

*This opinion is nonprecedential except as provided by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
A20-1356**

State of Minnesota,
Respondent,

vs.

Earl Jay Murphy,
Appellant.

**Filed May 10, 2021
Affirmed
Slieter, Judge**

Hennepin County District Court
File No. 27-CR-18-3937

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

Michael O. Freeman, Hennepin County Attorney, Nicole Cornale, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Hooten, Presiding Judge; Slieter, Judge; and Klaphake, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

SLIETER, Judge

In this appeal from the district court's denial of appellant's motion to correct sentence, appellant argues that the district court erred by failing to vacate a lifetime period of conditional release imposed following his conviction for two counts of first-degree criminal sexual conduct. Because appellant was separately convicted and sentenced for the two counts, the conviction for the first count qualified as a "prior sex offense conviction" requiring lifetime conditional release upon conviction for the second count. We therefore affirm.

FACTS

Appellant was charged with three counts of criminal sexual conduct after his 13-year-old daughter informed a pediatrician at Fairview Children's Hospital that she had been sexually abused by appellant approximately seven years earlier. Counts one and two of the complaint were described as criminal sexual conduct in the first degree, in violation of Minn. Stat. § 609.342, subd. 1(a) (2016), and count three was described as criminal sexual conduct in the first degree, in violation of Minn. Stat. § 609.342, subd. 1(h)(iii) (2016).

All three counts were presented to the jury. After two full days of deliberation, the jury informed the district court that, though they had reached unanimous verdicts on counts two and three, they were "not in unanimous agreement on Count Number 1." Despite the defense's request that the court declare a mistrial, the district court acted pursuant to Minn. R. Crim. P. 26.03, subd. 20(7), accepting a partial verdict of counts two and three, dismissing count one, and releasing the jury. At the subsequent sentencing hearing, the

district court convicted appellant and imposed a sentence of 171 months' imprisonment on count three, to be followed by a ten-year period of conditional release. The district court next convicted appellant on count two and imposed the same sentence, to be served concurrently, followed by a lifetime period of conditional release.

Appellant directly appealed his conviction and sentence in *State v. Murphy*, No. A19-0322, 2020 WL 996737, (Minn. App. Mar. 2, 2020), *review denied* (Minn. May 19, 2020). In that appeal, appellant raised an issue involving the district court's imposition of lifetime conditional release. *Id.*, at *5. Appellant previously argued that neither count two nor count three could serve as a "prior sex offense conviction" because the date range for the two offenses overlapped, so it could not be determined whether the jury in fact found him guilty of committing more than one offense of criminal sexual conduct. *Id.* We rejected that argument, concluding that appellant "cannot show that the jury found him guilty of counts 2 and 3 based on the same conduct Thus, the district court did not err by ordering lifetime conditional release." *Id.* We affirmed the imposition of lifetime conditional release. *Id.*, at *5-6.

Appellant subsequently filed a motion to correct sentence, again seeking an order vacating his lifetime term of conditional release on a new basis: that the district court entered simultaneous convictions. The district court denied appellant's motion. This appeal follows.

DECISION

In this second appeal, appellant renews his claim that the district court erred by imposing a lifetime period of conditional release for count two, though on a different ground.¹ Appellant argues that because he was convicted of the two counts simultaneously, neither offense could serve as the “prior sex offense conviction” required for the imposition of lifetime conditional release pursuant to Minn. Stat. § 609.3455, subd. 7(b) (2016). *See State v. Brown*, 937 N.W.2d 146, 156 (Minn. App. 2019).

