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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1980**

State of Minnesota,
Respondent,

vs.

Rashad Ramon Ivy,
Appellant.

**Filed June 29, 2020
Affirmed in part, reversed in part, and remanded
Reilly, Judge**

Ramsey County District Court
File No. 62-CR-15-4420

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

John J. Choi, Ramsey County Attorney, Alexandra Meyer, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Reilly, Judge; and Florey, Judge.

UNPUBLISHED OPINION

REILLY, Judge

In this appeal from his second resentencing for his convictions related to sex trafficking, appellant argues (1) the district court's imposition of multiple top-of-the-box,

consecutive sentences unfairly exaggerates the criminality of his conduct, (2) the district court erred in imposing separate sentences for both domestic assault and sex trafficking for one of the victims, and (3) the warrant of commitment inaccurately describes the conduct for count 7. We affirm in part, reverse in part, and remand to the district court.

FACTS

This is the third appeal brought by appellant Rashad Ramon Ivy in his sex-trafficking case. The state charged appellant with sex trafficking, prostitution, criminal sexual conduct, and domestic assault by strangulation. The facts are detailed in his first appeal, *State v. Ivy*, 902 N.W.2d 652 (Minn. App. 2017), *review denied* (Minn. Dec. 19, 2017) (*Ivy I*). The state also charged appellant's codefendants Tarris Trapps and Danika Johnson. Trapps pleaded guilty to a sex-trafficking charge and a solicitation charge, and agreed to testify against appellant. Johnson pleaded guilty to conspiracy to commit sex trafficking in the second degree and also agreed to testify against appellant.

The case proceeded to a jury trial, and the jury found appellant guilty of 10 of the 12 charged counts. The district court sentenced appellant to 700 months in prison. In his direct appeal, appellant challenged his convictions and sentences. This court affirmed his convictions, but reversed the sentences and remanded for resentencing. *Id.* at 667-68. The district court resentenced appellant to 581 months in prison. Appellant again appealed his sentences. This court again reversed and remanded for resentencing. *State v. Ivy*, No. A18-1338 (Minn. App. May 20, 2019), (*Ivy II*) *review denied* (Minn. Aug. 6, 2019).

This time the district court resentedenced appellant to 433 months in prison. The district court imposed the following sentences:¹

- Count 8 (sex trafficking): 91 months, representing a top-of-the-box sentence (presumptive range 65-91 months)
- Count 9 (sex trafficking): 57 months, representing a top-of-the-box sentence to run consecutively to count 8 (presumptive range 41 to 57 months)
- Count 10 (sex trafficking): 57 months, representing a top-of-the-box sentence to run consecutively to counts 8 and 9 (presumptive range 41 to 57 months)
- Count 5 (solicitation to practice prostitution): 57 months, representing a top-of-the-box sentence to run consecutively to counts 8, 9, 10 (presumptive range 41 to 57 months)
- Count 3 (solicitation to practice prostitution): 57 months, representing a top-of-the-box sentence to run consecutively to counts 8, 9, 10, and 5 (presumptive range 41 to 57 months)
- Count 6 (criminal sexual conduct): 57 months, representing a top-of-the-box sentence to run consecutively to counts 8, 9, 10, 5, and 3 (presumptive range 41 to 57 months)
- Count 1 (sex trafficking): 57 months, representing a top-of-the-box sentence to run consecutively to counts 8, 9, 10, 5, 3, and 6 (presumptive range 41 to 57 months)
- Count 2 (domestic assault by strangulation): 39 months, to run concurrently with counts 8, 9, 10, 5, 3, 6, and 1 (presumptive range 29-39 months after three-month custody enhancement)²

This appeal follows.

¹ The district court adjudicated appellant guilty of count 4 but did not impose a sentence because “the charge in Count 6 encompasses Count 4.” The district court adjudicated appellant guilty of count 7 (conspiracy to engage in sex trafficking) but did not impose a sentence because it was part of the same behavioral incident related to the other offenses.

