

*This opinion is nonprecedential except as provided by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
A21-0080**

Brent Lanier Lynch, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed August 30, 2021
Affirmed
Connolly, Judge**

Ramsey County District Court
File No. 62-CR-12-1801

Zachary A. Longsdorf, Longsdorf Law Firm, PLC, Inver Grove Heights, Minnesota (for appellant)

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

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

Considered and decided by Connolly, Presiding Judge; Reyes, Judge; and Florey, Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

In this appeal from the denial of his motion to correct his sentence for second-degree murder, appellant argues that the district court erred by (1) construing his motion as a petition for postconviction relief and concluding that it was procedurally barred, and (2) concluding that the modification to the restitution award was lawful. We affirm.

FACTS

In March 2012, respondent State of Minnesota charged appellant Brent Lynch with second-degree murder after his girlfriend was found dead at his home. Lynch subsequently entered an *Alford* plea to one count of intentional second-degree murder and was sentenced to 386 months in prison.

Restitution was not discussed in Lynch's plea agreement. But it was ordered by the district court on November 1, 2012, in the amount of \$10,325.97, with the possibility of more being added within 90 days. On December 17, 2012, Lynch was also ordered to pay restitution to the Minnesota Crime Victims Reparations Board. Lynch's attorney later negotiated with the state, and between them, they agreed to a total restitution award of \$9,831.70, which the district court adopted. As part of the award, the victim's sister received \$4,307.38 for travel expenses to the funeral and lost wages.

On direct appeal, Lynch challenged his conviction of intentional second-degree murder, arguing that the district court erred in denying his presentence motion to withdraw his *Alford* plea. *State v. Lynch*, No. A13-0167, 2013 WL 6152187, at *1 (Minn. App. Nov. 25, 2013), *review denied* (Minn. Jan. 29, 2014). Lynch also challenged the district

court's restitution order. *Id.* This court rejected Lynch's argument, concluding that, because he did not object to the restitution at sentencing, he had waived the issue. *Id.* at *6. This court also determined that the prosecutor and his attorney had reached an agreement as to the amount of restitution and thus Lynch had waived that issue as well. *Id.* at *7.

On March 14, 2014, the victim's sister informed the state that she no longer wanted to receive restitution. Consequently, the state filed a motion under Minn. R. Crim. P. 27.03, subd. 9, to reduce the amount of restitution that Lynch was required to pay. Lynch claims that he was then pro se and was never served with a copy of the motion, and that he did not notice the change in restitution until 2018, when he observed that a smaller amount was being withdrawn from his prison paycheck.

In 2015, Lynch filed his first postconviction petition alleging several claims, including ineffective assistance of appellate counsel. *Lynch v. State*, No. A16-0801, 2017 WL 1046304, at *1 (Minn. App. May 30, 2017). He did not challenge the reduction in restitution. This court affirmed the denial of his petition for postconviction relief, concluding that Lynch was not denied the effective assistance of appellate counsel and that his remaining claims were procedurally barred. *Id.* at *4-5.

On November 1, 2020, Lynch filed a motion to correct his sentence under Minn. R. Crim. P. 27.03, subd. 9, arguing that the reduction in restitution impacted his plea agreement, which cannot be altered without his consent, and seeking a hearing at which he could accept the reduction or withdraw his plea. The district court treated this motion as a

petition for postconviction relief under Minn. Stat. § 590.01, subd. 4(a) (2020), and summarily denied the petition. This appeal follows.

DECISION

I.

Lynch challenges the denial of his motion to correct his sentence under Minn. R. Crim. P. 27.03, subd. 9. That rule allows a court “at any time” to “correct a sentence not authorized by law.” Minn. R. Crim. P. 27.03, subd. 9. But the district court characterized Lynch’s motion as a petition for postconviction relief under section 590.01. Thus, whether the district court properly characterized Lynch’s motion as a postconviction petition is a threshold issue that requires us to interpret the rule and statute. We interpret procedural rules and statutes de novo. *State v. Coles*, 862 N.W.2d 477, 479 (Minn. 2015).