We review a district court’s denial of a motion to correct a sentence pursuant to Minn. R. Crim. P. 27.03, subd. 9 for an abuse of discretion. *See Townsend v. State*, 834 N.W.2d 736, 738 (Minn. 2013). “Specifically, [appellate courts] review the district court’s legal conclusions de novo and its factual findings under the clearly erroneous standard.” *See id.*

Pursuant to *Brown*, “when a district court convicts an offender simultaneously of multiple sex offenses in the same hearing, the offender does not have a prior sex-offense conviction and is not subject to a lifetime conditional-release term.” *Brown*, 937 N.W.2d at 157. Conversely, if the convictions are entered *consecutively*, the first conviction serves as a “prior sex offense conviction” for the purpose of section 609.3455. *State v. Nodes*, 863 N.W.2d 77, 82 (Minn. 2015). These convictions may occur during the same hearing,

¹ Respondent argues that appellant’s claims are barred pursuant to *State v. Knaffla*, 243 N.W.2d 737, 741 (Minn. 1976). However, the procedural bar of *Knaffla* applies only to petitions for postconviction relief pursuant to section 590.01, subd. 1, and not to motions to correct a sentence pursuant to rule 27.03. *Washington v. State*, 845 N.W.2d 205, 211 (Minn. App. 2014).

and no particular length of time must pass between them for the first offense to become “prior.” *Id.*

Therefore, the question presented is whether appellant was convicted of the two counts simultaneously or consecutively. “A conviction occurs when the district court accepts and records a verdict of guilty by a jury.” *Brown*, 937 N.W.2d at 156 (quotation omitted). By this standard, it is clear that the district court “convicted” appellant of the two counts consecutively during the sentencing hearing, when it stated:

Earl Jay Murphy, *standing convicted* by a jury’s verdict of Count 3, criminal sexual conduct in the first degree, you are sentenced to the custody of the Commissioner of Corrections for a period of 171 months.

...

Standing convicted by a jury’s guilty verdict on Count 2, criminal sexual conduct in the first degree, of an overlapping time period, you are sentenced to the custody of the Commissioner of Corrections for a period of 171 months, concurrent to Count 3. A lifetime conditional release period will follow.

(emphasis added). When the district court announced that appellant was “standing convicted by a jury’s verdict of Count 3,” appellant was convicted of that offense. “[I]n the next instant [count 3] was no longer a present offense, but was now a past conviction.” *Nodes*, 863 N.W.2d at 82. When the district court next announced appellant’s conviction for count two, that count was the “sole present offense” and count three was the “prior sex offense conviction,” thus requiring lifetime conditional release. *Id.* Appellant was convicted of the two offenses consecutively.

Appellant argues that he was not “convicted” during the sentencing hearing but, instead, when the district court earlier accepted the jury’s partial verdict. Appellant points specifically to the district court’s statements regarding that partial verdict:

Rule 26.03, subd. 20(7) specifically allows the Court to *accept* a partial trial verdict . . . I *accepted* that partial [verdict] pursuant to the rule in full belief that this jury as they looked at us and told us they could never reach a unanimous verdict on Count 1.

(emphasis added). Appellant points to this wording as evidence that he was convicted when the district court “accepted” the partial verdict. This argument is not persuasive.

As this court has made clear, a guilty verdict alone is not a “conviction.” *State v. Walker*, 913 N.W.2d 463, 467 (Minn. App. 2018). As noted above, conviction requires that the court “accept[] *and record[]* a verdict of guilty by a jury.” *Brown*, 937 N.W.2d at 156 (emphasis added) (quotation omitted). “While court-accepted guilty pleas, jury verdicts of guilt, and findings of guilt by a court are often referred to as ‘convictions,’ a formal adjudication of conviction requires more.” *State v. Hoelzel*, 639 N.W.2d 605, 609 (Minn. 2002). A “conviction” typically requires “[a] conviction appearing in the official judgment of conviction or in a conviction order entered by the court.” *See id.* It was only at sentencing that the district court both noted that appellant was “standing convicted” on each charge (consecutively to each other) and *recorded* these convictions in the written sentencing order and warrant of commitment. As such, the district court, by “accepting” the partial verdict did not convict appellant because it did not “accept” *and* “record” a “verdict of guilty.” *Brown*, 937 N.W.2d at 156.

Appellant was consecutively convicted of the two counts during the sentencing hearing when the district court acknowledged the findings of guilt by the jury and formally acknowledged and recorded appellant's convictions on counts two and three. The district court did not abuse its discretion by denying appellant's motion to correct sentence.

Affirmed.