

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1302**

State of Minnesota,
Respondent,

vs.

Billy Gene Hunt,
Appellant.

**Filed April 5, 2021
Affirmed
Jesson, Judge**

Sherburne County District Court
File No. 71-CR-17-1823

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

Kathleen A. Heaney, Sherburne County Attorney, George R. Kennedy, Assistant County Attorney, Elk River, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Richard Schmitz, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Reyes, Judge; and
Jesson, Judge.

NONPRECEDENTIAL OPINION

JESSON, Judge

After convicting appellant Billy Hunt of aggravated controlled substance crime in the first degree, the district court sentenced Hunt to a presumptive sentence of 158 months' imprisonment. Hunt now challenges the district court's calculation of his criminal-history

score, arguing that five of his prior burglary convictions—all committed at different storage units on the same day—are part of a “single behavioral incident,”¹ and that his criminal-history score should have been reduced accordingly. Because individually-owned storage units are effectively different locations, the district court did not err in classifying Hunt’s burglary convictions as multiple incidents. As a result, we affirm.

FACTS

Appellant Billy Hunt was convicted of aggravated controlled substance crime in the first degree in July 2018. Minn. Stat. § 152.021 subd. 2b(2) (2018). The district court sentenced him to 158 months’ imprisonment, which is the presumptive sentence for a criminal-history score of six or above for a severity level D9 offense. Minn. Sent. Guidelines 4.C. (2018). Hunt’s score was calculated as 16 based on 17 prior Iowa convictions. Hunt did not challenge his criminal-history score at the original sentencing hearing.

Hunt appealed, challenging the search and the calculation of his criminal-history score. *State v. Hunt*, No. A19-0336, 2020 WL 522167, at *1 (Minn. App. Feb. 3, 2020), *review denied* (Minn. Apr. 14, 2020). With regard to the score, Hunt disputed the inclusion of the Iowa convictions in the calculation of his criminal-history score. *Id.* at *3-4. This court affirmed the conviction but remanded the case for resentencing due to an insufficient record. *Id.* at *4.

¹ “Legal authorities use the terms ‘single course of conduct’ and ‘single behavioral incident’ interchangeably.” Minn. Sent. Guidelines cmt. 2.B.116 (2018).

On remand, Hunt argued that his criminal-history score should be reduced from 16 to four, which would ultimately reduce his sentence from 158 months to 134 months. The district court concluded that Hunt had at least six felony points from Iowa convictions. These convictions and offense dates were: (1) one conviction of third-degree burglary on October 17, 2007; (2) one conviction of third-degree burglary on May 9, 2008; (3) five convictions of third-degree burglary on May 27, 2008; and (4) one conviction of third-degree burglary on March 29, 2011.

Specifically at issue in this case are the May 27 burglary convictions. The first conviction was for the burglary of a storage unit in Williamsburg. Hunt admitted to stealing power tools and a projector from the Williamsburg unit. The next four convictions were for burglaries of four storage units at Deneve Storage near Victor. Each unit had a separate renter. Surveillance video showed Hunt forcing open each storage unit, going into each storage unit, and taking property—a bicycle and a computer—from just one of those units. Hunt did not take anything from the three other units he entered.

The district court determined that the five burglaries on May 27, 2008, were to be calculated as separate crimes because the evidence showed that Hunt's actions involved burglaries of separate storage units rented by different victims. Each of Hunt's convictions was calculated as one point, for a total criminal-history score of eight. Based on this calculation, the district court imposed the presumptive 158-month sentence for a severity level D9 offense with a criminal-history score of six or above.

Hunt appeals.

DECISION

Hunt argues that the district court abused its discretion when it sentenced him with a criminal-history score of more than six. He asserts that because his five May 2008 burglary convictions involved a single behavioral incident, only two of his burglary convictions can be counted in his criminal-history score under the Minnesota Sentencing Guidelines. *State v. Stillday*, 646 N.W.2d 557, 561 (Minn. App. 2002), *review denied* (Minn. Aug. 20, 2002). Because Hunt concedes that the score for the three other burglary convictions was properly assigned for the other three burglary convictions, the issue before us is whether the district court abused its discretion in determining that Hunt should be assigned five points—one for each of the five burglaries on May 27.

To consider this issue, we turn first to the sentencing guidelines. The guidelines determine presumptive sentences based on the severity of an offense and the offender's criminal-history score. Minn. Sent. Guidelines 2.B.1 (2018). An offender is assigned a particular score, typically one half-point or one point, for every felony conviction for which a felony sentence was stayed or imposed not including the current sentencing. Minn. Sent. Guidelines 2.B.1 & cmt. 2.B.101 (2018). Criminal-history score calculations count out-of-state convictions as felonies if the same crime would be defined as a felony in Minnesota, and the defendant received a sentence that is equivalent to a felony-level sentence in Minnesota. Minn. Sent. Guidelines 2.B.5.b (2018).²

² The Iowa burglaries are felonies under the Minnesota Sentencing Guidelines: (1) they are the equivalent of burglary in the third degree, a felony violation of Minnesota Statutes section 609.582, subdivision 3 (2018); and (2) Hunt received felony-level sentences. *See* Minn. Stat. § 609.02, subd. 2 (2018).

