

*This opinion is nonprecedential except as provided by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
A22-0562**

Danny Hamilton, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed November 14, 2022
Affirmed
Cochran, Judge**

Hennepin County District Court
File No. 27-CR-10-17596

Danny Hamilton, Faribault, Minnesota (pro se appellant)

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

Michael O. Freeman, Hennepin County Attorney, Jonathan P. Schmidt, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Cochran, Presiding Judge; Segal, Chief Judge; and
Hooten, Judge.*

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

NONPRECEDENTIAL OPINION

COCHRAN, Judge

Appellant challenges the district court's denial of his motion to correct his sentence, arguing that his sentence is not authorized by law. Specifically, he contends that his sentence is based on an incorrect criminal-history score and that the district court improperly sentenced him to an upward durational departure. Because the district court correctly calculated appellant's criminal-history score at sentencing and did not impose an upward durational departure, we conclude that the district court did not abuse its discretion when it denied his motion to correct his sentence. We therefore affirm.

FACTS

In April 2010, respondent State of Minnesota charged appellant Danny Hamilton with one count of first-degree criminal sexual conduct in violation of Minn. Stat. § 609.342, subd. 1(e)(i) (2008), and one count of first-degree aggravated robbery in violation of Minn. Stat. § 609.245, subd. 1 (2008). The charges stemmed from allegations that Hamilton had robbed and raped a woman in an alley in Minneapolis. A jury found Hamilton guilty on both counts.

The district court sentenced Hamilton to 68 months' imprisonment for aggravated robbery and 172 months' imprisonment for criminal sexual conduct, to be served consecutively. The district court used a criminal-history score of two to calculate Hamilton's aggravated-robbery sentence. For the criminal-sexual-conduct (CSC) conviction, the district court used a criminal-history score of zero. The district court used a score of zero because it was imposing consecutive sentences and had already sentenced

Hamilton on the aggravated-robbery conviction. *See* Minn. Sent’g Guidelines II.F.2 (Supp. 2009).¹ At the time the district court imposed the sentences, it noted: “This sentence does not represent a durational or dispositional departure. Both sentences are well within the box.”

Hamilton filed a direct appeal, challenging only his CSC conviction. He argued that (1) he had been prosecuted twice in violation of the Double Jeopardy Clause; (2) the state’s decision to strike the only African American member of the jury was racially motivated; (3) the district court erroneously excluded relevant facts; and (4) the evidence was insufficient to support a conviction. *State v. Hamilton*, No. A11-115, 2012 WL 5747, at *1 (Minn. App. Jan. 3, 2012), *rev. denied* (Minn. Mar. 28, 2012). This court affirmed. *Id.* In his direct appeal, Hamilton did not challenge his sentence. *Id.*

Since his direct appeal, Hamilton has filed three petitions for postconviction relief followed by two motions to correct his sentence. The district court has denied each of Hamilton’s petitions for postconviction relief as well as his motions to correct his sentence.² Hamilton’s second motion to correct his sentence, which was denied by an order dated March 7, 2022, is the subject of this appeal.

¹ Under the Minnesota Sentencing Guidelines, “[f]or each offense sentenced consecutive to another offense(s), other than those that are presumptive, a zero criminal history score, or the mandatory minimum for the offense, whichever is greater, shall be used in determining the presumptive duration.” Minn. Sent’g Guidelines II.F.2.

² Hamilton appealed the district court’s denial of his first petition for postconviction relief, and this court affirmed. *Hamilton v. State*, No. A14-1457, 2015 WL 1281427, at *1 (Minn. App. Mar. 23, 2015).

DECISION

Under Minn. R. Crim. P. 27.03, subd. 9, a district court “may at any time correct a sentence not authorized by law.” “We review a district court’s denial of a motion to correct a sentence under Minn. R. Crim. P. 27.03, subd. 9, for an abuse of discretion.” *Evans v. State*, 880 N.W.2d 357, 359 (Minn. 2016). A district court abuses its discretion if it bases its ruling on an erroneous conclusion of law, makes a clearly erroneous factual finding, or exercises its discretion in an arbitrary or capricious manner. *Pearson v. State*, 891 N.W.2d 590, 596 (Minn. 2017). We review legal conclusions de novo and factual findings for clear error. *Townsend v. State*, 834 N.W.2d 736, 738 (Minn. 2013).

Hamilton argues that the district court abused its discretion by denying his motion to correct his sentence because (1) his sentence is based on an incorrect criminal-history score, and (2) the district court sentenced him to an upward durational departure in violation of *Blakely v. Washington*, 542 U.S. 296, 303 (2004). We consider each argument in turn.

