

*This opinion is nonprecedential except as provided by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
A22-0971**

Ricky Arlen Turner, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed April 10, 2023
Affirmed
Ross, Judge**

Washington County District Court
File No. 82-CR-17-2023

Cathryn Middlebrook, Chief Appellate Public Defender, Erik I. Withall, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Kevin Magnuson, Washington County Attorney, Nicholas A. Hydukovich, Assistant County Attorney, Stillwater, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Gaïtas, Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

The state charged appellant Ricky Turner with promoting prostitution, aiding and abetting racketeering, aiding and abetting concealing criminal proceeds, and sex trafficking of a minor. In exchange for the state's agreement to dismiss the concealing-criminal-

proceeds and sex-trafficking charges, Turner pleaded guilty to promoting prostitution and aiding and abetting racketeering. The district court convicted him and, based on the dismissed sex-trafficking charge, informed Turner of his obligation to register as a predatory offender when he completes his prison sentence. Turner petitioned for postconviction relief to challenge the registration requirement. The postconviction court denied his motion for relief. Because Turner's dismissed sex-trafficking charge arose out of the same set of circumstances as his racketeering conviction, we affirm.

FACTS

Ricky Turner allegedly met a seventeen-year-old girl at a fast-food restaurant in Wayzata, told the girl that he was a pimp, and asked her to work for him. When the girl asked whether other girls worked for him, Turner responded that his "wife" did. He told the girl that he would buy her a car if she worked for him. In May 2017, police arrested Turner's codefendant, B.H., who was caught engaging with an undercover officer in a prostitution sting operation. Police surveillance of the parties' residence led them to arrest Turner in his driveway while he was sitting in his car with the seventeen-year-old girl.

The state charged Turner with promoting prostitution, aiding and abetting concealing criminal proceeds, aiding and abetting racketeering, and sex trafficking of a minor. Turner pleaded guilty to the racketeering charge and to promoting prostitution, and the district court dismissed the remaining charges based on the parties' plea agreement. Turner agreed that he must register as a predatory offender. He admitted at his plea hearing that, from 2016 until May 2017, he ran an enterprise called "Finesse" through which he promoted the prostitution of women in the Twin Cities area. He recruited women both in

person and online to work for him. He testified specifically about prostituting his girlfriend and codefendant, B.H. Turner and B.H. rented a Wayzata home that they occasionally used to serve their patrons. According to Turner, he promoted B.H. in prostitution “dozens and hundreds” of times. The district court sentenced Turner to serve 168 months in prison—concurrent for each crime of conviction—and advised him of his requirement to register as a predatory offender for ten years after completing his sentence.

Turner moved the district court for postconviction relief, challenging the order that he register as a predatory offender. The district court denied the motion. Turner appeals.

DECISION

Turner argues that he need not register as a predatory offender because the dismissed charge of sex trafficking of a minor did not arise out of the same circumstances as his racketeering conviction, which was instead premised in part on the prostitution of B.H., an adult. A person must register as a predatory offender if he was charged with a specified predatory offense and was convicted of that offense “or another offense arising out of the same set of circumstances.” Minn. Stat. § 243.166, subd. 1b(a)(2) (2022). Sex trafficking of a minor is one of the specified predatory offenses, but racketeering is not. *Id.*, subd. 1b(a)(2)(iii). Offenses arise out of the “same set of circumstances” when the “same general group of facts [give] rise to both the convicted offense and the [dismissed] offense.” *State v. Berry*, 959 N.W.2d 184, 188 (Minn. 2021) (quotation omitted). Identical circumstances are not required; we instead analyze whether the circumstances overlap in terms of “time, location, persons involved, and basic facts.” *State v. Lopez*, 778 N.W.2d 700, 706 (Minn. 2010). We approach this analysis de novo. *Id.* at 705. Our de novo review leads us to affirm.

Turner contends that we must determine the circumstances surrounding the conviction offense of racketeering by considering only the specific racketeering predicate offenses established at the plea hearing. To commit racketeering, a person must engage in a “pattern of criminal activity,” Minnesota Statutes section 609.903, subdivision 1 (2014), which is three or more criminal acts that:

- (1) were committed within ten years of the commencement of the criminal proceeding;
- (2) are neither isolated incidents, nor so closely related and connected in point of time or circumstance of commission as to constitute a single criminal offense; and
- (3) were either: (i) related to one another through a common scheme or plan or a shared criminal purpose or (ii) committed, solicited, requested, importuned, or intentionally aided by persons acting with the mental culpability required for the commission of the criminal acts and associated with or in an enterprise involved in those activities.

Minn. Stat. § 609.902, subd. 6 (2014). Turner maintains that, because the predicate offenses expressly established during the plea hearing refer only to the prostitution *of an adult* (his codefendant B.H.), the dismissed offense of sex trafficking *of a minor* could not have arisen out of the same set of circumstances.

