

*This opinion is nonprecedential except as provided by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
A21-0532**

Elliott Lamar-Seccer Pierson, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed March 28, 2022
Affirmed
Reyes, Judge**

Hennepin County District Court
File No. 27-CR-14-26101

Elliott Pierson, Bayport, Minnesota (pro se appellant)

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

Michael O. Freeman, Hennepin County Attorney, Sarah J. Vokes, Assistant County
Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Johnson, Presiding Judge; Reyes, Judge; and Cochran,
Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

Self-represented appellant challenges a district court's denial of his motion to correct a sentence, arguing on appeal that it erred by imposing consecutive, rather than concurrent, sentences without clarifying the consequences of violating a presentencing

release condition. Appellant also argues that the district court improperly injected itself into the plea-bargaining process. Respondent contends that appellant's motion to correct a sentence is a statutorily time-barred and procedurally barred petition for postconviction relief. We affirm.

FACTS

On September 5, 2014, respondent State of Minnesota charged appellant Elliot Pierson with two counts of first-degree aggravated robbery under Minn. Stat. § 609.245, subd. 1 (2014), after two gas-station-employee victims notified police that appellant had robbed their gas station with a knife. On January 30, 2015, appellant submitted a petition to enter a *Norgaard* plea¹ with no agreement regarding sentencing as to both counts of first-degree aggravated robbery.

At the plea hearing, the district court imposed various conditions of release, including that appellant abstain from alcohol and unprescribed drugs and remain law abiding. Although the district court noted that “there is never a guarantee” when it comes to sentencing, the district court discussed its intention to impose a concurrent sentence if appellant followed the conditions of release and appeared in district court for sentencing. However, the district court warned appellant that if he violated any of the conditions of

¹ “A plea constitutes a *Norgaard* plea if the defendant asserts an absence of memory on the essential elements of the offense but pleads guilty because the record establishes, and the defendant reasonably believes, that the state has sufficient evidence to obtain a conviction.” *Williams v. State*, 760 N.W.2d 8, 12 (Minn. App. 2009), *rev. denied* (Minn. Apr. 21, 2009); *see State ex rel. Norgaard v. Tahash*, 110 N.W.2d 867 (Minn. 1961).

release, or if he failed to appear in court for sentencing, it could impose guidelines-permissible consecutive sentences for the two counts of first-degree aggravated robbery.

On February 12, 2015, appellant submitted to a random urine analysis and tested positive for cocaine. The district court then issued a conditional-release revocation order and bench warrant for appellant's arrest. Officers arrested appellant pending sentencing.

On March 30, 2015, the district court held a violation hearing and a sentencing hearing. The district court sentenced appellant to 165 months in prison: 108 months on the Count I aggravated robbery and 57 months on the Count II aggravated robbery, to be served consecutively. This court affirmed his appeal from his conviction in *State v. Pierson*, No. A15-1057, 2016 WL 596433, at *5 (Minn. App. Feb. 16, 2016), *rev. denied* (Minn. Apr. 27, 2016).

On October 14, 2020, appellant filed a motion to correct his sentence under Minn. R. Crim. P. 27.03, subd. 9. On January 25, 2021, the district court denied appellant's motion on the merits. It did not address the state's argument that appellant's motion to correct a sentence is a statutorily time-barred and procedurally barred postconviction petition. This appeal follows.

DECISION

Appellant makes two arguments to support reversal. First, he argues that the district court failed to clarify the consequences of violating a presentencing release condition. Second, appellant argues that the district court improperly injected itself into the plea-bargaining process. However, we begin by addressing the state's alternative argument because it is dispositive.

The state argues that appellant's motion to correct a sentence is a postconviction petition that is statutorily time-barred and procedurally barred. Although the district court did not consider the state's arguments and denied appellant's motion on the merits, we may affirm a district court's decision on alternative grounds not decided by the district court if there is factual and legal support for the arguments, "and the alternative grounds would not expand the relief previously granted." *State v. Grunig*, 660 N.W.2d 134, 137 (Minn. 2003).