I. The district court used the correct criminal-history score to sentence Hamilton.

Hamilton argues that his sentence is unlawful because the district court used the incorrect criminal-history score for his aggravated-robbery conviction at sentencing. We review a district court’s determination of a defendant’s criminal-history score for an abuse of discretion. *State v. Stillday*, 646 N.W.2d 557, 561 (Minn. App. 2002), *rev. denied* (Minn. Aug. 20, 2002). Moreover, a defendant who challenges his criminal-history score after the time for a direct appeal has passed bears the burden of proving that his

criminal-history score was improperly calculated. *Williams v. State*, 910 N.W.2d 736, 743 (Minn. 2018).

The Minnesota Sentencing Guidelines establish presumptive sentences for felony offenses. Minn. Stat. § 244.09, subd. 5 (2020). To determine a defendant’s presumptive sentence, the district court calculates the defendant’s criminal-history score using the defendant’s prior convictions and then cross-references that score with the convicted offense. Minn. Sent’g Guidelines II.C (Supp. 2009). From there, the district court may consider whether grounds exist for a departure from the presumptive sentence. *See* Minn. Sent’g Guidelines II.D (Supp. 2009). When calculating a defendant’s criminal-history score, the district court must include previous felony convictions. Minn. Sent’g Guidelines II.B.1 (Supp. 2009). But the district court may not include felony convictions that have decayed. *See* Minn. Sent’g Guidelines II.B.1.f. A prior felony conviction has decayed if “a period of fifteen years has elapsed since the date of discharge from or expiration of the sentence, to the date of the current offense.” *Id.*; *see State v. Washington*, 894 N.W.2d 168, 172 (Minn. App. 2017), *aff’d*, 908 N.W.2d 601 (Minn. 2018).

Hamilton argues that the district court improperly included a decayed felony conviction when it calculated his criminal-history score for aggravated robbery. Hamilton contends that this error inflated his score from one and one-half points (which would have rounded down to one) to two points. *See* Minn. Sent’g Guidelines II.B.1 (“The felony point total is the sum of [the weights assigned to each prior felony sentence]; no partial points are given.”); Minn. Sent’g Guidelines cmt. II.B.101 (Supp. 2009) (“No partial points are

given—thus, a person with less than a full point is not given that point.”); Minn. Sent’g Guidelines V (Supp. 2009) (offense severity reference table). We are not persuaded.

The record reflects that the district court correctly assigned Hamilton a criminal-history score of two when sentencing Hamilton for aggravated robbery. Hamilton’s presentence-investigation report shows that Hamilton had two prior felony convictions that had not decayed as of the date of Hamilton’s offenses in this matter. The combined criminal-history score for these two convictions gave Hamilton a criminal-history score of two at the time of sentencing.

The first prior felony conviction was a conviction of unlawful possession of a firearm—a level-six offense weighted at one and one-half points under the sentencing guidelines in effect at the time Hamilton was sentenced. *See* Minn. Sent’g Guidelines II.B.1, V. Hamilton was sentenced for this crime on September 11, 1996, and he committed the offenses in this case on April 17, 2010. The time between these dates is less than 15 years. Thus, this conviction had not decayed by the time Hamilton was sentenced, and it was properly included in the calculation of Hamilton’s criminal-history score.

The second prior felony conviction was a conviction of fifth-degree possession of a controlled substance³—a level-two offense weighted at one-half of a point under the

³ Hamilton appears to argue that this conviction should not have been included in his criminal-history score because it was “dismissed.” To support his argument, Hamilton cites a December 27, 2000 charge for fifth-degree possession of a controlled substance in district court file number 27-CR-00-121340, which was dismissed on January 25, 2001. Hamilton appears to conflate this dismissed charge with his felony conviction of fifth-degree possession of a controlled substance in district court file number 27-CR-95-109708, which was properly included in his criminal-history score. Thus, this argument

sentencing guidelines in effect at the time Hamilton was sentenced. *See id.* Hamilton was sentenced for this crime on February 21, 1996, fewer than 15 years before Hamilton committed the offenses in this case. Thus, this conviction also had not decayed by the time Hamilton was sentenced, and it was properly included in Hamilton's criminal-history score.

Based on these previous convictions, the district court correctly assigned Hamilton a criminal-history score of two when sentencing him for aggravated-robbery.⁴ Accordingly, the district court did not abuse its discretion in denying Hamilton's motion to correct his sentence based on his challenge to the calculation of his criminal-history score.

II. The district court did not sentence Hamilton to an upward durational departure and therefore could not have violated *Blakely*.