² In imposing the consecutive sentences for counts 1, 3, 5, 6, 9 and 10, the district court used a criminal history score of zero as required by Minn. Sent. Guidelines 2.F.2.a(1)(ii) (2014).

DECISION

I. The district court did not unfairly exaggerate the criminality of appellant's conduct by sentencing him to multiple top-of-the-box consecutive sentences.

Appellant contends that the district court abused its discretion when it imposed multiple permissibly consecutive sentences, each at the top of the range for his sex-trafficking, solicitation, and criminal-sexual-conduct convictions. “This court will not generally review a district court’s exercise of its discretion to sentence a defendant when the sentence imposed is within the presumptive guidelines range.” *State v. Delk*, 781 N.W.2d 426, 428 (Minn. App. 2010), *review denied* (Minn. July 20, 2010). “Only in a rare case will a reviewing court reverse imposition of a presumptive sentence.” *Id.* (quotation and citation omitted).

Under the Minnesota Sentencing Guidelines, appellant’s offenses are eligible for permissive consecutive sentences. Minn. Sent. Guidelines 2.F.2.a(1)(ii). “When consecutive sentences are permissive, [appellate courts] will not reverse the imposition of such a sentence absent a clear abuse of discretion.” *State v. Fardan*, 773 N.W.2d 303, 322 (Minn. 2009). “We will interfere with the district court’s sentencing discretion only when the sentence is disproportionate to the offense or unfairly exaggerates the criminality of the defendant’s conduct.” *State v. Ali*, 895 N.W.2d 237, 247 (Minn. 2017) (quotation and citation omitted).

A. Appellant’s sentences were not disproportionate compared to his accomplices.

Appellant first contends that the district court abused its discretion by sentencing him to multiple top-of-the-box sentences because he received “a drastically longer sentence

than his accomplices” Johnson and Trapps. This court may compare the sentence a defendant received to the sentence his codefendant received. *See State v. Vazquez*, 330 N.W.2d 110, 111-12 (Minn. 1983). But “[a] defendant is not entitled to reduction in his sentence merely because a co-defendant or accomplice has been convicted of a lesser offense or received a lesser sentence.” *State v. Starnes*, 396 N.W.2d 676, 681 (Minn. App. 1986).

Trapps pleaded guilty to a sex-trafficking charge and a solicitation charge. He entered into an agreement with the state to testify against appellant and, in exchange, the state dismissed additional charges against him. The district court sentenced Trapps to 82 months’ imprisonment. Johnson pleaded guilty to conspiracy to commit sex trafficking in the second degree. Johnson also entered an agreement with the state to testify against appellant and, in exchange, she would serve a year at the workhouse, be placed on probation for seven and one-half years, and would not have to register as a sex offender. While appellant’s codefendants did receive lesser sentences, these sentences resulted from their cooperation with the state. Additionally, although Johnson assisted appellant in his sex-trafficking scheme, she was also a victim of it. Thus, it is reasonable that appellant’s codefendants received lesser sentences. We discern no abuse of discretion in the district court’s decision to impose longer sentences for appellant than his codefendants.

B. Appellant’s sentences do not unfairly exaggerate the criminality of his conduct.

Appellant next contends that the sentences for the offenses involving four of the victims exaggerate the criminality of his conduct because those crimes were less serious

than the typical offenses. Appellant points to the testimony of the state's sex-trafficking expert to support his argument. The state's expert testified that sex traffickers sometimes use physical violence and "almost always us[e] verbal abuse to control the girls." Appellant argues that his conduct as to at least four of the victims is less serious than the typical offense because he did not verbally or physically abuse those four victims.

The state's expert, who works for Homeland Security Investigations as a federal agent investigating human trafficking cases, testified generally about sex trafficking and how it operates. The expert explained that she did not know any of the specific facts of appellant's offenses and had not read any of the police reports. Thus, she did not address the particular seriousness of this case or of the offenses against each individual victim.