Here, the record contains sufficient facts to address the postconviction-petition arguments, the state advances legal authority for its position on appeal, and addressing the arguments will not expand the relief granted to the state. We therefore consider the state's argument.

I. Appellant's motion to correct his sentence is a postconviction petition.

The state argues that appellant's motion to correct his sentence is in fact a petition for postconviction relief under Minn. Stat. §§ 590.01-.11 (2020) because appellant did not argue that his sentence was unauthorized by law.² We agree.

"[A]n offender may challenge his sentence either by filing a petition for postconviction relief under chapter 590 of the Minnesota Statutes or by filing a motion to correct sentence pursuant to rule 27.03, subdivision 9." *Washington v. State*, 845 N.W.2d 205, 210 (Minn. App. 2014). However, rule 27.03, subdivision 9, does not apply "if a party has challenged a sentence on the ground . . . that a district court otherwise erred by

² We note that appellant did not address this argument in his principal brief filed with this court, nor did he file a reply brief addressing any of the state's alternative arguments. However, we also note that the state raised this issue before the district court.

selecting one among two or more sentences that are authorized by law.” *Id.* at 213. “[A]n offender may not avoid the requirements of the postconviction act by simply labeling a challenge as a motion to correct a sentence under rule 27.03, subdivision 9.” *Id.* at 212; *see State v. Amundson*, 828 N.W.2d 747, 751-52 (Minn. App. 2013) (stating motion to correct sentence is not subject to same limitations as postconviction petitions).

Here, appellant argues that the district court should have imposed concurrent rather than consecutive sentences. However, the law undisputedly authorizes *both* sentences. *See* Minn. Sent. Guidelines 2.F.2.a.(1)(ii) (2014). Appellant also argues that the district court interfered with the plea-bargaining process, a challenge that does not involve his sentence. *See State v. Coles*, 862 N.W.2d 477, 480 (Minn. 2015) (stating that “the plain language of Rule 27.03 is limited to sentences”). We therefore conclude that rule 27.03 does not apply and consider appellant’s motion to correct a sentence to be a petition for postconviction relief.

II. Appellant’s postconviction petition is statutorily time-barred.

The state argues that appellant’s petition is statutorily time-barred. We again agree.

When reviewing a denial of a postconviction petition, we review legal issues *de novo*. *Pearson v. State*, 891 N.W.2d 590, 596 (Minn. 2017). A petition for postconviction relief must be filed within two years after “the entry of judgment of conviction or sentence if no direct appeal is filed” or “an appellate court’s disposition of petitioner’s direct appeal.” Minn. Stat. § 590.01, subd. 4(a) (2020). Appellant filed a direct appeal on February 16, 2016, and the supreme court denied review on April 27, 2016. Appellant had until April 27, 2018, to file timely his petition for postconviction relief. It is undisputed

that appellant did not file the current petition for postconviction relief until October 14, 2020. Appellant's petition is therefore untimely.

However, untimely petitions may still be considered if the petitioner establishes that he meets one of five listed statutory exceptions. *Id.*, subd. 4(b). The petitioner bears the burden of proving that he meets one of the statutory exceptions. *State v. Rainer*, 502 N.W.2d 784, 787 (Minn. 1993). Appellant does not assert an exception to the statutory time-bar, nor are we aware of an applicable exception. We conclude that appellant's petition is statutorily time-barred. We are therefore not required to consider whether appellant's claims are procedurally barred. *See Onyelobi v. State*, 966 N.W.2d 235, 239 n.5 (Minn. 2021) (declining to address appellant's procedural-bar argument after concluding that appellant's postconviction petition is time-barred without exception).

Because we affirm on this alternative ground, we need not consider the merits of any of appellant's substantive arguments.

Affirmed.