

*This opinion is nonprecedential except as provided by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
A22-1690**

Emem Ufot Udoh, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed May 22, 2023
Affirmed
Johnson, Judge**

Hennepin County District Court
File No. 27-CR-13-8979

Emem Ufot Udoh, Brooklyn Center, Minnesota (*pro se* appellant)

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

Mary F. Moriarty, Hennepin County Attorney, Jonathan P. Schmidt, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Bryan, Presiding Judge; Johnson, Judge; and Hooten, Judge.*

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

NONPRECEDENTIAL OPINION

JOHNSON, Judge

In 2014, Emem Ufot Udoh was convicted of multiple counts of criminal sexual conduct. In 2022, Udoh moved to correct his sentence, arguing that he should not be required to be on conditional release for the remainder of his lifetime. We conclude that the district court did not err by ordering lifetime conditional release because Udoh had a prior sex-offense conviction when he was convicted of the sex offense for which lifetime conditional release was ordered. Accordingly, the district court did not err by denying Udoh's motion to correct sentence. Therefore, we affirm.

FACTS

In March 2013, the state charged Udoh with two counts of first-degree criminal sexual conduct, in violation of Minn. Stat. § 609.342, subd. 1(b) (2012), and two counts of second-degree criminal sexual conduct, in violation of Minn. Stat. § 609.343, subd. 1(a) (2012). In counts 1 and 2, the state alleged that, between April 2012 and February 2013, Udoh engaged in sexual penetration of and sexual contact with his 13-year-old stepdaughter. In counts 3 and 4, the state alleged that, between June 2012 and February 2013, Udoh engaged in sexual penetration of and sexual contact with his 11-year-old stepdaughter.

After a six-day trial in August 2014, a Hennepin County jury found Udoh guilty of the charges in counts 1, 2, and 4. In September 2014, the district court imposed concurrent prison sentences of 144 months on count 1 and 70 months on count 4. The district court also ordered that, after Udoh completes his sentence on count 1, the commissioner of

corrections shall place him on conditional release for 10 years with respect to count 1 and for the remainder of his lifetime with respect to count 4. In addition, the district court ordered that, after Udoh completes his sentence, he will be required to register as a predatory offender for the remainder of his lifetime.

On direct appeal, this court affirmed Udoh's convictions with respect to counts 1 and 4 but reversed the conviction on count 2 on the ground that it is a lesser-included offense of the offense in count 1. *State v. Udoh*, No. A14-2181, 2016 WL 687328, (Minn. App. Feb. 22, 2016) (citing Minn. Stat. § 609.04, subd. 1 (2012)), *rev. denied* (Minn. Apr. 27, 2016).

In September 2022, Udoh filed a *pro se* motion to correct his sentence. He argued that he should not be on conditional release, and should not be required to register as a predatory offender, for the remainder of his lifetime after his release from prison. The district court denied Udoh's motion. Udoh appeals.

DECISION

Udoh argues that the district court erred by denying his motion to correct sentence.

A district court “may at any time correct a sentence not authorized by law.” Minn. R. Crim. P. 27.03, subd. 9. An offender may obtain a correction of his or her sentence by filing a motion to correct sentence. *See, e.g., Townsend v. State*, 834 N.W.2d 736, 739 (Minn. 2013); *Johnson v. State*, 801 N.W.2d 173, 175 (Minn. 2011). A sentence is not authorized by law if it is “contrary to law or applicable statutes.” *State v. Schnagl*, 859 N.W.2d 297, 301 (Minn. 2015). In general, this court applies an abuse-of-discretion standard of review to a district court's denial of a motion to correct sentence. *Townsend*,

834 N.W.2d at 738. But we apply a *de novo* standard of review to a district court’s legal conclusions. *Id.*

Udoh challenges two components of his sentence that apply for the remainder of his lifetime after the completion of his prison sentence: the requirement that he be on conditional release and the requirement that he register as a predatory offender. We will discuss each requirement separately.

A.

The legal authorization for the district court’s order for lifetime conditional release is contained in the following statute:

[W]hen the court commits an offender to the custody of the commissioner of corrections for a violation of section 609.342, 609.343, 609.344, 609.345, or 609.3453, and *the offender has a previous or prior sex offense conviction*, the court shall provide that, after the offender has completed the sentence imposed, the commissioner shall place the offender on conditional release *for the remainder of the offender’s life*.

Minn. Stat. § 609.3455, subd. 7(b) (2012) (emphasis added).

In *State v. Nodes*, 863 N.W.2d 77 (Minn. 2015), the supreme court held that another sex-offense conviction in the same case may constitute a ““previous or prior sex offense conviction”” for purposes of section 609.3455, subdivision 7(b). *Id.* at 79-82 (quoting Minn. Stat. § 609.3455, subd. 7(b) (2014)). The defendant in *Nodes* was (like Udoh) convicted of first-degree criminal sexual conduct with respect to one victim and second-degree criminal sexual conduct with respect to another victim. *Id.* at 78-79. The state asked the district court to order that, after Nodes completes his sentence (if it were to be executed), he must be placed on conditional release for 10 years with respect to the first

conviction and for the remainder of his lifetime with respect to the second conviction. *Id.* at 79. The district court denied the state’s request on the ground that both convictions were entered on the same day. *Id.* The state appealed. *Id.*

The supreme court reversed, reasoning as follows:

Nothing in the statute suggests that a conviction entered at the same hearing as a subsequent conviction cannot function as a “prior sex offense conviction” for the purpose of Minn. Stat. § 609.3455, or that a particular temporal gap between the convictions is required. As long as one conviction is entered before the second, it is a “prior conviction” under the plain language of the statute.