This case involved multiple victims who were either solicited to engage in prostitution or did engage in prostitution at appellant's request. This court explained before that appellant ran a criminal enterprise that trafficked women in the sex trade:

[A]ppellant sought to recruit vulnerable women into prostitution by luring them to his apartment under the guise of love and the promise of material possessions. He also sought to have more than one woman living at his apartment with the goal of creating a "family" atmosphere, which would be enticing to women, who lacked a strong family structure. Appellant would then convince or coerce these women to become involved in prostitution, direct Johnson to create advertisements for them on Backpage, instruct them in the rules of appellant's prostitution "game," and enforce the "rules" of appellant's prostitution "game" with the subtle, and in the case of [one victim], not so subtle threats of violence.

Ivy I, 902 N.W.2d at 659-60.

We recognize that the district court “sits with a unique perspective on all stages of a case, including sentencing, and the [district court] judge is in the best position to evaluate the offender’s conduct and weigh sentencing options.” *State v. Hough*, 585 N.W.2d 393, 397 (Minn. 1998). The same district court judge presided over appellant’s jury trial and reviewed appellant’s presentence investigation report before sentencing him. In that report, the writer recommended consecutive sentencing based on “the seriousness of sex trafficking cases, the effect on the community, the overall safety of vulnerable women, the lack of responsibility taken by [appellant], the harmful impact to the numerous victims and their families, and the level of violence used.” We are not persuaded that appellant’s conduct was less serious than that involved in the typical sex-trafficking or solicitation offense. The district court did not abuse its discretion when it sentenced appellant to multiple top-of-the-box consecutive sentences. Moreover, because the consecutive sentences were permissive, the district court was not required to provide a reason for their imposition. But given the concerns about the effect on the community, we conclude that the consecutive sentences did not unfairly exaggerate the criminality of appellant’s conduct.

II. The district court erroneously imposed sentences on two offenses that arose from the same behavioral incident and involved the same victim.

The parties agree that appellant should not have been sentenced on both counts 1 (sex trafficking) and 2 (domestic assault by strangulation) because the offenses arose out of the same behavioral incident and involved the same victim. We also agree. “[I]f a defendant commits multiple offenses against the same victim during a single behavioral

incident, Minn. Stat. § 609.035 provides that the defendant may be sentenced for only one of those offenses.” *State v. Bookwalter*, 541 N.W.2d 290, 293 (Minn. 1995). “Under Minn. Stat. § 609.035 . . . a sentencing court cannot impose multiple sentences (even concurrent sentences) for multiple offenses committed against the same victim in a single behavioral incident.” *State v. Herberg*, 324 N.W.2d 346, 348 (Minn. 1982). “Whether multiple offenses arose out of a single behavioral incident depends on the facts and circumstances of the particular case.” *Bookwalter*, 541 N.W.2d at 294.

Counts 1 and 2 both involved the same victim, and the district court found that “the domestic assault by strangulation [count 2] was part of the same behavioral incident as it relates to Count 1.” The district court then sentenced appellant to 57 months’ imprisonment for count 1 to run consecutively to counts 8, 9, 10, 5, 3, and 6, and 39 months’ imprisonment for count 2 to run concurrently with counts 8, 9, 10, 5, 3, 6, and 1. Because counts 1 and 2 involve the same victim and the district court stated that both offenses arose from the same behavioral incident, appellant should have been sentenced for only one of the offenses and the district court erroneously imposed sentences for both. We therefore reverse appellant’s sentence on count 2 and remand with instructions to vacate the sentence and amend the warrant of commitment accordingly.

III. An offense description on the warrant of commitment is inaccurate.

Appellant argues that his warrant of commitment lists the wrong offense description for count 7, and the state agrees. Appellant’s warrant of commitment correctly reflects that for count 7 he was convicted of a crime pursuant to Minn. Stat. § 609.322, subd. 1a(4), which punishes sex trafficking of an individual. Yet the offense description for count 7 is

incorrect because it is that of Minn. Stat. § 609.322, subd. 1(a)(4), which punishes sex trafficking of an individual under the age of 18. Appellant's warrant of commitment contains an error that also must be corrected on remand.

Affirmed in part, reversed in part, and remanded.