers* did not challenge that treatment on appeal. *Id.* For that reason, the supreme court applied the *Knaffla* doctrine and concluded that *Powers*’s petition was procedurally barred. *Id.* at 501. But in this case, the district court noted that Crum was relying on rule 27.03, subdivision 9, and Crum has consistently described his request as a motion to correct sentence. Consequently, the *Knaffla* doctrine and *Powers* do not apply.

B.

As noted above, the state argues that the district court did not err by dismissing Crum’s motion because he previously had made the same argument to both the district

court and this court and because this court had rejected the argument on the merits. Indeed, in our opinion affirming the district court's denial of Crum's first motion to correct sentence pursuant to rule 27.03, subdivision 9, we addressed and resolved Crum's argument as follows:

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.

Crum, 2019 WL 115332, at *2. The argument that we addressed and resolved in our prior opinion is, in essence, the same argument that Crum asserted in his second motion to correct sentence pursuant to rule 27.03, subdivision 9, and the same argument that he now asserts on appeal.

“The doctrine of law of the case is a rule of practice followed between the Minnesota appellate courts and the lower courts.” *Loo v. Loo*, 520 N.W.2d 740, 743-44 n.1 (Minn. 1994). “It is a discretionary doctrine developed by the appellate courts to effectuate the finality of appellate decisions.” *Id.* The doctrine applies in criminal cases as well as civil cases. *See, e.g., State v. Bailey*, 732 N.W.2d 612, 623 (Minn. 2007). The supreme court

has applied the doctrine to bar a post-conviction petition alleging a claim that previously had been considered and rejected on direct appeal. *Lynch v. State*, 749 N.W.2d 318, 321 (Minn. 2008). The supreme court also has applied the doctrine to bar a motion to correct sentence pursuant to rule 27.03, subdivision 9, on the ground that the motion raised an issue that previously had been raised and decided in a prior motion to correct sentence pursuant to rule 27.03, subdivision 9. *Townsend v. State*, 867 N.W.2d 497, 501 (Minn. 2015).

In this case, Crum filed a motion to correct sentence pursuant to rule 27.03, subdivision 9, in August 2019 in which he made an argument that he previously had made in his April 2018 motion to correct sentence pursuant to rule 27.03, subdivision 9. The district court correctly stated that Crum's August 2019 motion did "not raise any new issues" and that his argument previously had been rejected by the court of appeals. In so stating, the district court effectively recognized that it was bound by the law of the case. Thus, the district court did not err by denying Crum's second motion to correct sentence pursuant to rule 27.03, subdivision 9. *See Townsend*, 867 N.W.2d at 501.

Affirmed.