Id. at 82. The supreme court noted that a defendant is “convicted” when a guilty plea or guilty verdict is accepted and recorded by the district court, *id.* at 80 (citing Minn. Stat. § 609.02, subd. 5 (2014)), and that a district court “‘records’ a guilty plea upon accepting the guilty plea and adjudicating the defendant guilty on the record,” *id.* at 81 (quoting *State v. Martinez-Mendoza*, 804 N.W.2d 1, 6 (Minn. 2011)). Accordingly, the supreme court concluded that Nodes’s guilty pleas were accepted at his sentencing hearing and that his two convictions were entered sequentially, which made the first conviction a prior conviction:

When the court announced on the record that Nodes was adjudicated “guilty of criminal sexual conduct in the first degree,” in that instant Nodes was convicted of that offense, and in the next instant it was no longer a present offense, but was now a past conviction. Nodes’s first conviction, which occurred a moment “before” the second, was at that point a “prior sex offense conviction.”

Id. at 82.

Four years later, in *State v. Brown*, 937 N.W.2d 146 (Minn. App. 2019), this court distinguished *Nodes* in a case in which multiple convictions were entered “simultaneously.” *Id.* at 155-57. At Brown’s sentencing hearing, the district court referred to his two offenses collectively, using phrases such as “those crimes” and “both counts.” *Id.* at 155. We stated that there was “no temporal gap whatsoever between” the district court’s adjudications of the two offenses. *Id.* at 157. In that situation, we reasoned, “no conviction is entered ‘before’ the other, and no conviction can be prior to the other.” *Id.* Accordingly, we reversed the district court’s order for a lifetime term of conditional release. *Id.*

In this case, the parties agree that the district court accepted the jury’s guilty verdicts and adjudicated Udoh guilty at his sentencing hearing. The district court imposed sentences on counts 1 and 4 in the following manner:

And, therefore, Mr. Udoh, Emem Udoh, having been found guilty on August 19, 2014 of Count 1, the crime of Criminal Sexual Conduct in the First Degree in violation of Minnesota Statute 609.342, subdivision 1(b), and standing convicted of said crime, it is the sentences of law and the judgment of this Court that as punishment therefore you shall be committed to the Commission of Corrections of this state for a period of 144 months.

You were also found guilty on August 19, 2014 of Count 2, the crime of Criminal Sexual Conduct in the Second Degree in violation of Minnesota Statute 609.343, subdivision 1(b), and are convicted of that crime; however, no sentence is imposed upon this conviction.^[1]

¹As stated above, the conviction on count 2 later was reversed on the ground that it is a lesser-included offense of the offense in count 1. *See Udoh*, 2016 WL 687328, at *4.

You were also found guilty on August 19, 2014 of Count 4, the crime of Criminal Sexual Conduct in the Second Degree in violation of Minnesota Statute 609.343, subdivision 1(a), and standing convicted of said crime it is the sentence of law and the judgment of this Court that as punishment therefore you shall be committed to the Commissioner of Correction of this state for a period of 70 months.

The transcript of the sentencing hearing clearly reflects that Udoh's convictions on counts 1 and 4 were entered sequentially, as in *Nodes*, not simultaneously, as in *Brown*. For that reason, Udoh's conviction of the sex offense in count 1 was a "prior sex offense" at the time of his conviction of the sex offense in count 4. *See Nodes*, 863 N.W.2d at 82 (quoting Minn. Stat. § 609.3455 (2014)). Because Udoh had a prior sex-offense conviction, the district court was authorized by law to order that he be placed on conditional release for the remainder of his lifetime. *See* Minn. Stat. § 609.3455, subd. 7(b).

Udoh argues in his *pro se* brief that "[t]his case is like *Brown*, where the convictions occurred *simultaneously* during sentencing." In response, the state argues that *Nodes* applies because the district court separately imposed the sentences on counts 1 and 4. Udoh does not attempt to rebut the state's argument in his reply brief. But there is no valid counter-argument because, as stated above, the record clearly reflects that Udoh's convictions on counts 1 and 4 were entered sequentially, as in *Nodes*, not simultaneously, as in *Brown*.

Thus, the district court's order for lifetime conditional release was authorized by law.

B.

Udoh also challenges the district court's order that he register as a predatory offender for the remainder of his lifetime.

The district court was authorized to order registration as a predatory offender with respect to both count 1 and count 4 because Udoh was convicted of violations of sections 609.342 and 609.343. *See* Minn. Stat. § 243.166, subd. 1b(a)(1)(iii) (2012). The duration of Udoh's requirement to register as a predatory offender is governed by the following statute:

[A] person required to register under this section shall continue to comply with this section until ten years have elapsed since the person initially registered in connection with the offense, *or until the probation, supervised release, or conditional release period expires, whichever occurs later.*

Minn. Stat. § 243.166, subd. 6(a) (2012) (emphasis added). Because Udoh is required to be on conditional release for the remainder of his lifetime, he also is required to register as a predatory offender for the remainder of his lifetime. *See id.* Thus, the district court's order for lifetime registration as a predatory offender was authorized by law.

In sum, the district court did not err by denying Udoh's motion to correct his sentence.

Affirmed.