But if an offender has multiple offenses occurring in a “single course of conduct” in which state law prohibits the offender from being sentenced on more than one offense, “only the offense at the highest severity level should be considered.” Minn. Sent. Guidelines cmt. 2.B.107 (2018). The state has the burden to establish a defendant’s criminal history. *State v. Edmison*, 379 N.W.2d 85, 87 n.1 (Minn. 1985). We review a district court’s criminal-history score calculation for an abuse of discretion. *State v. Edwards*, 900 N.W.2d 722, 727 (Minn. App. 2017), *aff’d mem.*, 909 N.W.2d 594 (Minn. 2018). But when the issue involves the proper interpretation of the sentencing guidelines, the issue is a question of law that the appellate courts review de novo. *State v. Maurstad*, 733 N.W.2d 141, 148 (Minn. 2007).

With these principles in mind, we consider whether Hunt’s Iowa convictions constitute a single behavioral incident. To do so, we consider factors such as (1) time and place, and (2) whether the offenses were “motivated by a desire to obtain a single criminal objective.” *State v. Gould*, 562 N.W.2d 518, 521 (Minn. 1997). For time-and-place factors, we determine whether the acts occurred at “substantially the same time and place and arise out of a continuous and uninterrupted course of conduct.” *State v. Johnson*, 141 N.W.2d 517, 525 (Minn. 1966). But, merely because the “crimes were committed within a short time span and within the same area does not mean the single behavioral incident prohibition is violated.” *State v. Thomas*, 352 N.W.2d 526, 529 (Minn. App. 1984), *review denied* (Minn. Oct. 11, 1984). As for the remaining factor, “Broad statements of criminal purpose do not unify separate acts” into a single criminal objective. *State v. Jones*, 848 N.W.2d 528, 533 (Minn. 2014).

Looking first at the time-and-place factors, Hunt’s burglaries happened on the same day, but not in the same location. One of the five burglaries occurred in Williamsburg, a town far from where the other four burglaries took place at Deneve Storage. To discern whether different storage units in the Deneve Storage complex are also different locations, we turn to *State v. Drljic*, 876 N.W.2d 350 (Minn. App. 2016). In that case, the defendant broke through a wall and sealed door of businesses that were “physically connected as part of one building.” *Drljic*, 876 N.W.2d at 354. Yet we held the businesses were “functionally separate” and treated them as different locations. *Id.* Similarly, in this case, although the units were physically in the same building, Hunt had to cut the padlock off of each door in order to access them. Following the logic of *Drljic*, we conclude that the time-and-place factors are not in Hunt’s favor.

As for the overall criminal objective, Hunt only took a few items from the storage units. In three of the units he opened, he did not take anything at all. This demonstrates he did not have the same criminal objective in each unit. Removing different items from each location is considered a different criminal purpose. *Id.* Based on the items he took—including power tools and a projector from one unit, and a bicycle and computer from another—Hunt’s burglaries do not fit a singular criminal objective. This factor is also not in Hunt’s favor.

To convince us otherwise, Hunt contends that he was on a “crime spree,” which should be construed as a unifying criminal purpose. *Langdon v. State*, 375 N.W.2d 474, 476 (Minn. 1985) (characterizing trying to get as much money as possible as a singular criminal purpose). In *Langdon*, the defendant entered the communal laundry rooms of

multiple buildings within the same apartment complex in a single afternoon to steal from locked coin boxes from washers and dryers. *Id.* at 475. This series of burglaries, the supreme court concluded, arose from a single behavioral incident because the defendant had a similar criminal purpose for each burglary. *Id.* at 476-77. But the supreme court noted that if the defendant had burglarized a number of apartments owned by different people, then multiple punishments might be appropriate.³ *Langdon*, 375 N.W.2d at 476. Here, as noted above, breaking into individually owned storage units by different owners is more analogous to breaking into individually owned businesses in the same building than multiple common spaces in an apartment complex. And the “single motive” of obtaining money from locked coin boxes is far different from the eclectic items taken (and passed over) from the units by Hunt. Thus, the criminal purpose in *Langdon* is distinguishable from the facts before us.⁴

Because the factors for a single behavioral incident were not met for Hunt’s five May 27, 2008 burglary convictions, each conviction warrants one separate point, totaling a criminal-history score of eight. The district court’s 158-month presumptive sentence, based on a total criminal-history score of above six, fell within its wide discretion.

Affirmed.

³ In *Drljic*, this court applied this aspect of *Langdon* to a defendant breaking into multiple businesses in the same building and treated the burglary of each business as a separate location and criminal objective. *Drljic*, 876 N.W.2d at 354.

⁴ Hunt also argues that the district court improperly elevated dicta in *Langdon* to be its holding in the amended sentencing order. This argument effectively is another way to argue that Hunt’s factual circumstances fit within that of *Langdon*. As explained above, Hunt’s burglaries are more analogous to *Drljic*, where this court determined the burglaries were not a single behavioral incident. 876 N.W.2d at 354.