Hamilton also argues that the district court abused its discretion by denying his motion to correct his sentence because each sentence amounted to an upward durational departure imposed in violation of *Blakely*. 524 U.S. at 303. This argument misses the mark because the district court did not sentence Hamilton to an upward durational departure for either of his two convictions.

We begin our analysis of this argument by providing some additional background on presumptive sentences and departures under the Minnesota Sentencing Guidelines. As

fails, and the district court properly used a criminal-history score of two when sentencing Hamilton for aggravated robbery.

⁴ Hamilton does not challenge the assignment of a criminal-history score of zero for the CSC conviction.

discussed above, the sentencing guidelines establish a presumptive sentence for each felony offense. Minn. Stat. § 244.09, subd. 5(2); Minn. Sent’g Guidelines II.C. In addition to the presumptive sentence, the sentencing guidelines also prescribe a sentencing range “within which a judge may sentence *without* the sentence being deemed a departure.” Minn. Sent’g Guidelines IV (Supp. 2009) (emphasis added). For example, aggravated robbery with a criminal-history score of two carries a presumptive sentence of 68 months’ imprisonment and has a permissive sentencing range of 58-81 months’ imprisonment. *Id.* “All three numbers in any given cell [on the sentencing guidelines grid] constitute an acceptable sentence based solely on the offense at issue and the offender’s criminal history score—the lowest is not a downward departure, nor is the highest an upward departure.” *State v. Jackson*, 749 N.W.2d 353, 359 n.2 (Minn. 2008). In other words, any sentence within the permissive sentencing range is not a departure. *Id.*

The sentencing guidelines also provide a nonexclusive list of aggravating factors that may support an upward durational sentencing departure. Minn. Sent’g Guidelines II.D.2.b; *see also* Minn. Stat. § 244.10, subd. 5a(a) (Supp. 2009) (identifying the same aggravating factors). Under the United States Supreme Court’s decision in *Blakely*, a criminal defendant has a constitutional right to a jury finding of aggravating circumstances that would support an upward departure from the defendant’s presumptive sentence, unless the defendant waives this right. *State v. Jones*, 745 N.W.2d 845, 848, 851 (Minn. 2008) (citing *Blakely*, 524 U.S. at 303).

Hamilton argues that the district court’s sentence for each of his convictions constitutes an upward departure because the sentence for each of his convictions exceeds

the presumptive sentence.⁵ Hamilton appears to contend that any sentence other than the presumptive sentence—even a sentence within the permissive sentencing range—constitutes a departure from the sentencing guidelines that must be submitted to a jury unless the defendant waives his *Blakely* rights. For example, Hamilton argues that the district court departed upward when it sentenced him to 172 months for criminal sexual conduct and 68 months for aggravated robbery, even though both sentences were within the permissive sentencing ranges based on Hamilton’s criminal-history scores. This argument is based on a misunderstanding of the sentencing guidelines.

As the district court correctly concluded, Hamilton’s sentences for first-degree aggravated robbery and first-degree criminal sexual conduct are not upward departures subject to *Blakely*. Under the sentencing guidelines that were in effect at the time Hamilton committed his offenses, the permissive sentencing range for first-degree aggravated robbery with a criminal-history score of two was 58-81 months, and the permissive sentencing range for first-degree criminal sexual conduct with a criminal-history score of zero was 144-172 months. Minn. Sent’g Guidelines IV. The district court sentenced Hamilton to 68 months for aggravated robbery and 172 months for criminal sexual

⁵ Hamilton does not appear to be challenging the consecutive nature of his sentences. To the extent that Hamilton does challenge the consecutive nature of his sentences, this challenge fails. The sentencing guidelines that were in effect at the time Hamilton committed his offenses allowed district courts to impose consecutive sentences for multiple current felony convictions of certain crimes without those sentences being considered a departure. Minn. Sent’g Guidelines II.F.2.a, VI (Supp. 2009). First-degree aggravated robbery and first-degree criminal sexual conduct were among those crimes. Minn. Sent’g Guidelines VI. Thus, the district court had the discretion to consecutively sentence Hamilton for these crimes.

conduct—both of which are within the permissive sentencing ranges for the applicable criminal-history scores. Thus, Hamilton’s sentences are each within the sentencing range “within which a judge may sentence *without* the sentence being deemed a departure.” Minn. Sent’g Guidelines IV (emphasis added); *see also, Jackson*, 749 N.W.2d at 359 n.2. Accordingly, nothing in the record suggests that the district court sentenced Hamilton to an upward departure, and the district court did not abuse its discretion in imposing the sentences that it did. *See* Minn. Sent’g Guidelines IV.

In sum, the district court acted well within its discretion when it denied Hamilton’s second motion to correct his sentence.

Affirmed.