The contention fails because we do not read the plea-hearing transcript references to B.H. as the exclusive basis for all three criminal acts establishing the pattern of criminal activity necessary for the racketeering conviction. Turner responded affirmatively when the prosecutor asked him, “And you agree that [B.H.] *and these women* that worked for you often would meet with several men a day?” (Emphasis added.) He also responded

affirmatively when the prosecutor asked, “And during this time there were at least three separate acts of promotion of prostitution which makes you guilty for racketeering?” These questions did not reference B.H. exclusively. Indeed, the prosecutor inquired about promoting her in prostitution only after asking more general questions about multiple “women” involving “separate acts of promotion of prostitution.” It is true that the prosecutor expressly referenced the racketeering predicate-acts requirement while asking Turner about B.H. But this does not show that her role in the prostitution enterprise was the exclusive basis for establishing Turner’s pattern of criminal activity. His admissions before specifically discussing B.H. reflected that his pattern of criminal activity was broader, including at least three distinct incidents of promoting prostitution of B.H. and other women within the ten-year statutory period. *See* Minn. Stat. § 609.902, subd. 6(1), (2). Turner’s plea-hearing admissions regarding B.H. apparently represented only part of his larger criminal enterprise.

Having established what circumstances we may consider, we turn to the *Lopez* factors of time, location, persons involved, and basic facts to determine whether the circumstances of Turner’s racketeering offense of conviction overlap with his dismissed sex-trafficking-of-a-minor offense. 778 N.W.2d at 706. The complaint and plea colloquy indicate that the offenses occurred during the same time frame. The criminal complaint alleges that police arrested Turner in May 2017 as he sat in his car with a seventeen-year-old girl. And Turner admitted to having promoted prostitution from 2016 until his arrest in May 2017. We reject Turner’s contention that the record’s silence as to the time he allegedly recruited the minor to engage in prostitution precludes a holding that the two

offenses temporally overlap. The contention overlooks the inference that ongoing interactions between a prostitution solicitor and his victims necessarily follow initial prostitution-recruitment efforts. And the district court need not merely infer that the child's presence in the car with Turner was the natural consequence of his recruitment; it was immediately after police found them together there that the child disclosed Turner's recruitment efforts. The offenses overlap in time.

As to location, we reject Turner's argument that, because his promotion of B.H.'s prostitution occurred only in the Wayzata property's guest house and he was found with the child in the driveway, the locations of the two offenses do not overlap. His narrow approach fails on the law and facts. As to the law, contrary to Turner's assertion that *State v. Berry* supports the notion that offenses do not overlap when one occurs inside a building and the other occurs just outside, the *Berry* court concluded that the locations did not sufficiently overlap where the dismissed offense occurred inside a building and the offense of conviction occurred "in a car traveling over hundreds of miles of interstate highway." 959 N.W.2d at 190. Our circumstances materially and obviously differ from *Berry*'s given the close proximity of offenses on the same property. As to the facts, Turner acknowledged in his offense of conviction plea colloquy that he promoted prostitution across the Twin Cities—an area that includes all components of the Wayzata house. The offenses overlap in location.

The basic facts of the dismissed and convicted offenses also overlap. The complaint alleges that Turner met the minor at a fast-food restaurant, described himself as a pimp, and asked her to work for him in exchange for money and cars. During his plea hearing,

Turner admitted to engaging in the same recruiting approach for the “Finesse” enterprise. He acknowledged that he recruited women into his enterprise online and in person. He also admitted that the prostitution profits went into his bank account and that he used them to purchase luxury items, like cars. His recruitment of the minor mirrors the recruiting practices used in his pattern of criminal activity.

Turner contends that the basic facts and persons involved do not overlap because he testified to promoting the prostitution of adult women, not minor girls, while the dismissed offense involves his alleged sex-trafficking of a minor. The different verbiage does make this a close call. But given that the minor that Turner was allegedly recruiting was within nine months of adulthood, and because both near-adult females and adult females might, in common vernacular, together be referred to as a class of “women,” we do not believe that the age distinction constitutes enough of a difference to distinguish the basic facts of the dismissed offense from the offense of conviction or place the minor outside the class of persons that Turner recruited as part of his criminal enterprise.

We are not persuaded by any concern that treating Turner’s dismissed sex-trafficking-of-a-minor offense and his racketeering conviction offense as involving overlapping circumstances would allow the state to charge a defendant with meritless predatory offenses simply to require registration. Two safeguards mitigate against this concern. The first is that “it is the judiciary’s determination of probable cause, not the prosecutor’s bringing of a charge, that triggers the statutory basis for sex-offender registration,” *State v. Haukos*, 847 N.W.2d 270, 273 (Minn. App. 2014), and the same is so for the predatory-offender registration requirement here. Any defendant facing a

meritless predatory-offense charge may therefore simply ask the district court to dismiss the charge and, if his assessment about merit is correct, avoid the registration requirement altogether. He could make this probable-cause challenge unrelated to any plea discussion, or he could instead negotiate to make his agreement to plead guilty contingent on the district court's dismissing the predatory-offense charge as lacking in probable cause. The second safeguard is the defendant's right to refuse any plea agreement under circumstances involving what the defendant believes is a genuinely meritless predatory-offense charge.

We hold that Turner's conviction for aiding and abetting racketeering arose out of the same set of circumstances as the dismissed sex-trafficking-of-a-minor charge. The postconviction court did not err by refusing to relieve Turner of his obligation to register as a predatory offender.

Affirmed.