A postconviction challenge based solely on a sentencing issue that does not implicate the plea agreement or the conviction is reviewed under Minn. R. Crim. P. 27.03, subd. 9, and can be made at any time. *Reynolds v. State*, 888 N.W.2d 125, 129-30 (Minn. 2016). And our supreme court has held

that a motion to correct a sentence under Minn. R. Crim. P. 27.03, subd. 9, is a proper method to challenge the court’s legal authority to award restitution when the motion does not impact the underlying conviction. But when a motion to correct a sentence impacts more than simply the sentence, Rule 27.03 does not apply. Specifically, a motion to correct a sentence is not the proper method to challenge a restitution award that is entered pursuant to a defendant’s negotiated guilty plea in which payment of restitution is a material part of the negotiation.

Evans v. State, 880 N.W.2d 357, 360 (Minn. 2016).

Here, Lynch filed a motion to correct his sentence, asserting that the reduction in restitution was an illegal modification of his sentence because he was not notified of the hearing. The district court treated Lynch’s motion as a petition for postconviction relief because he sought to withdraw his guilty plea. But restitution was never part of Lynch’s plea agreement, which only addressed jail time. Because restitution was a separate part of the sentence, Lynch’s plea agreement was not implicated, and therefore the district court should not have treated Lynch’s motion as a petition for postconviction relief.¹

II.

Lynch contends that his restitution could not be reduced without his consent. District courts have “wide discretion in ordering restitution and determining the appropriate amount of restitution.” *State v. Anderson*, 507 N.W.2d 245, 246 (Minn. App. 1993), *review denied* (Minn. Dec. 22, 1993). Because a plea agreement is considered analogous to a contract between the state and a defendant, alteration of one term may alter the nature of the entire agreement. *State v. Meredyk*, 754 N.W.2d 596, 603 (Minn. App. 2008). Accordingly, this severely limits the district court’s otherwise broad discretion to modify restitution after the district court accepts a plea agreement that expressly calls for a specific, bargained-for restitution amount. *Id.* “[A] district court generally should not alter the terms of a restitution obligation negotiated as part of a plea agreement if it materially changes the expectations of the parties to the bargain.” *Id.* at 604.

¹ Even if the district court did not err by treating the matter as a petition for postconviction relief, Lynch’s petition still fails for the reasons discussed below.

In *State v. Chapman*, the plea agreement similarly did not mention restitution. 362 N.W.2d 401, 403 (Minn. App. 1985), *review denied* (Minn. May 1, 1985). The agreement called for the defendant to plead guilty to two counts in exchange for the prosecutor’s promise to dismiss the remaining six counts. *Id.* The two counts to which the defendant pleaded guilty were embezzlement and theft of funds totaling \$15,747.97. *Id.* at 402. The district court ordered the defendant to pay restitution in the amount of \$47,656.95, the full amount of losses from all the crimes originally charged against her. *Id.* This court concluded that “[t]he difference in this case between the restitution ordered and that proposed by [the defendant], a difference of approximately \$31,000, is substantial.” *Id.* at 404. Although some amount of restitution was contemplated by the parties, this court did “not believe that a plea agreement, voluntarily and intelligently entered into, should include such a gamble on the amount of restitution. The better practice would have been for the parties to enter on the record their understanding of the plea agreement’s effect on restitution.” *Id.* The court therefore concluded that “[t]he restitution ordered was beyond the terms of the plea agreement” and reversed and remanded. *Id.*

Here, similar to *Chapman*, restitution was not part of Lynch’s plea agreement; rather it was added to his sentence later by the district court. But unlike the defendant in *Chapman*, Lynch is paying restitution only for the crime to which he pleaded guilty. And with the cancellation of restitution to the victim’s sister, Lynch is paying \$5,524.32, as opposed to \$9,831.70, which was originally ordered. He cannot claim that his current restitution is unexpectedly high. While his expectations may have been altered, the alteration was not prejudicial to him.

Moreover, other cases in which terms for conditional release were added without the defendant's consent were reversed because those sentences prejudiced the defendant and it was important for the defendant to have an opportunity to object. *See, e.g., Reynolds*, 888 N.W.2d at 130; *State v. Garcia*, 582 N.W.2d 879, 882 (Minn. 1998). Lynch's case is different. No new penalties were imposed on him by the district court's order; he was not prejudiced by its decision. The amount of restitution owed went down, not up. Because Lynch was not prejudiced by the district court's order decreasing restitution, the court acted within its discretion by reducing the restitution amount.

Affirmed.